MINUTES OF THE JUDICIARY COMMITTEE
March 9, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown in room 224A of the capitol building, Helena, Montana at 8:28 a.m. All members were present as was Brenda Desmond, Staff Attorney for the Legislative Council.

SENATE BILL 226

SENATOR CRIPPEN, District 33, Billings, said that this bill was requested by the county attorneys and provides that a party may move for a continuance of the hearing on a youth court petition when the youth involved is in custody as well as when the youth is not in custody. He testified that in those situations wherein a youth is designated as a delinquent youth and is in need of supervision, and wherein those allegations are not determined by a written admission by the youth, then the present law provides that the petition shall be dismissed with prejudice if the hearing on the petition is not begun within fifteen days after the service is completed. He indicated that the purpose of this bill is to expand that to provide that the continuance can be made whether or not the youth is under supervision. He stated that there are many times when the youth is in custody but it is required by the authorities to have more than fifteen days to present evidence to the court. He said that this would save time, there would be less duplicity in hearings and also would give more time for the court to find alternate ways to handle the youth rather than sending him off to one of the reformatory schools.

MARC RACICOT, Prosecution Coordinator for the County Prosecutor Services of the Department of Justice, said that they hope this will remedy problems wherein they simply cannot get all this evidence gathered together within fifteen days, especially with very difficult cases. He indicated that there are some youths that are involved in a particularly violent crime that require waiting for evidence that may have to be processed through the labs and if the hearing is not held within fifteen days, it simply has to be dismissed as there is no provision for continuance if the youth is custody.

There were no further proponents and no opponents.

SENATOR CRIPPEN closed.

REPRESENTATIVE SPAETH asked when they are talking about youth in custody are they talking about youth in jail. MR. RACICOT replied that they are normally in a proper youth facility but some may be in custody in a jail.

REPRESENTATIVE SPAETH said that he wondered if the amendment would make it a little more open-ended as the law the way it is presently written assures that the county attorneys act as quickly as possible when the youth is in custody or jail. MR. RACICOT replied that there is that possibility if the youth court is not following the very specific guidelines of the Youth Court Act and there is the possibility that someone could remain in custody longer than what they do now. He felt the advantages outweigh the possible hazards of allowing the youth to be held in custody longer than he should be.

REPRESENTATIVE SPAETH asked about amending part 1 to 25 days instead of amending part 2. MR. RACICOT responded that they felt the threshold requirement should be 15 days and unless they can show compelling circumstances, this is where it should be.

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

SENATE BILL 170

SENATOR BOYLAN, District 38, said that this was originally introduced as a plain old repealer and State Administration Committee tried to fix this up and the more they fixed it up, the more in opposition they got; and he thought that they may come back to the plain old repealer. This is an act to provide for reversion to the former owner of certain interests in real property acquired for a public use and later abandoned limiting the right of first refusal of the former owner to purchase certain abandoned interests.

JAMES MORROW, an attorney from Bozeman, presented to the committee a packet of letters that were sent to Senator Boylan from himself and a brief in support of a repealer to SB 170. See EXHIBITS A, B, and C.

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

TIM STEARNS, representing the Northern Plains Resource Council, said that this bill as introduced would allow a landowner who had his property taken from him through condemnation to regain ownership of that property once the public use for which it was taken ends. He stated that it is their belief that property taken by right of eminent domain should revert to the original owner or to his successors.

There were no further proponents and no opponents.

SENATOR BOYLAN said that with the abandonment of the Milwaukee Railroad there is a lot of land to be divided and the Burlington-Northern is abandoning a lot of branch lines and he felt that it was vital that they take care of this by the repealer.

REPRESENTATIVE KEYSER asked if they would like this committee to restore this to the original language that was there before the Senate tinkered with it. SENATOR BOYLAN replied yes.

REPRESENTATIVE SPAETH asked if they were not to return it to the original form would he prefer that they kill it. SENATOR BOYLAN said that he would prefer they kill what is there and what it says now changes the whole picture.

REPRESENTATIVE SPAETH asked if the new section on page 3 does not add a new dimension. MR. STEARNS replied yes. SENATOR BOYLAN said that you are better off to kill what is on the books and then let the Montana courts decide.

REPRESENTATIVE RAMIREZ said that what they are doing here is attempting to codify what they hope the law will be hereafter and not necessarily changing the status quo or anything that has gone on before or anything that

pertains to land that has already been acquired by condemnation. SENATOR BOYLAN replied that you change the theory - the common law theory is that it reverts and he does not feel that the intent of the legislature is properly expressed. He did not feel that they want to change the rights of the owner of the land and this bill already has. He commented that what we do here or say here, other counsel might say this is the intent of the legislature.

REPRESENTATIVE RAMIREZ stated that they have talked a lot about railroad abandonment, but whatever ownership is acquired when those lands were originally condemned, the supreme court is going to have to make a determination for all the land that was acquired prior to 1981. He said that in all probability those property rights were fixed at the time and they are not going to be taken away by an act that was adopted in 1981. He continued that what they are doing is saying that anything that is condemned or acquired in the future that this is the law that is going to apply to that condemnation. Then, he stated, if that land is abandoned it will revert to the landowner from whom it was acquired. MR. MORROW responded that the amendment does not say for prospective use only. He indicated that there are fourteen states that he knows of that says regardless of the form of the deed that this is still an easement and the reversionary rule does apply.

REPRESENTATIVE RAMIREZ asked if there was any case that was being litigated concerning the applicability of the 1981 law. DOUG HARRIS, representing the Montana Farm Breau, responded that they couldn't find anything and they looked at it pretty carefully. He continued that in Montana wherein a private corporation can condemn private property for public use, it seems to him that it is critical that such a statute be passed; because companies generally acquire rights of way through a whole parcel of deeds, so they may have 1,000 to 1,500 deeds. He noted that the Milwaukee Road runs all the way from North Dakota to St. Regis, Montana and he would guess that there are 5 to 6,000 deeds. He felt that the impact on the past can only be judged on a case-by-case basis.

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

SENATE BILL 195

SENATOR CRIPPEN, District 33, Billings, said that this was an act that defined "hashish" for purposes of the controlled substances laws. He stated that section 50-32-101 defines various controlled substances and on pages 3 and 4, prior to this bill, there was no definition of the term "hashish". He stated that there was a case wherein the defendant was charged with the possession of hashish; the lower court dismissed the charge since the term "hashish" was not defined in the code, it could not be alleged in the complaint.

MARC RACICOT, Prosecution Coordinator for the County Prosecutor Services of the Department of Justice, said that the definition comes from the Montana State Crime Lab and they are confident that they have given them a reasonable definition.

CHUCK O'REILLY, Sheriff of Lewis and Clark County and representing the Montana Sheriffs' and Peace Officers' Association, testified that they support this bill.

There were no further proponents and no opponents.

SENATOR CRIPPEN closed.

REPRESENTATIVE ADDY said in looking on page 4, at the bottom of the page, they defined "marijuana" and he thought that hashish could be included in this definition. MR. RACICOT said he thought he was correct, but there are different penalties for hashish and marijuana.

CHAIRMAN BROWN asked what are the penalties. MR. RACICOT replied that from one gram to sixty grams or less is a misdemeanor while over one gram of hashish is a felony.

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

SENATE BILL 236

SENATOR CRIPPEN, District 33, Billings, stated that this was an act that adds to the list of items that may be forfeited when used in connection with a violation of the dangerous drugs laws; to create a rebuttable presumption of forfeiture; to provide the means by which the presumption must be rebutted and to provide for the disposition of drug offense fines and of proceeds of the sale of forfeited items. He said that this was amended considerably in the Senate Judiciary Committee to not only expand "things subject to forfeiture" but to create a rebuttable presumption of forfeiture and to provide means by which the presumption must be rebutted. He testified that the profit made on drugs is second only to the profit made by Exxon; and that people dealing in drugs netted over $80 billion last year so you know this is a big business. He indicated that every day there are cutbacks in law enforcement and this bill would solve some of these problems in cutbacks.

MARC RACICOT, Prosecution Coordinator for the County Prosecutor Services of the Department of Justice, testified that this bill will provide some money to assist in drug enforcement and education. He indicated that this is not going to be a massive amount of money, but it will go a long way toward helping in these areas. He said that this will provide for the seizure, forfeiture and use of three things in addition to things that are alread there - (1) all money and other property used to buy contraband drugs; (2) all property bought from the profits in drug dealing; and (3) all money used to facilitate these drug violations. He recommended passage of this bill.

CHUCK O'REILLY, Sheriff of Lewis and Clark County, said that for the past five years, they have been extremely fortunate in our drug forfeiture; they have acquired a 1965 Volkswagon, a 1949 Ford pickup, a 1968 Dodge pickup and the newest vehicle they have is a 1972 Chrysler Cordova; and if you total up the value of those vehicles, he thought they would be less than $1,000.00. He noted

that they are not going to be setting up any major slush fund for the law enforcement people in the state. He stated that the most they have acquired in monies that could be put in a drug fund would be around $1,000.00; they have a drug fund in Lewis and Clark County that was acquired through fines, forfeitures and court orders; the vehicles that they have acquired most generally are used in undercover work. He did not feel that they would make a lot of bucks off this statute except enough to get some officer training.

There were no further proponents and no opponents.

SENATOR CRIPPEN asserted that this was a very important bill; it broadens the scope not only on the definition of forfeiture but also with what the county, city or state can do with those items - he contended that it was one thing to confiscate them and it was quite another thing to sell them and use the funds for the purpose of combating the original crime to begin with. He pointed out that this bill was commented on favorably in the Billings Gazette and that is unique in itself.

REPRESENTATIVE KEYSER asked about the D.E.A. program. MARC RACICOT responded that this is the Drug Enforcement Act.

REPRESENTATIVE KEYSER said that the federal government has been doing something very basic to this for a number of years. MR. RACICOT replied yes, although they have just expanded their forfeitures to drug profits during the past year. He indicated that they have had some good experiences and some bad. He informed the committee that they got a cattle ranch, which they seized and they had no one to run it and it ended up costing them more money for someone to run it than it would have to just leave it alone.

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

SENATOR CRIPPEN informed the committee that REPRESENTATIVE ADDY will carry Senate Bills 195 and Senate Bill 226, and REPRESENTATIVE SEIFERT will carry Senate Bill 236 on the floor of the House.

SENATE BILL 225

REPRESENTATIVE DANIELS, District 14, Deer Lodge, said this was an act to extend the period of time following a request for release in which a person voluntarily committed to a mental health facility may be detained for evaluation and processing commitment proceedings and Senator Towe made some amendments on this bill so that in the present form, it is not recognizable as the original bill.

NICK ROTERING, Legal Counsel for the Department of Institutions, stated that they requested this bill of Senator Daniels; but, in the form it is in today, it is not even recognizable to the way he drafted it. He explained that presently when a person is at Warm Springs Hospital on a voluntary admission, he gives written notice to the hospital that he wants to be released; the hospital then has five days to go through a series of examinations and legal decisions to decide if they want to keep him there for commitment purposes, i.e., if he is dangerous and meets the definition of seriously mentally ill.

He informed the committee that the way the procedure works is that they have to have all their paper work done; they, in turn, have to contact him in Helena as he is the one who has to prepare the court petition and submit it to the court in Deer Lodge County to start the commitment proceedings. He indicated that, if they get someone in on Sunday night, and then on Monday, he gives them a note to get out of there, they do not always have enough information on whether or not they should commit him. He indicated that he has advised them, from a liability standpoint, that it may be safer to start the commitment process than release someone who might be dangerous. He said that basically this petition would be very weak as far as data from the professionals is concerned, so they asked for this bill to allow from 5 to 10 days.

He continued that there was concern in the Senate Judiciary hearing wherein the Montana Mental Health Association alleged that they were involved in patients' rights

and they have to be very careful in that particular area. He informed the committee that they had suggested an amendment that stated that the additional 10 days would only apply if it was during the first 15 days that the person is at Warm Springs; and after that period, Warm Springs should have sufficient information; and they hoped this would be a compromise in this situation.

He contended what the bill does now is absolutely nothing; they put the 5 days back in and the amendment on the bottom of page 2 does not mean anything because that is currently the practice and it is authorized by the statute anyway. He stated that what they are suggesting if you agree with the concept that the mental health professionals at Warm Springs have a person they don't know much about and has only been there for a short period of time, they would suggest the amendment. He commented that if you do not agree with this concept, then the bill could be tabled in committee as far as he was concerned.

There were no further proponents and no opponents.

SENATOR DANIELS said that the discussion in the Senate Judiciary was that many of these voluntary commitments are not precisely that; a little pressure is applied on some people; they go to Warm Springs and, if they have the opportunity to get out, they are going to immediately ask to be discharged. He insisted that sometimes it is to the person's own benefit that he go to Warm Springs and they do this as a courtesy to the family and as a gesture of generosity to him to see that he gets this needed treatment. He said that if they are there for a 10-day period, that a lot of them realize that they need help.

REPRESENTATIVE HANNAH asked if these amendments were put on in the committee or on the floor. SENATOR DANIELS replied that some were in the committee and some were on the floor.

REPRESENTATIVE HANNAH asked about people who are being evaluated by the mental health centers. MR. ROTERING replied that this bill does not attempt to deal with this, but if somebody was under the care of the local mental health center or a local psychiatrist and they had talked the individual into being admitted to the local hospital and he decides that he wants to leave, under the present law, that facility has 5 days to make a decision on whether or not to make a commitment. He commented that normally the commitment is to Warm Springs rather than the community but there are cases where they can look at treatment being done in a community setting.

REPRESENTATIVE HANNAH asked what is the commitment process. MR. ROTERING replied that the county attorney has to file a petition to the court alleging that the individual is seriously mentally ill and demonstrate that he is a danger to himself or others; the court then reviews the process; he assures that a responsible person, friend or relative be appointed; they set a hearing date and the court has the authority to detain the individual pending that hearing. He said that what they are trying to do, if that person has only been at Warm Springs for forty-eight hours and they do not know that much about the person, rather than have 5 days to make the evaluation, this would give them 10.

REPRESENTATIVE HANNAH asked if this amendment is the one he would like to put back on the bill. MR. ROTERING responded yes, this is the one that the people from the Montana Mental Health Centers indicated would be acceptable to them.

REPRESENTATIVE FARRIS asked if this bill would tend to take people who are going there voluntarily and treat them as though they were involuntarily committed. MR. ROTERING answered no, all it does is just give the staff and gives the person himself more time to become oriented. He noted that a lot of these people that are sent down there are so full of drugs, they have to be detoxified or something like that, that it really takes them a few days to get oriented, to know who they are, where they are and what they are.

REPRESENTATIVE FARRIS said that it sounded to her as though they are saying that these people are so sedated that they don't know how to behave themselves, but they are so canny that they know that they don't want to be there and she did not think they could have it both ways. MR. ROTERING replied that many of these people are sent down there under pressure from their peers, from their families or from a law enforcement officer; they get down there and the effects of the drug, alcohol or whatever it is have not worn off; they are still basically in a daze; and for the staff to evaluate them in a relatively short period is simply not practical.

REPRESENTATIVE FARRIS declared that it would probably be better to deal with the commitment process than to try to rearrange patients' rights when they are there voluntarily and she felt voluntary means voluntary. MR. ROTERING responded that it is still voluntary - they are simply extending the evaluation period from 5 days to 10 days.

REPRESENTATIVE BERGENE commented that it seems to her that there is always a public outcry about the commitment laws and she said that she knows that it is often hard for a family that knows that someone needs to be committed often has a hard time getting that person committed, particularly if they are a juvenile. MR. ROTERING responded that from a procedural standpoint, the commitment law is very complex in that it insures the patients' rights; in saying is there a balancing right between the needs of the patient to have treatment and the rights of the patient not to be locked up in a mental hospital, he would have to say that the law comes down on the side of the patients' rights. He noted that one particular problem in regard to juveniles is that there is a statute in the mental health act which states that juveniles are to be housed and treated in separate wards - they are not to be mixed with the adult population. He indicated that the particular problem they have at Warm Springs is that the bed capacity they have on that ward is thirty, and actually, at any one time, they may have a waiting

list of five or ten people. He commented that they have a bill in for a youth treatment center at Billings, which the legislature gave the money to construct two years ago; and they are looking at a larger facility for youth at Billings.

REPRESENTATIVE BERGENE indicated that if the rights come down on the side of the patient, this can adversely affect the family. MR. ROTERING replied that the federal courts clearly indicated that mental health patients are definitely entitled to rights on whether or not they should be voluntarily committed.

REPRESENTATIVE BERGENE noted that sometimes they are so ill that it is difficult for them to make that judgment. MR. ROTERING replied that that is true.

REPRESENTATIVE CURTISS asked what percentage of the commitments are alcohol and drug related. MR. ROTERING responded that she has to understand that in addition to the mental health act, which allows commitment to Warm Springs, there is an act that has been around for a number of years that allows commitment to any alcohol or drug treatment program. He contended that that law gives so much rights to the patient, that it is seldom used. He stated that many of the people who are committed to Warm Springs for being seriously mentally ill do have an underlying drug or alcohol problem. He said that he did know since December of 1979, he has petitioned 123 times for someone who has requested his release.

REPRESENTATIVE KEYSER asked if they had their druthers, would they like to see the language in this bill as it is now basically taken out and the original language of Senator Daniels put back in, plus the amendment that was given to the committee. MR. ROTERING replied that that would be the preference of the department. SENATOR DANIELS replied that he would go along with the Department of Institutions.

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

SENATE BILL 226

The hearing on this bill was reopened. JEREMIAH JOHNSON, Chief Juvenile Probation Officer of Missoula County, and also President of the Montana Probation Officers' Association, stated that they appear in support of this bill and under the Youth Court Act, they have five days to file a petition against the youth if they are going to initiate any action, especially if they are in a custody situation; once that petition is filed, they have fifteen days to complete that entire hearing. He testified that there are problems at times when they have a youth from out-of-state or a youth that is in custody from one of the Job Corp Centers and there are problems in getting in touch with that parent. He indicated that the law requires that they have to be served proper notice before those hearings so they can come to the hearings if they so desire. He stated that the custody situation in those instances has created an occasional problem wherein the case has had to be completely dismissed against the youth.

REPRESENTATIVE ADDY questioned if he had talked to the youth court judge about this bill. MR. JOHNSON replied Judge Greene and he has been in support of it.

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

EXECUTIVE SESSION

SENATE BILL 226

REPRESENTATIVE ADDY moved that this bill BE CONCURRED IN. REPRESENTATIVE BERGENE seconded the motion. The motion carried with REPRESENTATIVE SPAETH voting no.

SENATE BILL 195

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN. REPRESENTATIVE JAN BROWN seconded the motion.

The motion carried unanimously.

SENATE BILL 236

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE EUDAILY.

CHAIRMAN BROWN pointed out that Senator Regan sent a note and was very disturbed about the police force getting rich.

The motion carried with REPRESENTATIVE FARRIS voting no.

SENATE BILL 170

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN. REPRESENTATIVE SEIFERT seconded the motion.

REPRESENTATIVE ADDY moved that the bill be amended on page 1, line 15, by striking this section and all subsequent sections and reinsert the language on lines 13 and 14 on page 1, and the title chaged appropriately. REPRESENTATIVE SEIFERT seconded the motion.

REPRESENTATIVE SPAETH stated that he would like to speak against the motion as he felt that the Senate did something good here. He explained that the way the bill is written when you have fee simple property that is condemned or acquired some way in the past by condemnation, they said that the owner would have the opportunity to buy that property back. He stated that they also felt that if it was something less than fee simple title, i.e. an easement, that when the public use was no longer needed, that that would be given back to the present holder of that property. He indicated that he thought there was a fairness question and the Senate directly addressed that question; that when a person comes along and condemns a right-of-way easement, that they have benefited and they have received compensation for that right-of-way easement and now they want it back for free. He contended that it may have caused them an undue burden, but they got compensated and hopefully our condemnation laws are written so that they were adequately compensated. He

did not feel that they should give it back to them free. He informed the committee that they have a ranch and they could profit from this particular bill; they have easements but they were adequately compensated for those easements and he did not feel that they should get it back for free. He felt that the Senate did a very good job of addressing this situation.

REPRESENTATIVE SCHYE said that he was a little confused; if he had forty acres and the railroad comes through and takes five acres on the corner; for years he has to go back and forth across this railroad track; the railroad is now going to abandon this; and he wondered what that would have to do with this bill. He asked if this repealer would just automatically give that land back or would they have to pay back the compensation they had.

REPRESENTATIVE ADDY noted that according to the briefs that Mr. Morrow presented on pages 3 and 4, he pointed out that the common law indicates that once the public purpose is no longer served by the condemnation, the property reverts to the prior property owner. He thought that this bill was introduced last time when the Burlington-Northern acquired the Milwaukee Road as the timing was certainly coincidental. He felt that when you are talking about eminent domain, you are really talking about an involuntary surrender of property rights by the original landowner and the only argument is what is just compensation. He said he liked the original intent of the bill because it encourages those who would claim a public use and take property to take the least interest that is actually necessary. He felt that this would tend to minimize the impact on the landowner of the industrialization of Montana. He contended that there is no doubt that changes are going to occur, and when you have rapid change, he would like to provide some cushion for those most directly affected by it.

REPRESENTATIVE SCHYE stated that they went through this on the northern borders on condemnation of land

for the underground pipelines; it is underground, but they still farm the land on top of it but they still, by eminent domain, have the land and he asked if they were saying that if that land was abandoned, then someone else could come in and get that land that is on top of that pipe. REPRESENTATIVE ADDY replied that as the bill is amended, you would have the right of first refusal - someone else could come in and bid.

REPRESENTATIVE SPAETH said that he would have to disagree with REPRESENTATIVE ADDY because most everything on the northern border relating to these pipelines are easements as opposed to fee simple and this bill, as the Senate amended it, lets all easements revert back for free and he felt that that was good for the present owner. He contended that the way the Senate amended it was if you acquired a fee simple, then the owner has the right of first refusal; he does not get it for free but he has to buy it.

REPRESENTATIVE ADDY said that he would like the condemning party to take less than fee simple if that is all that is necessary, and he would think that there would be less impact on the landowner if they appropriate less than fee simple interest in the property. He asserted that he wanted them to use the easement and if you allow them to sell a fee simple but not an easement, you are going to encourage them to go for a perpetual interest in the property.

REPRESENTATIVE RAMIREZ responded that he did not agree with that either because they are acquired for the least price too. He stated that they could not have built that pipeline if they had taken a fee simple interest in a strip of land - they couldn't have afforded it and certainly a pipe line company is not going to try to get a fee simple interest when an easement will accomplish every purpose they need to at much less cost because if they condemn an easement there is a lot less cost involved than if they condemn a fee simple strip across the property. He felt that economics enters into this in a big way and he

did not think that this bill is going to be the determing factor - what he thought was going to be the determining factor is what is the interest they need and what are they willing to pay for it in order to accomplish their purposes. He stated that if they can get by for less, they are going to pay for less.

REPRESENTATIVE ADDY explained that when you look at costs, you have to look at the upfront cost on one hand and then you have to look at the cost of fee simple or pertetual interest in the land less the potential resale value at the end of the project. He felt that as long as they have the probability of reselling this property, maybe for exactly what they paid for it, then there is going to be a lesser long-term cost and an incentive for them to take more of a permanent interest in the property.

REPRESENTATIVE RAMIREZ responded that a strip of land twenty feet wide is not the kind of thing that most companies want to invest in.

REPRESENTATIVE ADDY responded that if they are talking about pipelines, he would agree with him, but they are talking about any public purposes.

REPRESENTATIVE FARRIS said that the railroad in Fort Benton always refused to rebuild the bridge so that the road could be two lanes and if the railroad was not a railroad anymore, she assumed that this land would revert to the state, and she asked what would happen here under this bill and the amendments.

REPRESENTATIVE SPAETH responded that this is a past thing and he did not think this bill would apply to anything dealing with this type of thing and he stated that this generally applies to future condemnations; but he felt that one of the things that will apply to the prospective future is that lots of times they build roads along railroad beds and if that had been the case, that would revert back to the original owner as opposed to allowing the highway department or the county highway department to come in and buy that.

REPRESENTATIVE FARRIS asked if the highway department could buy that land from the original owner. REPRESENTATIVE SPAETH replied that the highway department could do this, but it would be better for them to buy it from the railroad.

REPRESENTATIVE ADDY asked why would it be better to have them buy it from the railroad. REPRESENTATIVE SPAETH responded that you would be dealing with two transactions as opposed to one.

REPRESENTATIVE ADDY commented that under the bill as written, the landowner would have the right of first refusal; the highway department would come in and offer to buy from the railroad and the landowner would have the right of first refusal on that. He stated that if they go with the strict repealer, the land would automatically revert to the landowner and the person who originally gave up that land would have an interest that they could protect in the second condemnation proceedings. He declared that what REPRESENTATIVE SPAETH is saying is that this bill will piggyback eminent domain proceedings and more or less cut the original landowner out of any subsequent proceedings unless they can cough up the cash at that point in time.

REPRESENTATIVE RAMIREZ asserted that he felt that everything they do today and everything that was done in 1981 is only going to operate in the future; that they cannot affect property rights that have already vested simply by changing the law. He stated that he likes the law in this bill as it is written to apply to the future and he wondered if they should put in a clause that says this will be prospective only - that would satisfy Mr. Morrow's concern that he did not want any of this law to be used in a dispute that had arisen before the law was enacted; and yet it would set the rules a little more clearly for anything that comes hereafter. He felt that this might be

one way to handle it other than just repealing the 1981 law and leaving it up to the supreme court to decide what the rules are forever. He made a substitute motion that they add a clause that basically says this has a prospective operation. REPRESENTATIVE SPAETH seconded the motion.

REPRESENTATIVE ADDY asked if you are voting for your amendment, you are going against the original language in the bill. REPRESENTATIVE RAMIREZ replied that they would take the Senate version as amended but we would make it clear that this applies only in the future and does not affect anything in the past. He stated then they would leave it up to the courts to decide what the law is that applies to any condemnation and subsequent abandonment that occurred prior to 1981.

REPRESENTATIVE ADDY said that he opposed the motion and he felt that Mr. Morrow's point in letting the courts decide is that the courts won't have a statute in light of which the common law will be intermixed rather than having a statute abrogating common law and limiting discretion of the courts.

REPRESENTATIVE KEYSER said that he would have to speak against this amendment; he would like to go back to Senator Boylan's original bill, which was this little white bill here (he held up the first reading copy of SB 170) as he introduced it. He indicated that he would like to take the language out of the blue bill that the committee has before them and on page 3, section 3, the new section, include that and add that to this white bill and then go with it. He commented that if they can't go back to the original bill, although they would agree to that new section, then they would just as soon have this amended bill totally killed. He noted that that was the intent of the author, that is basically what the testimony was and, for that reason, he would oppose the Ramirez amendment.

REPRESENTATIVE SPAETH said that the sponsor felt that they should leave section 3 in there, but he felt that they should not do this without changing sections 1 and 2 as the Senate did. He thought that the crux of the bill as it is now written is found on page 3, section 3, but he did not think this could stand without the amendments that were made to section 70-30-321 and section 70-30-322. He commented that he felt the bill does something more than the present law does - it gives free reversion of easements - it doesn't give free reversion of fee simple property and he thought this was an important feature for a landowner. He said this was very critical to have as easements are more of a nuisance than fee simple right-of-way that goes through there. He advised that another problem is in condemning land as to when is this land going to revert back as a criteria in adjusting compensation. He felt that as a lawyer defending and prosecuting condemnations, this would be a new cause to expand the trial and he could see some problems in that too. He stated that he would support the Ramirez amendment.

REPRESENTATIVE ADDY declared that he thought the common law rule in Montana is perpetual interest less than fee interest do revert; that fee interest, under common law would also revert and what this bill intended to do originally was to make perpetual interest and less than perpetual interest revert so if they are stuck with the language in the original section 1, the straight repealer, that, in fact, would encompass section 3 on page 3 as well.

CHAIRMAN BROWN noted that the committee had considered a couple of bills that dealt with repealers and there had been some discussion about whether or not you could amend repealers.

REPRESENTATIVE KEYSER said he keeps hearing about eminent domain and that a person has a right to get this back if it was taken by eminent domain and as he reads through this whole bill with the Senate amendments, he does not see that, because they have crossed out every reference to eminent domain. He stated that everything in here talks about fee simple, but it does not address that property taken by eminent domain.

REPRESENTATIVE ADDY replied that he thought those are sections of the code that they are amending; title 7, section 30 is the eminent domain statute.

CHAIRMAN BROWN asked if this would conflict with the Jacobson bill. REPRESENTATIVE ADDY replied that he did not think it would; he did not recall anything in that bill that deals with reversion of interests.

REPRESENTATIVE CURTISS stated that she has real problems with a person who may have been an unwilling seller when a condemnation takes place and who would be wanting to get his property back but who would have to go through a competitive bid process. She thought she would be more comfortable if there was some provision that there would be an appraisal and she felt that there is a real sense of fairness involved here. She continued that she watched all the condemnation that took place during the building of the Libby dam - some 36,000 acres - and there were not any of those people who wanted to sell; many of them had homesteaded in this beautiful river valley and these had been their homes for ages; and because of escalated land values, it would not be within their ability to buy that back anyway, perhaps even at an appraised value rather than competitive bidding. She said that she did not know what the answer is.

REPRESENTATIVE RAMIREZ stated that with all these problems, maybe they should just kill the bill, but he felt that no matter what they do, it is prospective anyway and he felt they should amend it first and that would at least address a lot of concerns that Mr. Morrow had about whether this would interfere with any vested rights and any litigation that might arise over property that has already been condemned and already been abandoned. He said he would like to see them do this at least and then maybe they should kill the bill.

REPRESENTATIVE ADDY said that this is going to be prospective, but if they were going to return to the law pre-1981, it would not necessarily be prospective. He stated that they would have a two-year window in there and where the 1981 law operates, anything that occurred in that two-year period would fall under statutory provision and anything that happened before 1981 statute became effective or after the 1983 repealer went into effect would fall under common law principles, which gives the original landowner a little more protection. He explained that anytime a condemnor comes in and takes fee simple perpetual interest when they don't need that much, they are overreaching and to the extent that they discourage that and provide a bit of a windfall to the original landowner who has been deprived of the use of his property, has had to work around whatever is in the middle of his field or property, he felt that that is a just social policy.

REPRESENTATIVE RAMIREZ commented that there are two glaring assumptions in that statement that he does not know if they are accurate and that is (1) that the eminent domain statutes are abused or that they even can be abused by people taking more than they really need. He said that he was not sure that they could do this, because they have to show a public purpose and he did not think they could take more than they actually need. He asserted that the second assumption was that this brief contains the common law as it would be adopted by the Montana Supreme Court and he is not sure that that is the case either. He continued that he has been involved in enough of these controversies to know that you can sit down and read the plaintiff's brief and think there is no question about this; and then sit down and read the defendant's brief and then wonder how the plaintiff came up with all that stuff he came up with. He stated that they do not really know because there is no Montana decision on what the law is. He stated that

if they repeal the law rather than amend it, they will not know what the law is that pertains to anything after 1981 so we will just leave it totally up in the air and it would seem to him that is not the way to do it.

REPRESENTATIVE SCHYE commented that he is still confused, but he thought the landowners are now really becoming concerned about eminent domain. He said that he was never involved until this pipeline came in and you have no rights; and there is a lot of problems with the eminent domain laws. He thought a lot of people are getting interested in this because they are concerned about power lines, coal slurry lines and they are going to go through their prime farm lands and they do not have any choice.

CHAIRMAN BROWN suggested that maybe since there is such a diversity of opinion on this bill they should table it and think about it for awhile.

REPRESENTATIVE SPAETH moved that the bill BE TABLED. REPRESENTATIVE ADDY seconded the motion. The motion carried with REPRESENTATIVE KEYSER, REPRESENTATIVE SCHYE and REPRESENTATIVE DAILY voting no.

SENATE BILL 201

MS. DESMOND said that she spoke to Marc Racicot to see if he knew anything about a practical comparison between the two and he didn't and she went to the library and went back a couple years and didn't find anything.

REPRESENTATIVE ADDY said that the problem they have now is that one defendant can compel the state to grant immunity to another state defendant; the second defendant then has transactional immunity and cannot be tried for the crime. Then the second defendant gets on the stand and says that he did everything

and he was not involved at all. He explained that, at that point, he has transactional immunity, so both he and the first guy walk; whereas, if the second defendant had been granted use immunity instead of transactional immunity, it would still be possible to prosecute him if there was independent evidence of his involvement in the crime.

REPRESENTATIVE RAMIREZ said that he would still like to find out about this.

CHAIRMAN BROWN said the bill would be held for another day.

REPRESENTATIVE KEYSER moved to adjourn at 10:08 a.m.

Dave Brown
DAVE BROWN, Chairman

Alice Omang
Alice Omang, Secretary

STANDING COMMITTEE REPORT

February March 10 19 83

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 226

THIRD reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PARTY MAY MOVE FOR A CONTINUANCE OF THE HEARING ON A YOUTH COURT PETITION WHEN THE YOUTH INVOLVED IS IN CUSTODY AS WELL AS WHEN THE YOUTH IS NOT IN CUSTODY; AMENDING SECTION 41-5-516, MCA."

Respectfully report as follows: That SENATE Bill No. 226

BE CONCURRED IN

DO PASS

DAVE BROWN, Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 9, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 195

_____ reading copy (_____)
color

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "HASHISH" FOR PURPOSES OF THE CONTROLLED SUBSTANCES LAWS; AMENDING SECTION 50-32-101, MCA."

Respectfully report as follows: That SENATE Bill No. 195

BE CONCURRED IN

~~DO PASS~~

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 9, 1983

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 236

_____ reading copy (_____)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADD TO THE LIST OF ITEMS THAT MAY BE FORFEITED WHEN USED IN CONNECTION WITH A VIOLATION OF THE DANGEROUS DRUGS LAWS; TO CREATE A REBUTTABLE PRESUMPTION OF FORFEITURE; TO PROVIDE THE MEANS BY WHICH THE PRESUMPTION MUST BE REBUTTED; TO PROVIDE FOR THE DISPOSITION OF DRUG OFFENSE FINES AND OF PROCEEDS OF THE SALE OF FORFEITED ITEMS; AMENDING SECTIONS 44-12-102, 44-12-203 THROUGH 44-12-205, 44-12-206, AND 46-18-235, MCA."

Respectfully report as follows: That SENATE Bill No. 236

BE CONCURRED IN

DO ~~NOT~~

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 226 DATE March 9, 1983

SPONSOR SENATOR CRIPPEN

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Jeremiah Johnson	Missoula	MT. Probation Officers	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 170 DATE March 9, 1983

SPONSOR SENATOR BOYLAN

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Tim Stearns	Helena	NPRC	X	
Pat Underwood	Bozeman	Mont. Farm Bureau	X	
Doug Hanus	Bozeman	Mont Farm Bureau	X	
Jack Marsh	Bozeman	" "	X	
Paul F. Boylan	Senate Dist 38		✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit A
SB170
3-9-83

'AMES H. MORROW, JR.
)MUND P. SEDIVY, JR

H. CHARLES STAHMER
COUNSEL
RRY SCHAPLOW
OF COUNSEL
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LOCATION:
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TELEPHONE:
(406) 586-4311

February 28, 1983

Senator Paul Boylan
Montana State Capitol
Capitol Station Box 11
Helena, MT 59620

RE: Senate Bill No. 170

Dear Senator:

Thank you for your phone call last week from Helena and my phone conference with you last Saturday. You had sent to me the Amended Bill. As we have discussed, this is an "emasculation". You had originally filed a straight forward repealer bill to repeal Section 70-30-221 and 322 of the M.C.A. This bill got into two or three different committees. The printed bill that you have now sent to me is simply a repeat of the same legislation that was passed in 1981 under Chapter 440. There was some improvement in that there was added a Section 3 which provided for a reversion to adjoining property owners where the interest was other than a fee simple interest. You informed me that Senator Turnage would not agree to that Section 3 and that Section 3 was being eliminated.

In other words, all that the amendments have done is to have printed the same ideas that were in Chapter 440 of the 1981 Session laws.

The procedures now open appear to be as follows:

1) To have the bill amended in the House by restoring your original bill to a straight forward repealer.
2) To get the bill withdrawn as it is now written.
3) To have the House vote against the bill.

This possibly could be an argument that the 1983 voting against the proposal would, in effect, be stating its intent to have the 1981 legislation repealed.

If item 1, above, is a better strategy, I told you that I would take the time to appear before any committee of the House. I have further informed that I have no personal interest in the particular legislation. However, it may affect many landowners to whom the "public purpose" easement deeds apply. My original letter and briefing to you covers this subject.

I think an investigation should be had as to the real background of those who framed the 1981 legislation (Chapter 440, 1981 Session Laws), and those who prepared the particular amendments to your Senate Bill 170. It appears to me that a "bill of goods" has been sold by certain interest who have a beneficial interest. In this connection, I am partcularly thinking of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company that has been inducing adjoining landowners to pay them for the abandoned Railroad Right-of-Way.

I am sending copies of this letter to the same persons that I have previously sent copies to and, in addition, I am sending copies of this letter together with copies of my letter and briefing to Fred Colver, Representative of Central Montana Association which is concerned with the Milwaukee branch line running from Harlowton to the Winifred area, and to Fred Horpestead, Representative of Tri-County Association which has been attempting to deal with the Milwaukee Railroad people on lands involved in Wheatland, Golden Valley, and Musselshell Counties.

After you have received this communication, I would appreciate phone conference with you.

Again, thanking you for your efforts in this matter, and with best personal regards, I remain

Very truly yours,

MORROW & SEDIVY, P. C.

J. H. Morrow

JHM:cf

cc: Mr. Pat Underwood
Mr. Mons Teigen
Mr. Terry Murphy
Mr. Tim Stearns
Mrs. Louise Galt
Mr. Walter Sales
Mr. Norman Wallin
Mrs. Dorothy Eck
Mr. Leo Lane
Mr. Robert A. Ellerd
Mr. John Vincent
Mr. Mac Quiin
Mr. Bill Brown
Mr. Fred Colver
Mr. Fred Horpestead
Mr. Lester Brainard
Mr. David T. Brewer
Mr. Berrien P. Anderson
Doig Brothers
Mr. Horace Morgan
Mr. Knute Hereim
Mr. Paul Maddock
Mr. Jim Higgins
Mr. Harry Brainard
D. D. Davis Ranch
Mr. William H. Orton
Mr. William P. Carr
Mr. Richard J. Morgan
Mr. Charles Lucas
Mr. Russell Robinson

Exhibit B
SB170
3-9-83

...IES H. MORROW, JR.
...MUND P. SEDIVY, JR.

H. ...ARLES STAHMER
...OUNSEL
...RY SCHAPLOW
...OF COUNSEL
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January 21, 1983

Senator Paul Boylan
Montana State Capitol
Capitol Station Box 11
Helena, Montana 59620

RE: Senate Bill 170
To Repeal Chapter 440, 1981 Session Law
Being 70-30-321 and 322, M.C.A.

Dear Senator:

I am enclosing Brief in Support of the above-reference. I am also sending copies of this letter and the Brief to Pat Underwood of the Montana Farm Bureau, Mons Tiegen of the Montana Stockgrowers Association, Terry Murphy of the Montana Farmers Union, Tim Stearns of the Northern Plains Resources Council, and to attorney Louise R. Galt of Helena.

The effect of Chapter 440 of the 1981 Session was perhaps misunderstood. The right of eminent domain was originally a right of the state to take private property for public use. The original reasons were to provide for public buildings and grounds, highways, and the like. These public uses have been added to many times by legislative amendments as will be noted in Section 70-30-102, M.C.A. The State of Montana no longer is a required party. Under Section 70-30-203, M.C.A., any corporation, association, commission, or person may be named as a party plaintiff. The final order of condemnation must describe the property and the purposes of the condemnation. (Sec. 70-30-309 M.C.A.). It was well recognized law that upon abandonment of the purpose that the title to the land reverts to the adjoining property owner.

The law now provides for private corporations and persons to take property for any of the various purposes enumerated. The Milwaukee Railroad and previous private railroad corporations did go to court on condemnation proceedings back in the early 1900's. Its representatives were enabled to go to farmers and ranchers and in the towns and cities armed with deeds of

various kinds to obtain railroad rights-of-way. This was a selling scheme aided by outside investors and land speculators.

The repealer bill, S.B. 170, will restore to the adjoining landowner his right to the land when the "public" purpose has been abandoned without the necessity of paying to the railroad company or other corporation or private person any money. The act as it was passed in 1981 compels the adjoining landowner to pay money that he never had to pay before. This is wrong. Hopefully, the Brief will help.

Very truly yours,

MORROW & SEDIVY, P. C.

J. H. Morrow

JHM:cf

Enc.

cc: Mr. Pat Underwood
Mr. Mons Tiegen
Mr. Terry Murphy
Mr. Tim Stearns
Mrs. Louise Galt
Mr. Walter Sales
Mr. Norman Wallin
Mrs. Dorothy Eck
Mr. Leo Lane
Mr. Robert A. Ellerd
Mr. John Vincent
Mr. Mac Quinn
Mr. Bill Brown

Exhibit C
SB170
3-9-83

BRIEF IN SUPPORT OF REPEALER SB 170

This Brief is in support of Senate Bill 170 to repeal Chapter 440, Laws of 1981, now codified in 70-30-321 and 70-30-322, Montana Code Annotated.

I.

Statutes to be Repealed

1. 70-30-321, MCA:

Sale of property acquired for public use when use abandoned - procedure. (1) Whenever a person who has acquired a real property interest for a public use, whether by right of eminent domain or otherwise, abandons such public use and places such interest for sale, the seller may sell the interest to the highest bidder at public auction.

(2) In the event the seller decides to sell an interest in real property as set forth in subsection (1), he shall publish notice of public sale in a newspaper in the county in which the real property interest is located once a week for four successive weeks. Sale shall be held in the county where the real property interest is located. The notice of sale shall contain the information required by 77-2-322.

2. Legislative History:

Enacted under Section 1, Chapter 440, Laws of 1981; now codified in 70-30-321, Montana Code Annotated.

3. 70-30-322, M.C.A.

Option of original owner or successor in interest to purchase at sale price. (1) The owner from whom the real property interest was originally acquired by eminent domain or otherwise or, if there is a successor in interest, the successor in interest shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest in the sale provided for in 70-30-321. If more than one person claims an equal entitlement, the

(2) If no bids are received by the seller and the optionholder indicates in writing to the seller that he wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the optionholder.

4. Legislative History:

Enacted under Section 2, Chapter 440, Laws of 1981, now codified in 70-30-322, Montana Code Annotated.

5. Compiler's comments state that Section 3, Chapter 440, Laws of 1981 provided that Sections 1 and 2 are intended to be codified as an integral part of Title 70, Chapter 30, which is the law of eminent domain, and the provisions of Title 70, Chapter 30, the law of eminent domain apply to Sections 1 and 2 of the above-cited statutes.

II.

Why These Statutes Must Be Repealed

The above-cited statutes are the result of special interest litigation and operate to the exclusive benefit of large corporations and public bodies such as The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, The Burlington Northern Railroad Company, The Montana Power Company, The Mountain States Telephone and Telegraph Company, The Montana State Highway Commission, and others who have acquired private Montana property by eminent domain or otherwise. The statutes are unconstitutional because they are clearly ex post facto legislation which ought not affect existing real property interests which previously have been acquired by eminent domain or

otherwise for public use to date. They ought to apply prospectively only for interests acquired after the date of the statutes' enactments. Otherwise, application of these statutes to existing real property interests which have been acquired by eminent domain or otherwise would result in unconstitutional takings of private Montana property without due process of law. Under common law, when the public purpose is abandoned for which the condemnor previously acquired a real property interest, the real property interest must revert to the condemnee or the condemnee's successors in interest by simple operation of law. These statutes completely abrogate that valuable common law right.

III.

Reversion of Condemned Property
When Public Purpose is Abandoned

It is common law of England, and, therefore, common law of the majority of the states of the United States, that condemnation for railroad purposes or other public purposes vests in the condemning authority only a permanent easement for the public purpose during the continuance of the corporate or public body's existence, and if the corporation or public body abandons use of the property for the public purpose, the original owners of the property or their successors are entitled to take possession of the property. See City of Duggan v. Dennerd, 156 S.E. 315 (1930); Erie Lackawanna Railroad Co. v. State, 330 N.Y.2d 700, 38 A2. 463 (1972).

There are no Montana cases directly on point involving abandonment of railroad rights-of-way or other such rights-of-way which have

Nevertheless, the clear authority under common law in Arkansas, Georgia, Missouri, Illinois, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Nebraska, Oklahoma, Tennessee, Washington, West Virginia, and Kansas support the proposition that any property acquired under condemnation or threat of condemnation, when abandoned of the purpose under which the condemnation powers were exercised, reverts to the original owners or owners' successors in interest in fee.

An excellent synopsis of the common law appears in Abercrombie v. Simmons, 71 Kan. 538, 81 P. 208 (1905), where the Court held:

> "An instrument which is in form of general warranty deed conveying a strip of land to a railroad company for a right of way will not vest an absolute title in the railroad company, but the interest conveyed is limited to the use for which the land is acquired, and when that use is abandoned the property will revert to the adjoining owner."

The Court further held that although the deed contained covenants of warranty and although the interest conveyed thereby was designated as a fee, those factors were not relevant nor were they controlling. The facts that the railroad acquired property for a public purpose and later abandoned the public purpose were the crucial facts which triggered the common law reversion. See also Harvest Queen Mill and Elevator Company v. John E. Sanders, et al., 159 Kan. 536, 370 P.2d 419 (1962).

In other words, when your property is taken under eminent domain for a public purpose, and the public purpose is later abandoned, you get your property back.

IV.

The Statutes Take From Private Montana Landowners and Give to Large Condemning Bodies

of common law, but there is no common law in any case where the law is declared by statute. However, where law is not declared by statute, and the common law is applicable and of a general nature and not in conflict with the statutes, the common law shall be the law and rule of decision. See 1-1-108 and 1-1-109, Montana Code Annotated.

The statutes sought to be repealed which deal with the sale of property acquired for public use when the public use is abandoned simply speak to "a real property interest for a public use." Obviously, "a real property interest" is extremely broad language which can be read to include all interests in real property, including easements. As our Supreme Court has held, an easement is a real property "interest protected by constitutional guarantees against the taking of private property without just compensation." City of Missoula v. Mix, 123 Mont. 365, 214 P.2d 212 (1980).

Further, 70-30-321, Montana Code Annotated provides that when any property acquired by public use whether by right of eminent domain or otherwise is abandoned, the condemnee or the condemnee's successor in interest may sell the interest to the highest bidder at public auction. A plain reading of that statute reveals that property acquired by a condemning authority apart from eminent domain may also be sold in like fashion. Thus, if one had granted or conveyed to a public body or corporation an easement for a public use freely or under threat of condemnation, the statute provides that the holder of that easement may sell the same at public auction, even though elementary common property law is clear that upon abandonment of an easement, title to the property servient to the

interest. The law as provided under 70-30-321 and 70-30-322, Montana Code Annotated abrogates that elementary common property law and operates to the clear benefit of large corporations and public bodies who condemn property for public use in the State of Montana or acquire property under threat of eminent domain. Those statutes obviously deny the common law rights of property ownership to Montana property owners who have long been subject to the condemning authority of those large corporations and public bodies.

V.

Conclusion

The statutes at issue are the product of special interest legislation, and operate to the exclusive pecuniary benefit of large corporations, utilities, and public bodies who have exercised the power or threat of power, of eminent domain to acquire vast stretches of private Montana property. In these statutes, independent Montana landowners have been stripped of their common law property rights. The statutes operate to allow those large corporations, utilities and public bodies to sell property to the highest bidder; property which they don't really own to begin with because upon abandonment of the public purpose, the property reverts to the original owner or his successor in interest.

Exhibit D
SB170
3-9-83

MONTANA FARM BUREAU FEDERATION

502 SOUTH 19th Dial 587-3153 BOZEMAN, MONTANA 59715

DATE Mar 9, 83

NAME Pat Underwood BILL NUMBER SB 170

SUPPORT X OPPOSE AMMEND

The Montana Farm Bureau supports SB 170. We desire that the Bill repeal the 1981 legislation which stated that the landowner would have to meet the highest bid. In the case of Milwaukee Railroad Right of way abandonment the landowners should not have to meet any bid. The land in question should revert to them. The repeal of this legislation from 1981 with the original intent of SB 170 would accomplish this.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 225 DATE MARCH 9, 1983

SPONSOR SENATOR DANIELS

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Nick Rotering	Helena	Dept. of Institutions	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

Proposed by the Department of Institutions

SB 225

Amendments to SB 225, second reading copy:

1. Page 2, line 15
After the words "for release:"
Insert the following: "if written request for release is given by the applicant within the first fifteen days of admission to the facility, the facility has the right to detain the applicant for no more than ten day excluding weekends and holidays, past his written request for release."