

MINUTES OF THE JUDICIARY COMMITTEE
March 8, 1983

The meeting of the Judiciary Committee was called to order by Chairman Dave Brown at 8:05 a.m. in room 224A of the capitol building, Helena, Montana. All members were present, as was Brenda Desmond, Staff Attorney for the Legislative Council.

SENATE BILL 347

SENATOR GALT, District 23, explained that this bill clarifies the law on prescriptive easements; and provides that recreational use of land or water does not grant a prescriptive easement, regardless of whether the recreational use was permitted or occurred without objection but with the knowledge of the landowner. He informed the committee that this clarification of existing law is required to avoid further confrontation between landowners and sportsmen. He contended that the bill, as proposed, will increase recreational access to privately held land; since it will remove the concern that many landowners have that through permitting a recreational use of their land, the landowner may expose his title to a later claim that a recreational use can become a prescriptive easement to the public. He felt that without this restatement of the law, public access to private lands will diminish.

JO BRUNNER, representing Women Involved in Farm Economics, offered a statement in support of this bill. See EXHIBIT A.

BILL ASHER, representing the Agriculture Preservation Association, the Park County Legislative Association and the Sweetgrass County Preservation Association, stated that they were in support of this bill for similar reasons as attested to previously.

PAT UNDERWOOD, representing the Montana Farm Bureau, gave a statement in support of this bill. See EXHIBIT B.

ALLEN SHUMATE, a landowner in the Helena Valley and a representative of WETA, testified that he is letting the hunters in when they ask, and most of them are good; but some are not - they come in the back way, leave the gates open, let the animals get out and animals get killed. He thought this was a good bill and would urge the committee's support.

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RALPH HOLMAN, a landowner, rancher and outfitter, offered written testimony in support of this bill. See EXHIBIT C.

MONS TEIGEN, representing the Montana Stockgrowers Association, the Montana Woolgrowers Association and the Cowbelles, gave the committee written testimony in favor of this bill. See EXHIBIT D.

There were no further proponents.

JIM FLYNN, representing the Department of Fish, Wildlife and Parks, testified in opposition to this bill. See EXHIBIT E.

KEN KNUDSON, representing the Montana Wildlife Federation, stated that they were in opposition to this bill, not because they do not believe that there are some problems, but they feel that it is an overreaction to a situation that occurred in the area of navigability. He also wished the committee would look closely at HB 888, because in that bill right now, there is a section on prescriptive easements that probably addresses a good deal of the concerns of the landowners, particularly as to floating. They feel, in some ways, that this bill is a duplication of some of the language in HB 888.

There were no further opponents.

SENATOR GALT said that he was surprised that the Fish Wildlife and Parks are opposing this bill, because he served on one of their committees for many years to improve landowners-sportsmen relations. He contended that, if this bill does not pass, he was afraid that they would really polarize the landowners and the sportsmen's positions, because the landowners, after these court decisions, are scared to death that every time they let someone use their land, they are going to lose their title to it. He felt that they should remember that they will be doing more for landowners-sportsmen relations by passing this bill as any one thing they can do.

REPRESENTATIVE ADDY said that, if he remembers correctly, HB888 dealt with stream access, and this bill seems to be a broader concept of access. MR. KNUDSON replied that a

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lot of concern that has been raised about prescriptive easements has been in regard to court cases that Senator Galt has pointed out; his understanding is that the language in HB888 does cover that quite well; and he is wondering if going beyond that problem is a bit of an overreaction to the court cases.

REPRESENTATIVE ADDY wondered if a prescriptive easement is available for recreational purposes that there will be a real disinclination by the property owners ever to grant access. He thought if you could gain a prescriptive easement by use, that this would prevent the use at the onset. MR. FLYNN replied that he is not an attorney and not that familiar with the law, but it is his understanding that under present circumstances, prescriptive easements cannot be gained solely on the basis of recreational use--recreational use is one of the factors considered in determining if a prescriptive easement has been established. He said that their concern with the proposed bill is (1) they are aware of the definition that specifically deals with water in the other legislation, which is a change from present law and (2) they do not know if the present law needs to be changed to this degree.

REPRESENTATIVE ADDY questioned if what he was saying is that recreational use alone will not support a prescriptive easement; that the court would look at what other purposes the landowner has granted an easement and it would be a kind of cumulative effect. MR. FLYNN replied that that is his understanding, but an attorney might be able to address it further.

SENATOR GALT referred the question to SENATOR TURNAGE, who is an attorney.

SENATOR TURNAGE stated that he does not have any citations, but to understand what prescriptive easement really is in the law it is a use that is open, notorious and adverse over a period of five years. He said that if a person owned a tract of land and some neighbor starts driving over a corner of that land because it is more convenient to get to the main highway; if he does that for five years openly, notoriously and adversely; you, as the landowner sit there and watch him do it; then you try to shut it off; you build a fence and block the road; then he runs to his lawyer and files a complaint in the courthouse alleging that

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he has gained a prescriptive right (a right recognized by the law) and if the facts all come out somewhat as I have said, the court is going to grant him a decree saying that this man can continue to use it. He commented that he does not know of any case where the court has found that casual, but open and notorious and adverse crossing of a piece of ground for the purpose of fishing or hunting has established a right, either individually to the person who crosses, or the general public that occasionally uses that; but he emphasized that that is not saying that it could not happen; and this is an alarm that the ranchers have. He felt that the bill probably does not change the existing law as is indicated in the testimony, but the ranchers are afraid that it might; and, if that fear continues, what is going to happen if we do not pass something like this, they are going to lock up every piece of private property in the state, because, in their view, they cannot risk the loss and control of their lands to the public. He said hopefully, this bill does not change the existing law, but he is afraid that if they do not do something, he doubted if you would be able to get in and hunt on your neighbor's place. He felt that this would just polarize the entire issue; it will do more harm in the next two years than has ever been done since 1889.

REPRESENTATIVE RAMIREZ asked MR. FLYNN if he had the citations concerning the cases that he had mentioned. MR. FLYNN responded that he did not, but he could get them for the committee.

There were no further questions and the hearing on this bill was closed.

SENATE JOINT RESOLUTION 15

SENATOR TURNAGE explained that the resolution is a sort of a thank-you letter to the Crimestoppers Program and it speaks for itself. He explained that this program has gained public support and the statistics show that it has had some beneficial effect on crime control and it does not cost the public any money.

There were no proponents and no opponents.

There were no questions and the hearing on this bill closed.

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SENATE BILL 145

SENATOR TURNAGE, District 13, explained that this bill was introduced at the request of the Montana Supreme Court and it repeals the statutory provision fixing the bar examination fee at \$25.00. He said that there is a House bill that says the court will fix the fee commensurate with cost, and this just repeals the old statute.

J. C. WEINGARTNER, representing the State Bar of Montana, stated that they were in support of this bill.

There were no further proponents and no opponents.

SENATOR TURNAGE closed.

REPRESENTATIVE ADDY asked since this bill deals with the same subject as HB 577, is there any conflict. SENATOR TURNAGE replied that maybe this should be checked, that he could not answer that. He thought there maybe should be a coordination or else an amendment on this one saying that HB 577 shall prevail.

REPRESENTATIVE EUDAILY noted that the fiscal note says that the supreme court budget for boards and commissions is predicated on the \$400.00 fee and he wondered if the fee was not to cover the cost. SENATOR TURNAGE responded that theoretically they are setting the fee to cover the cost, but he supposed, under the constitutional powers of the court, they could ignore this statute and go ahead by rule and set the fee.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 201

SENATOR TURNAGE, District 13, presented a letter to the committee from Judge Harkin of the Fourth Judicial District, which explains the case for the bill. See EXHIBIT F. He said that there are two methods of granting immunity - one found in federal law and one like that in Montana. He said one is called transactional immunity and one is called use immunity. He explained that this bill proposes to adopt

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for the state of Montana the federal rule, that of use immunity, and the net effect of the bill would make it tougher on those accused of crimes. He read from Judge Harkin's letter.

There were no proponents and no opponents.

SENATOR TURNAGE closed.

REPRESENTATIVE ADDY noted that evidently there is a problem in the prosecution of two cases that could not be solved simply by prosecuting the guy they had the goods on first. SENATOR TURNAGE said that he did not attend the trial in the Forsyth case, but that the defendant was defended by a most capable trial attorney, former District Judge Robert Keller, and he insisted that this co-conspirator be called as a witness for Forsyth, claiming that it was essential to Forsyth's proper defense that he be made to testify--it was not the prosecution, it was the defense. He continued that by calling the co-conspirator and getting him to testify, he invoked the transactional immunity statute, and once that was allowed as testimony, then he walked out free, even though he did not pull the trigger, at least the prosecution claimed that there was enough there to charge him with being a conspirator. He indicated that, as a good trial lawyer, if he was representing two people accused of homicide, he would do exactly that.

REPRESENTATIVE ADDY asked if there was a greater likelihood of perjury if you use use immunity rather than transactional immunity. SENATOR TURNAGE responded that if he were being called by the prosecution, he would try to testify on everything that possibly relates to my being charged, and that way even the use immunity would apply. He stated that the real mischief is the way you can manipulate this on the defense side.

REPRESENTATIVE RAMIREZ wondered if there were any articles that discussed just how effective the two types of immunity might be, as it seemed to him that transactional immunity would be much more effective from the law enforcement standpoint in getting people to testify by granting them immunity. SENATOR TURNAGE responded that he did not think you have voluntary witnesses here; they are always there against their will and they sure are not willing witnesses.

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CHAIRMAN BROWN wondered if this might get in the way in those cases where it is imperative to grant immunity to the lesser of two evils to get at the evil. SENATOR TURNAGE replied that it is a little hard to tell exactly how this would work in Montana, but he hoped that the federal experience had not been such as to make a change.

There were no further questions and the hearing on the bill was closed.

SENATE BILL 127

SENATOR HAZELBAKER, District 41, stated that this was a bill, which establishes basic peace officer employment standards and educational requirements to be completed within one year of the appointment of deputy sheriffs, undersheriffs, police officers, highway patrolmen, fish and game wardens, etc. and it also allows the Board of Crime Control to grant extensions to the time for compliance with the standards. He explained how he became involved in issues concerning the hiring of peace officers and the establishment of basic standards; and the time has come when they should be put in the law so that everybody knows what they are.

CLAYTON BAIN, Executive Director of the Peace Officer's Standards and Training in the Department of Justice, said that the present act, which has been in effect for the last ten years, authorizes the Board of Crime Control to establish minimum standards for the selecting and training of police officers. He informed the committee that this has changed the whole atmosphere of law enforcement in the state of Montana; over the past ten years, they have certified something like 1,200 peace officers in the state as being qualified to serve at a basic level as law enforcement personnel; and they are trying to take certain parts of the administrative rules and put them into the legal code.

There were no further proponents and no opponents.

SENATOR HAZELBAKER closed by saying the vote in the Senate on this bill was 50 to 0.

REPRESENTATIVE JAN BROWN wondered, if on page 2, lines 23 and 24, wherein it says "a physician, who is not the

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applicant's personal physician," if this could cause a problem in a small area where there might be just one doctor. MR. BAIN responded that they apparently have not run into that problem and what they will do they will send him to a physician in a nearby city.

REPRESENTATIVE VELEBER asked who bears the cost of this. MR. BAIN replied that normally the city council or the city commissioners, but it depends - some agencies bear the cost themselves and sometimes the applicant must bear the cost.

REPRESENTATIVE VELEBER questioned who determines who will bear the cost. MR. BAIN responded that normally the governing body and he noted that throughout the state more and more local agencies are bearing the cost themselves.

SENATOR HAZELBAKER explained that the city council sees that money is available to take care of this cost in Dillon as well as the law enforcement academy.

REPRESENTATIVE SPAETH noted that the bill said on page 3, line 1, "any emotional or mental conditions" and he thought that most physicians really do not like to be involved in these conditions and he wondered what was the situation concerning this. MR. BAIN responded that this is actually present law - they just took the present law and put it in there. He commented that what normally happens is that the medical physician will not test for any mental or emotional problems and that just about every one of the large agencies in the state require that the applicant take psychological tests.

REPRESENTATIVE SPAETH inquired where in the present law is this. He answered that it is in the section dealing with selection of police officers in the state of Montana.

REPRESENTATIVE SPAETH noted that on page 3, line 4, the bill reads, "successfully complete an oral examination" and he wondered how an oral examination differed from a job interview. MR. BAIN responded that they usually use questions as to how a person would handle a specific situation to get his judgment, his ability to speak and his ideas.

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REPRESENTATIVE SPAETH asked if this is pretty well pre-determined ahead of time. He explained that the town of Joliet wants to hire a new law enforcement person and, as their city attorney, he wanted to know how you go about setting up something like that. MR. BAIN replied that he just talked to a lady who is an alderwoman there and she was asking me the same question; you can appoint people from the city council or from the community; you find people to sit on that board; you give an actual situation and ask how they would handle this.

REPRESENTATIVE SPAETH indicated that on page 5, it says, "one-year probationary" and he wondered what does "probationary" mean. MR. BAIN responded that all peace officers in the state of Montana are required to serve a one-year probationary term; and it has been in the law for a number of years.

REPRESENTATIVE EUDAILY asked if the campus security officers and airport police officers are included in the current law. MR. BAIN replied that they are and this came about six or seven years ago.

REPRESENTATIVE JAN BROWN noted that on page 5, line 6, they mention a shortage of manpower and that there are women officers in this day and age.

REPRESENTATIVE ADDY said what we are doing is codifying regulations - making regulations into statutes. MR. BAIN responded that we are putting them in the legal code.

There were no further questions and the hearing on this bill was closed.

SENATOR HAZELBAKER indicated that REPRESENTATIVE MANUEL will carry this bill in the House.

The committee took a break at 9:01 a.m. and resumed at 9:16 a.m.

EXECUTIVE SESSION

SENATE JOINT RESOLUTION 15

REPRESENTATIVE ADDY moved that this bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE JENSEN. The motion carried unanimously.

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SENATE BILL 145

REPRESENTATIVE JENSEN moved that this bill be TABLED. REPRESENTATIVE ADDY seconded the motion.

CHAIRMAN BROWN pointed out that this probably does have to be tabled--it is a repealer of that entire section and if it is passed, it would take precedence over what we did on that other bill that came out of here, at least until we find out differently and Ms. Desmond will check that.

REPRESENTATIVE ADDY asked if this would have the same effect as a coordinating instruction and would we come out to the same place.

REPRESENTATIVE JENSEN asked if we want this repealed, if the other one dies.

The motion carried unanimously.

SENATE BILL 201

REPRESENTATIVE HANNAH moved that this bill BE CONCURRED IN. REPRESENTATIVE CURTISS seconded the motion.

REPRESENTATIVE RAMIREZ stated that he had a problem with this because there might be a situation where law enforcement is aware that immunity might be granted and occasionally people come forward, if they know that they might get immunity. He felt that they did not get very much information as to the effect of what this might do and by changing the policy, there might be some problems the other way.

REPRESENTATIVE ADDY said that he was not that uncomfortable with this bill; this is the federal form of immunity and the form of immunity that he worked with for four years while in the service; it did not seem to him to have that much impact on a defendant's decision to testify or not; you could plea-bargain or whatever before you testify against a co-defendant and if they agreed not to prosecute in exchange for that testimony, those agreements were honored. He thought that this gives more flexibility to the prosecutor-he has a choice between use immunity or you could negotiate.

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REPRESENTATIVE RAMIREZ recognized the fact that REPRESENTATIVE ADDY knew a lot more about this than he did, but he felt that it was a major policy decision because he did not have a good feeling about what the consequences of this policy change would be, and he did not feel that he got that much from the hearing. He said that it is not just a matter of the question of whether the rights of the accused are protected, even though in the backroom they can grant broader immunity, he did not know if this is the direction they want to go and he is concerned about the effects on the prosecution.

REPRESENTATIVE BERGENE asked REPRESENTATIVE RAMIREZ if it was his hope that SENATOR TURNAGE could get us some of those citations. REPRESENTATIVE RAMIREZ replied that he did not think he really had any and what he would propose to do himself is just call the Attorney General's office and ask them if they could get me some information on it.

CHAIRMAN BROWN stated that he would be inclined to hold this for a day, with the committee's permission, and ask MS. DESMOND to call over and get this information.

SENATE BILL 127

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE HANNAH wondered if this bill does not relate to why the Senate killed the bill about allowing all peace officers to go to training - apparently this does the same thing. REPRESENTATIVE KEYSER replied that that is not correct; that this language that is in here has been adopted as rules and regulations by the board and what they are doing is actually making this into statutes rules that they have already adopted and using in the training process.

REPRESENTATIVE JAN BROWN moved to amend page 5, line 6, by striking the word, "MANPOWER" and inserting "PERSONNEL". REPRESENTATIVE DARKO seconded the motion. The motion carried with REPRESENTATIVE KEYSER and REPRESENTATIVE DAILY voting no.

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REPRESENTATIVE FARRIS moved to amend the bill on page 1, line 22 by striking "patrolmen" and inserting "patrolman". REPRESENTATIVE IVERSON seconded the motion. The motion carried unanimously.

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE ADDY seconded the motion. The motion carried unanimously.

SENATE BILL 142

MS. DESMOND said that a question was raised as to what impact this bill might have on HB 731, which was passed in this committee and passed by the House. HB 731 adopts the 1978 revisions to the Uniform Federal Lien Registration Act; the revisions expand the application of that law to all federal liens, not just tax liens. She stated that a question was also raised as to the effect that changing the federal lien registration law might have on the way the Internal Revenue Service treats the filing of tax liens. She explained that in this state notices of liens are filed in the Secretary of State's office; if the state law for filing of liens is not in compliance with the Internal Revenue code, then the IRS will require that federal tax liens be filed in United States District Court rather than in the Secretary of State's office. She indicated that there was a difference between SB 142 and HB 731 and she made various calls to gain information concerning the effect of the proposed change on the Uniform Act. She had spoken to Benjamin Sanchez, Director of Litigation Division of the Internal Revenue Service in Washington, D.C. and he offered to review the matter.

CHAIRMAN BROWN informed the committee that a letter has been sent to Mr. Sanchez requesting further review.

REPRESENTATIVE RAMIREZ commented that if he were to guess why this language is in there is because the Internal Revenue Service would still want a system that was comparable to what they have in the district court. He said maybe they should write the Conference on Uniform Laws and ask them if they would consider a uniform change that would deal with storage for a long period of time, although he wondered why we can't microfilm them. He thought that they should kill the bill and MS. DESMOND should be commended for the nice job she did on this.

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MS. DESMOND indicated that the reason the provision was put in to keep the records permanently was because there was a concern that as the liens ran out after six years and had to be renewed, that if there was not a permanent record, it would not be clear to creditors as to when the original filing was and, therefore, they might not be on notice as to the date of filing of the lien, although Mr. Sanchez felt that even if the original record was destroyed, they could keep a record of the original filing.

CHAIRMAN BROWN informed the committee that he talked to Alan Robertson and he said that they were concerned and they were basing their position entirely on the Regional Counsel's advice; they had not gone further than that and he felt that maybe the committee should table this and if we do get further information before the session is over, we can see about it then.

REPRESENTATIVE ADDY moved that the bill BE TABLED. REPRESENTATIVE JENSEN seconded the motion. The motion carried unanimously.

SENATE BILL 114

SENATOR JENSEN moved that the bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE JAN BROWN.

CHAIRMAN DAVE BROWN offered the amendments that were passed out with the exception of #2. See EXHIBIT G. CHAIRMAN BROWN moved the adoption of these amendments and the motion was seconded by REPRESENTATIVE KEYSER.

CHAIRMAN BROWN explained that #4 and #9 were REPRESENTATIVE SPAETH's proposed amendments and the other amendments basically do two things - (1) they make it clear that the note may be held through any related court action and (2) he hopes they deal adequately with the retroactive clause as well as the burden on the coroners to return the multitude of suicide notes since it must be made on written request only. He stated that he was very anxious to get this bill out of here and to the floor.

REPRESENTATIVE RAMIREZ commented that he has a problem with "any related court action" and he moved to change in #3, #10 and #8 of the amendments the language "any related court action" to "any related criminal prosecution".

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REPRESENTATIVE RAMIREZ noted that they would have to change amendment #5 also.

REPRESENTATIVE KEYSER questioned if this would have to go through the appeal process. CHAIRMAN BROWN said that is his intention.

REPRESENTATIVE JAN BROWN asked in on amendment #6, should this be line 6 instead of line 4. CHAIRMAN BROWN replied that that is correct.

A vote was taken on the amendments and the motion carried unanimously.

REPRESENTATIVE RAMIREZ said that one of the witnesses called him and one of the problems he has, even if they do this upon request in making this retroactive, is that they could open up a whole lot of old things that are really not relevant any longer and might create some problems when there is not a personal representative.

CHAIRMAN BROWN said that she called him also and thought that five years would be alright.

REPRESENTATIVE RAMIREZ suggested that on line 25, after "died" insert "after September 30, 1978".

REPRESENTATIVE FARRIS commented that she felt that they should leave this open-ended, and the reason she says that she knows people who have lost someone in World War II and are still searching for them, and in her own family, her mother died 21 years ago and most all of us have adjusted to that fact, but she has one sister who has not and she felt that if you leave it open-ended, you are not hurting anyone.

REPRESENTATIVE RAMIREZ indicated that you are possibly creating a lot of expense and he would just like to eliminate the retroactive process entirely; because you don't have public administrators or a proceeding where there is a personal representative who has not been discharged. He explained that if you don't have that, you have to go to the public administrator and the public administrator might have to initiate a proceeding just to get a suicide note. He thought there could be a lot of expense and

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trouble. He felt, in his own mind, he would not want to have the bill retroactive. He noted what seems like a simple procedure to hand somebody something is made very complicated because you have all these proceedings you have to go through. He commented that this should all be unnecessary, because a coroner should have enough common sense that they should just give it to somebody without the law having to tell them to do it.

REPRESENTATIVE SPAETH said that this was his problem with the bill - they have one coroner in the state of Montana that does not do it right now, that has caused the problem and now we are literally going to cause problems with other coroners and other people by setting up what he feels is a relatively complicated procedure. He felt it was a strange way of running a business and he wished that they could do something with the one here in Lewis and Clark County.

REPRESENTATIVE KEYSER wondered if that was really so. He said that these people live close here and brought this to our attention, but he wondered if there were not other coroners who are doing this too.

CHAIRMAN BROWN commented that he asked Charles Graveley that question and he said that they had a problem with a few of them, but not very many.

REPRESENTATIVE SPAETH indicated that in his area, they have had four or five suicides within the last year-and-a-half and he asked the old coroner and the new coroner how they handled the suicide notes and they said that they handed it over. He said that now those families would have to go through a process and this is where he has some problems.

CHAIRMAN BROWN said that they basically just have to write a note. REPRESENTATIVE RAMIREZ replied that it is not the writing of the note that is the problem but who the coroner has to turn it over to - he can't give it to the family any longer - he has to give it to either the personal representative, or, if there is no personal representative, to the public administrator. He felt that that

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is why it is so dangerous to go retroactive, because those personal representatives are all discharged. He contended that if it goes to the public administrator, it does not say anything about, if you get a suicide note, just slip it to the family member, who you think in your judgment is entitled to it. He continued that you must go through a proceeding, notify the heirs, and this and that and the other and that is the part that bothers him.

REPRESENTATIVE RAMIREZ moved that they amend this bill subject to five years. The motion was seconded by REPRESENTATIVE JENSEN. The motion carried with REPRESENTATIVE DAILY voting no.

REPRESENTATIVE HANNAH wondered if this bill could be amended to say "in the event of a dispute, this trips this whole mechanism" so that where there is no problem that people who want these notes can go after them. He did not feel that he could support the bill the way it is written.

REPRESENTATIVE IVERSON said that he liked what he was getting at, but the dispute is probably not likely to happen until the note is turned over to the family - that is when the war is likely to start.

REPRESENTATIVE HANNAH explained that he meant that if the county coroner does not wish to release this information, there is a mechanism wherein whoever wants it can ask for it.

REPRESENTATIVE JENSEN said that if they could get at the problems with the coroner in general, maybe, next time they would not have this problem.

REPRESENTATIVE FARRIS stated that she thought the concern here is topsy-turvy - the coroners are public servants and the people are the ones we should be concerned about, not whether it is putting too big a burden on the poor county coroner.

REPRESENTATIVE SPAETH wondered if they should not address themselves to the duties of the coroners that they should not keep the note period and forget about all the other procedures and say, "That the coroner will not keep the

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note unless it is going to be used for an investigation."

CHAIRMAN BROWN commented that he did not think they have that option now; there is a problem; he thought the bill was a little cumbersome but would help solve the problem.

REPRESENTATIVE HANNAH wondered why we do not have time. CHAIRMAN BROWN responded that he guessed we could.

REPRESENTATIVE HANNAH commented that he thought this was a bill that could be worked on.

REPRESENTATIVE KEYSER stated that he was in support of this bill and what they were trying to do, but he really has to go along with the other suggestions. He said that this bill has some language that he would like to amend out and it is the personal representative thing that is still in the law and he felt that that was unnecessary. He thought that they could make this bill clean and so it would do exactly what they want and not be so complicated.

REPRESENTATIVE BERGENE noted that if they had never amended out that thing in the title, maybe that is the bill that they really wanted.

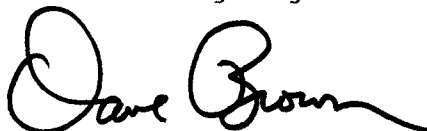
REPRESENTATIVE EUDAILY said if they had put a period there we would be alright.

REPRESENTATIVE KEYSER said they could take the personal representative and all that other out of there.

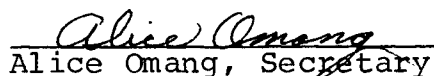
REPRESENTATIVE CURTISS indicated that they had some volunteers for a subcommittee.

CHAIRMAN BROWN appointed a subcommittee consisting of REPRESENTATIVE HANNAH, REPRESENTATIVE RAMIREZ and REPRESENTATIVE SPAETH to work on this bill.

The meeting adjourned at 10:08 a.m.



DAVE BROWN, Chairman



Alice Omang, Secretary

..... March 8, 19... 83...

MR. SPEAKER.....

We, your committee on JUDICIARY.....

having had under consideration SENATE JOINT RESOLUTION..... Bill No. 15.....

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color

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES
OF THE STATE OF MONTANA COMMENDING CITIZENS, LAW ENFORCEMENT OFFICIALS,
AND THE MEDIA IN MONTANA FOR THEIR SUPPORT OF CRINESTOPPERS, A
VOLUNTARY EFFORT TO PREVENT CRIME AND MAKE MONTANA COMMUNITIES SAFER.**

Respectfully report as follows: That..... SENATE JOINT RESOLUTION..... Bill No. 15.....

BE CONCURRED IN

~~DOGG~~

STANDING COMMITTEE REPORT

March 8, 19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE**

Bill No. **127**

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color

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING BASIC PEACE OFFICER EMPLOYMENT STANDARDS AND EDUCATION REQUIREMENTS TO BE COMPLETED WITHIN 1 YEAR OF THE APPOINTMENT OF DEPUTY SHERIFFS, UNDERSHERIFFS, POLICE OFFICERS, HIGHWAY PATROLMEN, FISH AND GAME WARDENS, CAMPUS SECURITY OFFICERS, AND AIRPORT POLICE OFFICERS; ALLOWING THE BOARD OF CRIME CONTROL TO GRANT EXTENSIONS TO THE TIME FOR COMPLIANCE WITH THOSE STANDARDS; AMENDING SECTION 7-32-303, MCA."

Respectfully report as follows: That..... **SENATE**

Bill No. **127**

BE AMENDED AS FOLLOWS:

- 1. Page 1, line 22.
Strike: "patrolmen"
Insert: "patrolman"
- 2. Page 5, line 6.
Strike: "MANPOWER"
Insert: "personnel"

AND AS AMENDED
BE CONCURRED IN

~~XXXXXX~~
DO PASS

WITNESS STATEMENT

Name BILL ASHER Committee on JUDICIARY
Address P.O. BOX 3285 BOZEMAN Date MARCH 8, 1983
Representing APA - PCLA + SCPA Support ✓
Bill No. SB 347 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. WE BELIEVE THAT SB 347 IS IN THE BEST INTEREST OF
LANDOWNERS AND SPORTSMEN Alike
- 2.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Exhibit A
SB 347
3-8-83

WIFE Women Involved In Farm Economics

NAME JO BRUNNER BILL NO. SB 347
ADDRESS 563 3rd ST HELENA DATE Mar 8, 1983
REPRESENT WOMEN INVOLVED IN FARM ECONOMICS
SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

Mr. Chairman, members of the committee, my name is Jo Brunner and I represent the members of the Women Involved in Farm Economics organization here today.

Mr. Chairman, our members wish to support Senate Bill 347. We believe that is not to our best interests to have to allow persons on our property simply because we have given them the privilege to be there several times in the past.

Because of the misuse of hunting and fishing privileges on our lands we have been forced to post more and more land. Policing, and that is a very harsh word to use, but does fit the extremes we must often to--takes a great deal of our time and can be expensive, often taking us away from other needs.

Most of us do not post our lands for plain orneriness--we have good reason to do so. Gates left open, livestock wounded or killed, fields driven through, all costly to the farmer and rancher.

While we realize that the majority of people fishing and hunting, often just picnicing, are responsible citizens, some are not. Those are the ones we must keep out and are making it tough on the responsible majority.

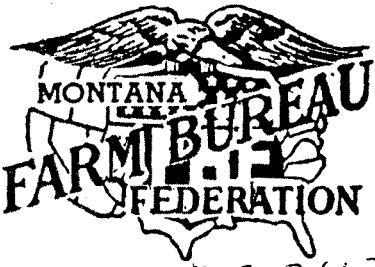
And if people have been on our lands in the past, without asking permission, or feeling that they needed permission, we should not be obligated to let them return.

One of our members was confronted by people they had allowed to cut Christmas trees on their property for several years, with the declaration that the landowners permission was no longer needed--we realize that this is the extremem but thats is the trend.

We ask a do pass on Senate Bill 347.

Thank you.

SB 347
3/8/83



MONTANA FARM BUREAU FEDERATION

502 SOUTH 19th

Dial 587-3153

BOZEMAN, MONTANA 59715

BILL NUMBER. SB 347

DATE Mar
~~Feb~~ 8, 1983

SUPPORT OPPOSE AMMEND

NAME Pat Underwood

COMMENTS:

The Montana Farm Bureau supports SB 347. We have written policy which is legislative addresses. we recommend a do pass on SB 347.

Pat Underwood

March 8, 1983

Exhibit C
SB347
3-8-83

House Judiciary Committee
House of Representatives
State Capitol
Helena, Montana

Chairman: Representative Dave Brown
Re: S.B. 347

Mr. Chairman and members:

My name is Ralph Holman, McLeod, Montana. I am a landowner, rancher and Outfitter, I stand in full support of S.B. 347. I have been a resident of Montana since 1939 and being an avid outdoor recreationist all of my life and having seen landowner-recreationist problems from both sides, I feel qualified to offer input for your consideration.

Not too long ago very few landowners posted their property and the recreationist who asked permission, followed landowner instructions and respected private property was a welcome guest. Currently we find there has been a radical change in landowner attitude brought on by some recreationist who are totally inconsiderate of private property rights.

From personal experience during my landowner years I have been told by trespassing recreationist that my gate was a nuisance and they were not about to close it; I have had closed gates thrown open numerous times and left open. I have been cursed for locking a gate on my land when signs, posted to keep out vehicles, were ignored. I have had a lock shot off a gate located on my private property. I have had gates left open even when signs were placed on gates requesting "Please Close Gate". On several occasions I have had to find stock that left through a gate left open by hunters. On one occasion it took me 3 days to find 20 head of horses that left my property through a gate left open by recreationist. Last summer a van load of recreationist informed me that they had driven a vehicle through my property for eight years therefore I could not deny them ingress and egress. In remembrance of the years that I did not own property, the majority of my property is not posted however, in view of current attempts to gain access by prescriptive easement, to take over use of private property, and in frustration, I am strongly considering a solid posting project.

Agreed it should not be necessary, nearly one third of Montana, approximately thirty million acres of land, thousands of miles of streams and countless lakes have been reserved for our recreationists. Few states have provided for the recreationist as has Montana.

Most landowners will react as I have in concern for private property rights, a do pass recommendation on S.B. 347 will relieve much of this concern, a concern shared by both the landowner and the ethical recreationist. Persons who oppose S.B. 347 should ask themselves if they want this to be possible on their own property or in their own back yard. Thank you.

Ralph Holman,
McLeod, Montana

C 2

Exhibit D
SB 347
3-8-83

NAME Mons Teigen ^{Sen} BILL No. 347
ADDRESS Helena DATE 3/8/83
WHOM DO YOU REPRESENT M. Stockman - Woodman - Cowbell
SUPPORT OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This bill is long overdue. Landowner-sportsmen relations are at a low point and there is a strong possibility that HB 888 may not pass so that relief to the problem will not be available.

Farmers + ranchers have been good neighbors for the most part, but failure to address this problem in this manner will make them increasingly wary of permitting ^{further} recreational use of their property.

Exhibit E
SB347
3-8-83

SB 347

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

March 8, 1983

Senate Bill 347, by precluding recreational use as one method of gaining a prescriptive easement, attempts to relegate recreational use of Montana lands and waters to a secondary status. By so doing, it ignores the enormous economic values of recreational activity in Montana.

Senate Bill 347 overturns the long recognition in the law of recreation as a legitimate and legal use for purposes of prescriptive easement. Although the Montana Supreme Court has indicated that occasional use of a roadway by hunters and fishermen may not be sufficient to create a prescriptive easement, there is considerable recognition that use of a roadway or other avenue for recreational purposes may lend credence to a claim for prescriptive easement. Accordingly, this bill seeks to turn around that long history of recognition.

Senate Bill 347 is a response to the recent court decisions regarding navigability on two Montana streams. Yet SB 347 goes far beyond those two cases and basically eliminates the consideration of ~~recognition~~ in relationship to a prescriptive easement.
[Handwritten: 7/26/83 at 10:00]

The Department feels that SB 347 is an over-reaction to recent events and that the measure should not pass.



Exhibit F
SB201
3/8/83

DOUGLAS G. HARKIN
JUDGE OF THE DISTRICT COURT

December 27, 1982

Senator J. A. Turnage
P. O. Box 450
Polson, MT 59860

Dear Senator Turnage:

I would like to bring to your attention a problem with the Montana immunity statute. Section 46-15-311 M.C.A. provides that either the prosecution or the defense may ask the district judge to compel a person to answer a question or produce evidence that may incriminate him. If the person is required to give testimony the person cannot be prosecuted for or on account of the transaction or thing about which he testified.

The Montana method of granting immunity is known as "transactional immunity". Under this form of statute, once the immunity is granted the witness cannot be prosecuted for any transaction about which his testimony is compelled [see Kelly v. Gilbert, 437 F. Supp. 201 (1976)]. The district court order to compel testimony has the effect of granting transactional immunity.

Under federal law, immunity from prosecution may be granted under the authority of 18 U.S.C. §6002, §6003. This form of immunity is commonly known as "use and derivative use" immunity and precludes the use of the compelled testimony and any evidence derived from such testimony.

The critical distinction between the Montana and federal immunity statutes is that the federal immunity statutes allow prosecution for a crime about which testimony was compelled; what is forbidden is the use of the actual testimony or evidence derived from the testimony. Montana law totally forbids prosecution for a crime about which the person has been forced to testify, even if there is evidence separate and apart from the actual testimony given by the person who was granted immunity.

By way of example, in a recent case immunity was granted to a witness so that the defendant could fully exercise his right of cross-examination. The witness, who was a good friend of the defendant, had been charged as an accomplice


Senator J. A. Turnage
December 27, 1982
page 2

to a homicide and when he was forced to testify he denied any involvement but did testify about some facts of the crime so that there is little doubt that he did give enough testimony to invoke the "transactional immunity" of our statute. The prosecution claims to have enough independent evidence to go to trial without the use of any of his testimony but now the case can never be prosecuted.

The problem caused by our statute is that in order to provide a fair trial to one defendant it may be necessary to allow another defendant to escape prosecution even though there exists independent evidence of his guilt. Often it is necessary to grant immunity to one co-conspirator in order to catch another but that is a conscious choice of the prosecution; under our current Montana statute immunity can be manipulated in a manner never intended.

An immunity law similar to the federal law would accomplish all objectives required of an immunity statute. Your help in correcting this problem would be appreciated. Please feel free to call on me if I could be of any further assistance.

Sincerely,


Douglas G. Harkin
District Judge

DGH/kp

Proposed Amendments to SB 114

1. Page 1, line 23.

Following: "of"

Strike: "the property"

Insert: " a written request for such property or note"

2. Page 2, line 2.

Following: "15."

Insert: "The personal representative or public administrator must give a suicide note to the person to whom it is addressed or if it is unaddressed, to an appropriate person under Title 72, chapters 1 through 3."

3. Page 2, line 7.

Following: "investigation"

Strike: "is"

Insert: "and any related *criminal prosecution* ~~court~~ action are"

4. Page 2, line 11.

Following: "note"

Insert: "held"

5. Page 2, line 12.

Following: "INVESTIGATION"

Insert: "or court action"

6. Page 3, line 4.6

Following: "72"

Insert: ",upon written request of the personal representative"

7. Page 3, line 8.

Following: "15"

Insert: ",upon his written request"

8. Page 3, line 13.

Following: "investigation"

Strike: "is"

Insert: "and any related court action are"

9. Page 3, line 17.

Following: "note"

Insert: "held"

10. Page 3, line 18.

Following: "INVESTIGATION"

Insert: "and any related court action"



The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

REPRESENTATIVE DAVE BROWN
HOUSE DISTRICT 83

HOME ADDRESS
3040 OTTAWA
BUTTE, MONTANA 59701
PHONE (406) 782-3604

COMMITTEES:

JUDICIARY, CHAIRMAN
NATURAL RESOURCES
HIGHWAYS
ENVIRONMENTAL QUALITY COUNCIL, VICE CHAIRMAN

March 7, 1983

Mr. Benjamin Sanchez
Director of Litigation Division
Office of Chief Counsel
Internal Revenue Service
Room 4551
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Mr. Sanchez:

I understand that Brenda Desmond, the staff attorney for the House Judiciary Committee, discussed with you today on the telephone a bill currently being considered by the committee, which amends provisions of Montana law regarding filing federal tax liens with the Secretary of State. The bill, Senate Bill 142, would delete the present requirement that notices of federal tax liens be kept permanently in the files of the Secretary of State. If the bill passes, these notices will be treated in the same manner as other state public records. Management of public records is governed by Title 2, Chapter 6, part 2, of the Montana Code Annotated.

The Montana Legislature is also considering adoption of the 1978 amendments to the Uniform Federal Lien Registration Act. The House has already passed this bill, House Bill 731, and it is now being considered in the Senate.

Ms. Desmond has advised me of your kind offer to review the Montana lien registration law proposed in Senate Bill 142. I am writing to request that this review be performed. I am chiefly interested in your opinion on the effect of the bill, if any, on the validity of the present Montana law for the purposes of the Internal Revenue Service's interpretation of Montana law under Section 6323 of the Internal Revenue Code and Regulation §301.6323 (f)(1).

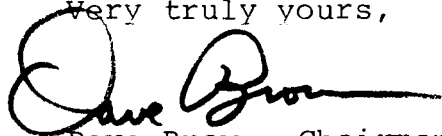
I am enclosing copies of relevant Montana statutes as well as the bills under consideration.

Mr. Benjamin Sanchez
March 7, 1983
Page Two

There are not many weeks left in the Montana legislative session,
so I would greatly appreciate it if this request were expedited.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dave Brown". The signature is written in a cursive style with a large initial "D" and a long horizontal flourish extending to the right.

Dave Brown, Chairman
House Judiciary Committee

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