

MINUTES OF THE MEETING  
EUDCATION AND CULTURAL RESOURCES COMMITTEE  
MONTANA STATE SENATE

January 28, 1983

The meeting of the Senate Education and Cultural Resources Committee was called to order by Chairman Bob Brown on January 29, 1983, at 1:08 p.m. in Room 402, State Capitol.

ROLL CALL: Roll was called with everyone present except Senator Severson who was excused.

Students of Marianne Smith, instructor of a class entitled "Fun Stuff" at the Helena Art Center, brought their drawings to display to the committee. They have been studying humorous illustration, expressions, and proportion in cartooning. The students were Julie Seymour, Tami and Tara Fisher, and O.J. Nybo. O.J. presented the committee with this delightful cartoon depiction of the members of the committee. Ms. Smith, an artist for Hallmark, is very accomplished and is well known for all the "E.T." artwork carried by Hallmark.

SENATE BILL 157: Senator Brown, District 10, sponsor of the bill, stated the purpose of the bill is to require state agencies to consider existing historical properties and aspects when expanding or building new facilities.

PROPOSERS

Bob Archibald, representing the Montana Historical Society, presented his testimony in support of the bill to the committee (attached exhibit #1). He also presented letters from Janet Cornish, Director, Butte-Silverbow Urban Revitalization Agency, and Margaret Davis, Helena, in support of the bill (attached exhibits #2 and #3).

Bill Lannon, representing the University system, stated they have a lot of historical buildings across the system and have always tried to utilize them when building or expanding. He said they would continue to support and recognize this aspect of historical preservation.

John D. McKittrick, a Helena architect, stated he supported the previous testimony. He felt it is beneficial for the state to be a leader in historical preservation in downtown areas.

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Jim Flynn, Director, Department of Fish, Wildlife, and Parks, presented his testimony in support of the bill (attached exhibit #4).

Ed Jasmin, President, Northwestern Bank of Helena, and a member of the Helena Improvement Society which is working on central business district preservation, said he supported the bill. He felt it created an incentive to use or preserve historical buildings which might otherwise be overlooked or neglected.

David Nelson, Executive Director, Montana Arts Council, stated he supports the bill. He said the group is moving its office to Helena in the near future and will use the bill as a guideline. He noted the esthetic aspects of historical preservation are important.

J. D. Holmes, representing Montana Arts Advocacy, stated the purpose of the group is to endeavor to make the quality of life in Montana better than it already is. The group supports the use of buildings by the state in consideration of their historical value.

There being no opponents to the bill, the hearing was closed.

SENATE BILL 246: Senator Brown, District 10, sponsor of the bill, stated the bill was introduced at the request of the Historical Society and provides for state agencies to adopt rules for procedures identifying and preserving heritage properties and paleontological remains.

### PROPOSERS

Bob Archibald, Montana Historical Society, presented his testimony in support of the bill to the committee (attached exhibit # 1). He also presented a proposed statement of intent as well as a letter of support from Margaret Davis (attached exhibits #5 and #6).

Jim Flynn, Director, Montana Department of Fish, Wildlife, and Parks, spoke in support of the bill.

Dr. Fred Munday, Professor of Archeology, University of Montana, and speaking for the professional and academic community, said they support the bill unanimously. In his travels across the state he runs into many people who have a great deal of interest

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in paleontological artifacts, and in the interest of preserving them and history the bill is most necessary.

Bob Tubbs, representing himself and his wife, asked the committee to support the bill.

Bill Lannon, representing the University system, stated he supports the bill with the amendments.

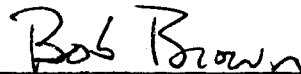
Dave Nelson, Executive Director, Montana Arts Council, stated his personal interest in the bill and urged the committee to support it.

J. D. Holmes, representing Montana Arts Advocacy, urged support of the bill.

There being no opponents the hearing was closed on Senate Bill 246.

Senator Brown resumed the chair.

ADJOURN: There being no further business the meeting adjourned at 2:20 p.m.

A handwritten signature in cursive script that reads "Bob Brown".

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Senator Bob Brown, Chairman

jdr

ROLL CALL

EDUCATION AND CULTURAL RESOURCES

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 4/28/83

NAME	PRESENT	ABSENT	EXCUSED
Senator Bob Brown, Chairman	X		
Senator Ed Smith, V. Chairman	X		
Senator Roger Elliott	X		
Senator Delwyn Gage			X
Senator George McCallum	X		
Senator Elmer Severson	X		
Senator Harry Berg	X		
Senator Chet Blaylock	X		
Senator Jack Haffey	X		
Senator Joseph Mazurek	X		

COMMITTEE ON

DATE

JAN. 28, 1953

Education

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Urdie Fisher	The Art Center			
Jami Fisher	The Art Center			
Tara Fisher	The Art Center			
Maurice Smith	The Art Center			
Julie Symour	The Art Center			
O. J. Nybo	The Art Center			
Suzanne Nybo	parent			
Dr Fred Munday	Univ. of Montana State Hist. Society			
Dore Nelson	MT. Arts Council	157 246	X X	
R. Anshuland	MT. Hist. Society	157 246	X X	
Anna Dumble	MT. Historical Society	157 246	X X	
J. D. Holmes	MT. ARTS ADVOCACY	157 246	X X	
Marcelle Sheffy	mt. Hist. Society	157 246	X X	
LON JOHNSON	MT. HISTORICAL SOCIETY	157 246	X X	
John D. McITTRICK	SELF	157	X	
Jim FLYNN	DEPT FWP	157 246	X X	
Dennis Hemmer	Dept of State lands	246		
FRED MILLER III	BEARPAW SENTINEL			
Sarah Power	Historical Society	246	X	
LeRoy A. Schramm	Mt. Univ. System			
Dennis WAGNER	Students - M.S.U.			
Bill Langan	Mt Univ System	157 244	X	is amended
Kathleen Mollenhan	O.P.T			
Diana Z Uareh	MT Historical Society	246	X	
Daniel Hilger	Pte 3 Box 119 Helena	246	X	
Bob Tucker	Self	246	X	

(Please leave prepared statement with Secretary)

1/28/83

## Education

## VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretariat)

TO: Senate Committee on Education and Cultural Resources  
FROM: Lee Heiman, Committee Counsel  
DATE: January 28, 1983  
RE: Bill Summaries of Senate Bills 157 and 246

Senate Bill 157 (Brown). Requires a state agency to consider using heritage properties if they are going to purchase, lease, or rent space for state purposes. The agency would contact the state historic preservation officer who will give information on such property to the agency. If there is suitable heritage property and the agency doesn't use it, the agency must justify this action to the historic preservation officer. (A copy of section 22-3-421, mentioned in subsection (1)(a)(i) is on the reverse of sheet.)

Senate Bill 246 (Brown). Provides that if an agency fails to make rules relating to identification and preservation of historical properties and paleontological remains on state lands, they must follow the rules on the same subject promulgated by the state historic preservation officer. (A copy of a proposed amendment to the bill is on the reverse of sheet.)

**22-3-421. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Antiquities permit" means the permit granted for exploration or field investigations of heritage properties or paleontological remains provided for in 22-3-432.

(2) "Heritage property" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archaeology, or culture.

(3) "Historic preservation office" means the office within the Montana historical society provided for in 2-15-1512.

(4) "Historic preservation officer" means the officer provided for in 2-15-1512.

(5) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research.

(6) "Preservation review board" means the board provided for in 2-15-1512.

(7) "Register" means the National Register of Historic Places, the official list of the nation's heritage properties worthy of preservation because of national, state, or local significance.

(8) "Registered property" means any heritage property listed in the register.

(9) "State agency" means any executive agency of the state of Montana.

History: En. Sec. 4, Ch. 563, L. 1979.

AMEND SENATE BILL 246 AS FOLLOWS:

1. Page 3, line 6.

Following: "(1)"

Insert: "in consultation"

Following: "with"

Strike: "the concurrence of"



NAME: R. Archibald DATE: \_\_\_\_\_

ADDRESS: 225 N. Roberts St

PHONE: 449-2694

REPRESENTING WHOM? MA-Hist. Society

APPEARING ON WHICH PROPOSAL: CB 157,247

DO YOU: SUPPORT? ✓ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SUMMARY - Senate Education and Cultural Affairs Committee  
Friday, January 28, 1983

*Bar. Archibald  
mt. Historical Society*

SB157 An Act to Require State Agencies to Give Preference to  
Heritage Properties for New Space Needs in Certain Cases

This act requires state agencies in need of additional space to consider systematically the use of existing, historically significant properties and, if these identified historic properties will serve the agencies' purposes, to give them preference. Note that the bill does not create a blanket requirement that historic space be used. Rather, it requires that an agency (1) check with the Historical Society to learn what historic space might be available, (2) evaluate the appropriateness and feasibility of using that space for the desired purpose, and (3) inform the Society of its decision as a result of that evaluation. The benefits of the act are:

- to demonstrate to Montanans the state's intent to be a conscientious steward of the state's past and of the heritage of Montana communities;
- to bring to the attention of state agencies opportunities to save money which are not now routinely considered;
- to give to the state another method to contribute to the economic revitalization of existing commercial centers in Montana communities.

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SB246 An Act to Require State Agencies to Adopt, in Consultation with the Montana Historical Society, Rules Outlining Procedures for the Identification and Preservation of Heritage Properties and Paleontological Remains or to follow Rules for that Purpose Adopted by the Historic Preservation Officer

This amendment reinforces and realizes--but does not alter or increase--the responsibility for heritage property consideration as outlined in the 1979 Montana Antiquities Act. The amendment identifies the specific method (i.e. regulations) by which state agencies will formalize and document their procedures for considering heritage properties on state land. Further, it gives the Historic Preservation Officer the authority to write regulations for that same purpose, should an agency choose not to write its own. The benefits of the act are:

- to clarify the format in which agency procedures are written and presented;
- to insure that the format used by agencies includes a public-comment process--open to development industries, to the lay public, and to professional historians;
- to insure that the procedures used by state agencies are accessible and clearly known to anyone whom they might affect;
- to assure Montanans that--even if a state agency does not choose to prepare procedures for heritage property consideration--the agency still must legally adhere to a standard for heritage property stewardship.

SB 246

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

January 28, 1983

Through the Legislative mandate given to our department in creating the State Park System, we have responsibility for preserving our historical and paleontological heritage. We feel that state agencies should make certain that these values are given proper consideration.

While we support SB 246 we do have a concern with some of the language included.

The bill, under Section 2, Subsection (1), gives the State Historic Preservation Officer veto power over rules proposed by a department. If rules are not adopted by an agency, the Preservation Officer, under Section 1, Subsection (9) may impose rules on the department.

This language would seem to indicate that one agency can set the rules for another agency if it so desires. This is a questionable practice and one we feel should be modified.

We suggest that Section 2, Subsection (1) of the bill be amended to substitute the word "consultation" for the word "concurrence". In this manner the department would have the proper incentive to adopt rules as an administering agency should. If rules were not adopted in a reasonable time, the Preservation Officer could impose rules on the department under the provisions of Section 1.

Of further concern is the word "feasible" on page 2, line 23 and page 3, line 9. Feasible can mean two different things to two different administrators. Even the dictionary has two separate but common definitions to the word. One is "capable of being done or carried out" and the other is "within reason". Either of these are judgment calls and I have no alternatives to suggest. But we would point out that this point of interpretation could relate back to our previous concern.

I would add that these concerns are for the law as it will apply to those involved for many years into the future. They are not intended to reflect upon Mr. Archibald's administration. He is conducting a meaningful program, has been most cooperative and is viewed with respect.

However, the personalities of today will certainly change at some time and the law will remain in place. We would hope that law is as free as possible of points of conflict.




Exhibit #2  
Jan. 28, 1983

# BUTTE-SILVER BOW URBAN REVITALIZATION AGENCY

Courthouse  
Butte, Montana 59701  
(406) 723-8262 Extension 354

January 27, 1983

Senator Bob Brown, Chairman  
Senate Education and Cultural Affairs Committee  
Capitol Station  
Helena, Montana 59620

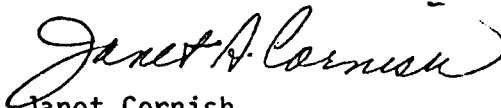
Dear Senator Brown and Members of the Committee:

I am writing to express my support for Senate Bills 157 and 246. Senate Bill 157 encourages the use of historical buildings by state agencies. As the Director of Butte's Urban Revitalization Agency, I am especially concerned with the reuse of buildings in central business districts. This legislation will further assure that Montana's downtowns can be redeveloped.

Senate Bill 246 provides state agencies with the much needed process for establishing rules regarding heritage properties. I believe this gives us greater protection for our states important resources.

I especially thank you for your support of these two bills and encourage the entire committee to support them as well.

Sincerely,



Janet Cornish  
Director

JC:sk



WITNESS STATEMENT

Exhibit #3  
Jan. 28, 1983

NAME Margaret S. Davis BILL No. SB 157  
ADDRESS 917 Harrison, Helena, Montana 59601 DATE 28 January 83  
WHOM DO YOU REPRESENT SELF  
SUPPORT support x OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

SB 157 - Requiring state agencies to give preference to heritage properties for new space needs if heritage properties can serve the purpose required.

<sup>citizens</sup>  
~~Montana~~ traditionally have taken pride in their historic buildings and properties. While we are a relatively young state, many of these buildings have become symbols of stability and community spirit. Even buildings which might not be very old or architecturally unique can take on special significance because of their association with state government. The state should statutorially recognize its stewardship responsibilities and give serious consideration to the use or adaptive reuse of heritage properties.

This bill would not mandate the state to use these properties, but it would require that consideration be given to historic space.

State consideration of heritage properties for its space needs makes good economic and political sense. I hope the committee will favorably consider SB 157.

*Margaret S. Davis*

NAME: John D. McKittrick DATE: 1-28-83

ADDRESS: 901 N. Benton Ave Helena

PHONE: 442-4993

REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Exhibit #4  
January 28, 1983

SB 157

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

January 28, 1983

Mr. Chairman, my name is Jim Flynn, Director of the Department of Fish, Wildlife, and Parks. I appear before you in support of Senate Bill 157.

We believe the state should support adaptive reuse of historic structures when prudent. The bill clearly leaves the decision regarding use of heritage property with the department directors but mandates consultation with the State Historic Preservation Officer. This is an important ingredient to the bill.

In summary, Mr. Chairman, we support Senate Bill 157.

NAME: David Nelson DATE: 1-28-83

ADDRESS: 2232 Summit Missoula 59803

PHONE: 243 4883

REPRESENTING WHOM? MT. Aids Council

APPEARING ON WHICH PROPOSAL: 157 + 246

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



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The primary purpose of this amendment is to insure that systematic consideration of heritage properties on state-owned land does occur in state agency planning and actions. More specifically, the amendment is meant to encourage state agencies to develop such a system themselves, tailored to their own agency needs, time schedules, and actions and that they do so within a format that requires attention and response to public, practical reactions as well as concurrence from historians and archeologists in the Society. The amendment then directs agencies that do not choose to prepare their own regulations to afford systematic consideration to heritage properties on state lands through adherence to general regulations prepared by the Society.

The regulations written as a result of this amendment should insure that (a) the decision on whether to undertake a professional cultural resources inventory or site evaluation prior to a potentially harmful action is made by the agency in consultation with the Society and is deliberate; (b) any heritage properties identified on state land are afforded direct consideration in an agency's decision on whether or how to undertake an action; and (c) wherever feasible, damage to heritage properties is avoided or subject to an appropriate form of mitigation. The regulations are not intended to require a single course of action by the agency or absolute protection of all heritage properties identified. The desired end is deliberate knowledge of and consideration of cultural resources in agency planning.

Regulations written by either state agencies or the Society should likely have as common elements:

- a requirement that prior to taking an action affecting state land or property state agencies will check with the Society to determine the presence or absence of previously identified historic or prehistoric resources, the relative value of any previously identified sites or buildings, and whether a field inventory or further site evaluation needs to occur to determine whether heritage properties might be impacted. State agencies will need to provide the Society with information on legal location, ground condition, and building age and condition.
- a requirement that the Society provide the information requested within a specified time and in a precise format.
- a requirement that each state agency have a system for making and documenting decisions on whether heritage properties identified as being affected by an agency decision or action can be afforded protection, avoidance, reuse, rehabilitation, or recording prior to impact and that the system adopted permits Society comment to the agency on their decision.
- a method for adjudicating differences between the agency and the Society in instances where the value of jeopardized sites appears to be high. Such a method could involve the Governor-appointed State Historic Preservation Review Board.

This amendment would be applicable to state agencies in two separate contexts: decisions on remodeling or demolition of historic state-owned buildings and decisions made by state land managing agencies relative to leases, easements, access, development, etc. For instance, the Department of Institutions has been considering abandonment and demolition of "Old Main" at the Montana State Veterans Home in Columbia Falls. The building is architecturally distinctive and is viewed within the community as possessing historically significant associations. In the absence of a known, systematic process for evaluating the importance of the building and alternatives for its use--either by the state or by the private sector--interest in preservation of the structure becomes an irritant to the Department and the origin of public criticism of them if they appear to have no way to react to that interest.

Similarly, within the past two years, landowners whose property adjoined school trust land in Eastern Montana were angry over the destruction--resulting from oil exploration work--of a prehistoric site which extended from state land onto their own land. The Department of State Lands could not assure them of having followed procedures that afforded the site consideration in the leasing process and was therefore legally liable in the absence of those procedures. The amendment proposed would require Lands to prepare regulations that suited their leasing schedules and discretionary abilities and clarify for the landowner the expectations that they could hold of a state agency.

The amendment, by requiring agency preparation of regulations or adherence to Society prepared regulations, assures Montanans that a system for respecting heritage properties will be established and that they can comment on the system and affords state agencies the opportunity to establish regulations that both suit their needs and protect them from legal or general criticism. The amendment further assures Montanans that the Society's expertise in history, archeology, and historic architecture is made available to state agencies for assistance in determining site value and potential for protection or reuse.

In the case of the Montana University System, "regulation" is understood to mean procedures to be included in the Montana University System Policies and Procedures Manual through the formal and public process used by the Regents for that purpose.

WITNESS STATEMENT

NAME Margaret S. Davis SB 246  
BILL No. \_\_\_\_\_  
ADDRESS 917 Harrison, Helena, Montana 59601  
DATE 28 January 83  
WHOM DO YOU REPRESENT SELF  
SUPPORT support X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

SB 246 - Requiring the adoption of rules, with the concurrence of the Montana Historical Society, by state agencies outlining the procedures by which they will consider cultural resources....

Rule making authority is not to <sup>be</sup> given lightly, but it is fully justified in this instance. Since the passage of the Montana Antiquities Act four years ago, no state agency has developed a system or method for consistently considering cultural resources. Without a stated public policy, these agencies may risk legal liability. Since agencies differ in their involvement with cultural properties, separate sets of rules are appropriate. Those agencies which do not wish to promulgate of their own, will operate under rules developed by the Montana Historical Society.

As a long time supporter of historic preservation, I believe that passage of this bill would help assure that Montana's cultural resources are not overlooked or discounted because of a lack of interest, knowledge, or clear, readily understood review procedures. Once demolished or thoughtlessly disturbed, these resources cease to exist. However, even if a property cannot be maintained intact, agency rules may allow interested persons, such as scientists and historians, to fully evaluate the site before any physical changes are made. At present this is a hit or miss proposition. I strongly support passage of SB 246.



NAME: Dr Fred Munday DATE: \_\_\_\_\_

ADDRESS: 415 Keith Avenue, Missoula, MT

PHONE: (406) 543-4232 (home) (406) 243-5081/2693 (office)

REPRESENTING WHOM? University of Montana

APPEARING ON WHICH PROPOSAL: 246

DO YOU: SUPPORT? ☒ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Robert J. Tubbs DATE: \_\_\_\_\_

ADDRESS: Helena

PHONE: 458-5441

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 246

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DAN Hilger

DATE :

1-V8-83

ADDRESS :

Helena

PHONE :

458 - 5253

REPRESENTING WHOM?

Self

APPEARING ON WHICH PROPOSAL:

SB 246

DO YOU:

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS :

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: maurella slay DATE: 1-28-83

ADDRESS: Martin Luther Society

PHONE: \_\_\_\_\_

REPRESENTING WHOM? \_\_\_\_\_

APPEARING ON WHICH PROPOSAL: SB 157 + 246

DO YOU: SUPPORT? ✓ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.





January 27, 1983

Senator Bob Brown, Chairman  
Senate Educational and Cultural Affairs Committee  
State Senate, Capitol Building  
Helena, Montana 59620

Dear Senator Brown:

Due to prior commitments, I am unable to attend the hearing on your bill entitled "An Act to Require State Agencies to Give Preference to Heritage Properties for New Space Needs in Certain Cases." As a Helena businessman and developer, I would like you and your colleagues to know that I strongly favor this bill.

In the decade of the seventies government at all levels began to realize both the economic and cultural importance of revitalizing the cities. These governments have poured countless dollars in programs to encourage redevelopment of heritage properties and relocation of business to core areas. I believe these programs have made a significant contribution to the future by constructive re-use of the best from the past.

It would seem appropriate for government to put its mouth where its money is. The federal government has elected to do so and state government should set the example in its own back yard. The action contemplated by this bill would add credibility to the revitalization process, would save money through lower lease rates for often more interesting and more accommodating space and would stimulate a better integration of state government with the community. Thank you for your consideration.

Sincerely,



Alan D. Nicholson

ADN/bd