

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 11, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Monday, February 11, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 265: Rep. Keyser informed the committee that the subcommittee studying the stream access bills has drafted a "gray bill". The changes as set forth in the gray bill were a result of a unanimous decision made among the subcommittee members. The gray bill is being prepared and will be submitted.

RE-CONSIDERATION OF HOUSE BILL NO. 443: Although HB 443 was sent out of committee on February 7, 1985, the Statement of Intent was not attached. The bill was re-referred back to committee so that the Statement of Intent could be adopted. On that basis, Rep. O'Hara moved that the committee adopt the Statement of Intent to HB 443. The motion was seconded by Rep. Hammond and carried unanimously.

CONSIDERATION OF HOUSE BILL NO. 620: Rep. Bradley, chief sponsor for HB 620, said the bill requires justices of the peace to be certified prior to their taking office. This process is basically done through the existing commission on courts. She pointed out that this would not be practiced until January 6, 1986. After that time, a J.P. could only assume the functions of that office if he filed with the county clerk and recorder a certificate showing that he completed the required educational course set up by the commission. She said it would require no expenses because it is something that can be asborbed by the commission.

Janet Stevens, justice of the peace in Missoula, testified in favor of this bill. She said the purpose of the bill is to further professionalize the courts of limited jurisdiction. It will increase the public's trust in justice of the peace courts.

Jim Jensen, appearing on behalf of the Montana Magistrates Association, wished to go on record as supporting this legislation.

There being no further proponents or opponents, Rep. Bradley closed. The floor was opened for questioning.

Rep. Mercer wanted to know if this bill will require temporary judges to go through this process. Rep. Bradley stated that it will not apply to those cases.

Rep. Bradley referred Rep. Mercer to section 2 of the bill dealing with temporary judges.

In response to a question asked by Rep. Hannah, Rep. Bradley said that section 5 refers to expenses as to how judges are entitled to reimbursement for the twice-a-year educational process. This new process counts towards that educational process, so she doesn't think the county expenses would be any different.

There being no further questions, hearing closed on HB 620.

CONSIDERATION OF HOUSE BILL NO. 300: Rep. Dennis Nathe, House District 19, HB 300's sponsor, appeared and offered testimony. He said this bill will extend the statute of limitations back five years on all sexual abuse charges filed against the person to make it consistent with a felony. He stated specifically the age of 16 because he feels this is consistent with the statutes.

David Briggs, executive director of the Mental Health Region, covering the southwest corner of the state of Montana, supports this legislation because in their experience in working with sex offenders, they have discovered that often times those offenders have committed a number of other kinds of offenses. If one person has the courage to bring charges against his/her attacker, then a lot of times other persons will come forward and admit to a prior offense committed against them years ago.

There being no further proponents or opponents, Rep. Nathe closed.

The floor was opened to questioning.

Rep. O'Hara wanted to know how far they can go back at the present time. Rep. Nathe stated that it would depend upon which statute a child abuser is charged under. Rep. Nathe is trying to make all the statutes specifically dealing with children involving sexual assault consistent.

Rep. Nathe at this time, stated he should have offered some amendments which he had intended to do at the

outset of his testimony. The statute dealing with incest should be included -- 45-5-507. Also, 45-5-625 which is the child abuse statute concerning pornography, the fondling of children, etc. should be added. He said these two statutes were left out inadvertently.

There being no further questions, hearing closed on HB 300.

CONSIDERATION OF HOUSE BILL NO. 313: Rep. Dennis Nathe, House District #19, sponsor of this bill, testified in support of HB 313. This is an act establishing the time for trial of a person committing a sex offense against a victim less than 16 years old. Rep. Nathe was candid with the fact that he didn't object if the committee wanted to table this bill. He said that in the state of Montana, a speedy trial is provided within six months, and the most time he was able to shorten the six months was two months. Any good defense lawyer will try to delay the trials. The longer the delay, the less explosive the situation is and the more people can forget. Rep. Nathe said that some of these criminal cases have dragged on for over a year. This was an attempt to try to rectify that problem, but he realizes that both sides have to have plenty of time to prepare their cases.

There were no further proponents or opponents, and Rep. Nathe closed.

There were no questions, and the hearing closed on HB 313.

CONSIDERATION OF HOUSE BILL NO. 644: Rep. Dennis Nathe, House District #19, sponsor of the bill, testified. He said this is an act providing for a pre-sentence investigation of a person convicted of committing a sex offense against a victim less than 16 years old. Rep. Nathe offered amendments to this bill as he did with HB 300 which would add 45-5-507 and 45-5-625. Also, he wished to amend line 19 of the bill by striking "psychiatric". At the end of the sentence on line 20 following "treatment" he wished to add "by a qualified professional person qualified by training and experience." He said the reason for amending this is because there are only two psychiatrists in the state. There are psychologists in the state who have the necessary training, in addition to other qualified people who could provide the necessary information to the court. This amendment would allow these additional people to be able to make these evaluation reports.

Again, Rep. Nathe stated that the purpose of the bill was to provide that between conviction and before sentencing that an evaluation of the child abuser take place so that the judge could sentence the person based on the evaluation.

David Briggs, executive director of the Mental Health Services, Inc., testified in support of this bill. In dealing with sexual offenders, the standard training that any mental health professional receives does not train them generally to deal with very often unique and very difficult problems such denial and refusal to admit to the problem that sex offenders do have. It is very important to have specialized evaluations to determine who can be treated or who should be treated in an in-patient setting or in the state prison setting and who can be safely treated on an out-patient basis. Currently, they have 26 individuals involved in their treatment program. That particular program has been going on for two years. At no time in those two years or with those 26 individuals have they had a reoffense. They have done very thorough and comprehensive evaluations. We think the thorough and comprehensive evaluation is very critical in the whole process. He doesn't think putting these habitual sex offenders in jail will benefit anyone.

There being no further proponents or opponents, Rep. Nathe closed.

The floor was opened to questions.

In response to a question asked by Rep. Eudaily, Mr. Briggs said they had a struggle coming up with some phrasiology pertaining to qualified persons in the state.

Rep. Nathe suggested that perhaps an amendment would help solve the problem Rep. Eudaily was having. He suggested that on line 19 to strike "psychiatric" insert "psychological". Rep. Nathe stated that he has had a struggle trying to define this particular portion.

There being no further questions, hearing closed on HB 644.

CONSIDERATION OF HOUSE BILL NO. 431: Rep. Dennis Nathe, House District #19, stated this is an act that requires that all the sheriff's sales be publicly posted and advertised in a newspaper at least one week before the sale.

There being no further proponents or opponents, Rep. Nathe closed, and the floor was opened for questioning.

Rep. Hammond wanted to know if there is a cost to the sheriff's department to post these notices. Rep. Nathe assumes it comes out of the county budget.

Rep. Addy said that publication of notice of the sale has been required in the past, and it requires one a week for three weeks. You would divide that requirement for publication by 1/3. Instead of three notices, there would only be one notice. He sees the bill as having an opposite effect.

Rep. Nathe said that there seems to be all types of property that fall under the sheriff's sale provision. Mr. Nathe doesn't know if all of them are being covered by the publication of the papers.

There being no further questions, hearing closed on HB 431.

CONSIDERATION OF HOUSE BILL NO. 529: Rep. Kelly Addy, House District #94, sponsor of HB 529, testified before the committee. He said this is a bill that seeks to sure up the solvency of the uninjured employers fund under the workers' compensation statute. At present, if an employee is injured and the employer is injured, the employee is limited to remedies under workers' compensation law. On the other hand, if the employee is injured and the employer is uninsured, they have to make an election between the two remedies. One is to make a claim against the uninsured employer's fund, and if it isn't solvent a person gets a certain portion of nothing from that fund; or proceed against the employer. Quite often the employer (if it is a corporation) is undercapitalized and doesn't have any assets against which the person can proceed if he gets a judgment. The unfortunate situation as it now stand is that the employee needs to make that election at the outset.

This bill give the employer three options to proceed with. You can proceed with the three options without excluding the other two. Rep. Addy pointed out some of the changes as set forth in the bill.

Karl Englund, Montana Trial Lawyers Association, said that the notion of election is a very difficult determination to make right now. This bill will take away incentive from employers not to cover and provide an injured person three ways to try to get compensated for their injuries with the understanding that he is only going to be compensated one time.

Gary Blewett, Administrator of the Workers' Compensation Division, Department of Labor and Industry, testified in support of this bill. He said the division investigates approximately 600 to 700 employers a year for possible uninsured status. They have narrowed that down to around 230 who they were capable of finding. Out of the 230 cases, there are about three fourths of them that have accidents on the uninsured cases.

OPPONENTS:

George Wood, executive secretary of the Montana Self-Insurers Association, testified against HB 529. He said the theory of providing benefits for injured employees of uninsured employers is a good one; unfortunately, the fund has always been underfunded. He feels this bill does not correct this defect, but only further confuses it. A copy of his testimony was marked Exhibit A and attached hereto.

There being no further opponents, Rep. Addy closed. This bill seeks to place the burden for funding injuries to workmen who work for unemployed injurers on the shoulders of those who did not choose to insure their employees. It places the burden on the shoulders of the people who are responsible for the problem.

The floor was opened to questions from the committee.

In response to a question, Rep. Addy said there is a general body of law allowing the "piercing of the corporate veil" where a manifested justice would result, where the corporation has been undercapitalized, where the corporation is actually the alter-ego, or where the refusal to permit the "piercing the corporate veil" would be tantamount to condoning a fraud.

In response to a question, Mr. Wood said his suggestion for funding this fund would be 1/3 general fund, 1/3 employers and 1/3 employees since we all have an interest in the lack of income for these people following the injury. He pointed out that there are some states that fund in that manner.

There were more general questions directed towards Rep. Addy and Mr. Blewett. Hearing closed on HB 529.

CONSIDERATION OF HOUSE BILL NO. 520: Rep. Ed Grady, House District No. 47, chief sponsor for this bill, offered testimony in its support. This bill was requested by the Montana Water Development Association and the Montana Irrigators. The bill was a result of

the recent supreme court decision in regards to the access issue.

K. M. Kelly, representing the Montana Water Development Association and the Montana Irrigators. He said this bill was intended to apply only to irrigation districts or other irrigation facilities which for the most part are on private property. Mr. Kelly offered a few amendments to the bill. On page 1, line 13, following "waters" insert "without permission or contractual arrangement with the owner". On page 1, line 15 following "(2) add "manmade". On line 16 following "systems" add "excluding the lakes, streams and reservoirs from which the system obtains its waters"; on page 1, line 18 following "facilities" add "that are not subject to federal jurisdiction under the federal power act". He said that even though the stream access bills are now pending, they may not pass in the form they are presently in print. Therefore, we would like to have it clarified that these irrigation districts and facilities are not available for recreation use. The reason for this is because of public safety. He further added that this bill won't discontinue lawsuits in their entirety, but it may aide them. (Mr. Kelly's testimony was marked Exhibit B and attached hereto.) We are just trying to relieve ourselves of some of the liability that could be involved.

Jo Brunner, representing the Montana Women Involved in Farm Economic organization, did not appear perse, but a copy of her written testimony was marked as Exhibit C and is attached.

Jim Flynn, director of the Department of Fish, Wildlife and Parks, offered testimony on HB 520. The department supports the intent of HB 520, however it has two additional concerns that Mr. Flynn addressed. A copy of his written testimony was marked as Exhibit D and is attached hereto the minutes.

Ron Waterman, representing the Montana Stockgrowers Association, supports the concept of the bill only with the proposed amendments as presented by Mr. Flynn.

Bill Asher, representing the Agricultural Preservation Association, the Park County Legislative Association, and the Meagher County Preservation Association, stated that he supports the concept of this bill. A copy of his testimony was marked as Exhibit E and attached hereto.

Mike Zimmerman, attorney for the Montana Power Company, stated his support for the bill with the amendments

offered by Mr. Kelly. He further stated that the company doesn't have any problem with HB 265.

Mike Micone, representing the Western Environmental Trade Association, stated his support for the bill with the amendments offered by Mr. Kelly.

There being no proponents to the bill, Rep. Grady closed. Rep. Grady feels this bill should pass in case HB 265 is jeopardized in any way.

In response to a question by Rep. Eudaily, Mr. Kelly stated that the intent of the bill is to say that while we are trying to prevent good reasonable use of the facility from the impoundment on, we are not trying to regulate the water that is behind the dam. Mr. Kelly stated he would have no objection clarifying this language.

Hearing closed on HB 520.

EXECUTIVE SESSION:

Representative Hannah called an executive session at 10:30 a.m.

ACTION ON HOUSE BILL NO. 575: Rep. Darko moved that HB 575 DO PASS. The motion was seconded by Rep. Hammond.

Rep. Addy moved the bill on line 25 following "victim" by striking the rest of the sentence in its entirety. The motion was seconded by Rep. Rapp-Svrcek and the question called. The motion to amend carried unanimously.

Rep. Darko moved that HB 575 DO PASS AS AMENDED. The motion was seconded by Rep. Hammond and discussed. The question was called, and the motion carried unanimously.

ACTION ON HOUSE BILL NO. 600: Rep. Keyser moved that HB 600 DO PASS. The motion was seconded by Rep. O'Hara. The motion carried with Rep. Brown and Krueger dissenting.

ACTION ON HOUSE BILL NO. 313: Rep. Keyser moved that HB 313 BE TABLED. The motion was seconded by Rep. Gould and carried unanimously.

ACTION ON HOUSE BILL NO. 300: Rep. Eudaily moved that HB 300 DO PASS. The motion was seconded by Rep. Hammond.

Rep. Keyser moved to adopt the amendments as proposed by Rep. Nathe by adding the new sections of "45-5-507" and "45-5-525" following "45-5-505".

The question was called on the amendment, and the motion carried unanimously.

Rep. Hammond moved that HB 300 DO PASS AS AMENDED. The motion was seconded by Rep. O'Hara and carried unanimously.

ACTION ON HOUSE BILL NO. 664: Rep. Hammond moved that HB 664 DO PASS. The motion was seconded by Rep. Darko.

Rep. Brown moved to amend the bill to include sections 45-5-507 and 45-5-525. The motion was seconded by Rep. Gould. The question was called, and the motion carried with Rep. Montayne dissenting.

Rep. Addy moved to amend page 1, line 19 by striking "psychiatric" then on line 20 following "treatment." insert "by a person qualified by professional training and experience." The motion was seconded by Rep. Hammond.

Rep. Eudaily wanted to know who determines whether a person is qualified in the area addressed here. Rep. Addy answered by saying that the supreme court ultimately determines that.

Rep. Krueger stated his support for the amendment because there is very little psychiatric help available, and this would enable other qualified people to make these evaluations.

The question was called, and the motion to amend passed unanimously.

Rep. Hammond moved that HB 664 DO PASS AS AMENDED. The motion was seconded by Rep. Eudaily.


Rep. Montayne spoke against the bill saying that he feels the bill is going too far.

Rep. Gould feels this will just be another reason to have these offenders turned loose.

Rep. Mercer spoke in favor of the bill stating that is will just give the judge more information in dealing with these cases.

The question was called, and the DO PASS AS AMENDED motion passed with Reps. Hannah, Gould and Montayne dissenting.

ADJOURN: A motion having been made and seconded, the meeting adjourned at 11:00 a.m.


TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/11/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

February 11 19 35

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 600

FIRST reading copy (WHITE)
color

INCLUDE OUT-OF-STATE CONVICTIONS FOR DUI & BROADEN CHARGING ON DUI

Respectfully report as follows: That HOUSE Bill No. 600

DO PASS

STANDING COMMITTEE REPORT

February 11 1975

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 575

FIRST reading copy (WHITE color)

INCREASED PENALTY FOR CERTAIN UNLAWFUL RESTRAINTS OF A CHILD

Respectfully report as follows: That HOUSE Bill No. 575

be amended as follows:

1. Title, line 6.

Following: "OLDER"

Strike: ", AND" through "COMMITTED" on line 7.

2. Page 1, line 25.

Following: "victim"

Strike: "and" through "45-5-625" on page 2, line 2.

AND AS AMENDED,

DO PASS

STATE PUB. CO.
Helena, Mont.

REP. TOM HANNA

Chairman.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

February 11 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 300

FIRST reading copy (WHITE)
color

EXTEND TIME FOR PROSECUTION OF SEX OFFENSES AGAINST CHILDREN

Respectfully report as follows: That HOUSE Bill No. 300

be amended as follows:

1. Page 1, line 14.
Following: "45-5-505"
Insert: " , 45-5-507, or 45-5-625"

AND AS AMENDED,

DO PASS

STANDING COMMITTEE REPORT

February 11

1985

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 644

FIRST reading copy (WHITE)
color

SEX OFFENSE AGAINST PERSON UNDER 16 YEARS OF AGE; PRESENTENCE REPORT

Respectfully report as follows: That HOUSE Bill No. 644

be amended as follows:

1. Page 1, line 14.

Following: "45-5-505"

Insert: ", 45-5-507, or 45-5-625"

2. Page 1, lines 18 and 19.

Strike: "a psychiatric"

Insert: "an"

3. Page 1, line 20.

Following: "treatment"

Insert: "by a person qualified by professional experience"

AND AS AMENDED,

DO PASS

STANDING COMMITTEE REPORT

February 11 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 443

SECOND reading copy (YELLOW)
color

INCOME WITHHOLDING FOR DELINQUENT CHILD SUPPORT PAYMENTS

Respectfully report as follows: That HOUSE Bill No. 443

AND AS AMENDED,

DO PASS

STATEMENT OF INTENT ATTACHED

STATEMENT OF INTENT
HOUSE BILL 443

A statement of intent is required for this bill because it gives the department of revenue rulemaking authority.

The intent of this bill and federal Public Law 93-378, the Child Support Enforcement Amendments of 1984, on which it is based is to ensure that the support of children is the highest priority in the allocation of a responsible parent's income through the timely and automatic initiation of income withholding procedures whenever a delinquency occurs equal to at least 1 month's support payment. This bill requires the department to monitor and track support payments as they become due for the purpose of detecting delinquencies and further, to promptly respond to such delinquency with income withholding procedures. To expedite the process of income withholding, any hearings are to be held under the contested case procedures of the Montana Administrative Procedure Act. Further, income withholding procedures are to be made available for interstate applications.

More specifically, it is the intent of the bill to grant to the department of revenue, the following:

(1) the authority to establish rules and procedures related to the administrative hearing process, including but not limited to procedures for requesting a hearing, for discovery, and for teleconferencing;

(2) the authority to adopt guidelines for the exercise of discretion in reducing the amount to be withheld in satisfaction of arrearages;

(3) the authority to establish procedures for the monitoring, tracking, and dispensing of support payments and payments received from income withholdings; and

(4) the authority to establish procedures for the implementation of interstate withholding.

MONTANA SELF-INSURERS ASSOCIATION

GEORGE WOOD, Executive Secretary

HOUSE BILL 529

EXHIBIT A

2/11/85

HB 529

MY NAME IS GEORGE WOOD, EXECUTIVE SECRETARY OF THE MONTANA SELF-INSURERS ASSOCIATION.

I ARISE IN OPPOSITION TO HOUSE BILL 529.

THE BILL PERTAINS TO THE UNINSURED EMPLOYERS FUND. THE THEORY OF PROVIDING BENEFITS FOR INJURED EMPLOYEES OF UNINSURED EMPLOYERS IS A GOOD ONE. UNFORTUNATELY, THE FUND HAS ALWAYS BEEN UNDERFUNDED. THIS BILL DOES NOT CORRECT THIS DEFECT, BUT ONLY FURTHER CONFUSES IT.

THE BILL DOES INCREASE THE PENALTY AGAINST THE UNINSURED EMPLOYEE FROM \$30,000 TO \$50,000. THE CHANGE IS ACADEMIC SINCE NO COLLECTIONS IN THIS AMOUNT ARE LIKELY TO OCCUR.

THE BILL DOES ALLOW THE DIVISION TO ENTER INTO AN AGREEMENT ASSIGNING ALL OR PART OF THE FUNDS RECEIVED FROM AN UNINSURED EMPLOYER TO THE INJURED EMPLOYEE OR HIS BENEFICIARIES. THIS PROVISION WOULD REDUCE THE AMOUNT GOING INTO AN ALREADY INSOLVENT FUND. IT WOULD PLACE THE INJURED WORKER WHOSE EMPLOYER PAYS ALL OR PART OF THE PENALTY IN AN ADVANTAGEOUS POSITION WHEN COMPARED WITH OTHER INJURED EMPLOYEES MAKING A CLAIM AGAINST THE FUND.

THE BILL, IF ENACTED, WOULD ALLOW THE INJURED EMPLOYEE TO FILE A CLAIM

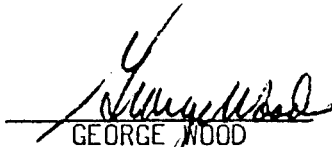
FOR COMPENSATION AND FILE AN INDEPENDENT CAUSE OF ACTION AGAINST THE EMPLOYER. THIS IS NOT ALLOWED PRESENTLY, A CHOICE MUST BE MADE.

THE BILL DOES ALLOW THE ACTION AGAINST OWNERS, OFFICERS OR DIRECTORS OF A CORPORATION WHICH IS UNINSURED. CERTAINLY SOME OF THE OFFICERS AND DIRECTORS OF THE CORPORATION WOULD IN NO WAY BE RESPONSIBLE FOR THE UNINSURED STATUS.

THERE ARE OTHER CHANGES IN THE BILL WHICH IN NO WAY CURE THE PROBLEMS OF THE UNINSURED EMPLOYERS FUND. CHANGES ARE NEEDED TO MAKE THE FUND A VITAL PART OF THE WORKERS' COMPENSATION ACT. THIS BILL DOES NOT DO IT.

I, THEREFORE, RESPECTFULLY SUGGEST THAT THIS COMMITTEE REPORT HOUSE BILL 529

DO NOT PASS.


GEORGE WOOD
EXECUTIVE SECRETARY

NAME: K. M. Kelly

DATE: 2/11/85

ADDRESS: Helena

PHONE: 458-5861

REPRESENTING WHOM? Montana Water Revel. Assn. Pub. Mont. Irrigators

APPEARING ON WHICH PROPOSAL: HB 520

DO YOU: SUPPORT? X AMEND? X OPPOSE?

COMMENTS: This bill was intended to apply only to
irrigation districts or other irrigation facilities
which for the most part are on private property

The above associations proposed this bill
because of public safety and in some
measure reduce the liability of the Irrigator
District.

The public both hunts fishes and floats
our facilities and because of drops in irrigation
can be dangerous particularly to small children.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WIFE Women Involved In Farm Economics



NAME JO BRUNNER COMMITTEE H. JUDICIARY
ADDRESS 1496 Kodiak Road, Helena DATE february 11, 1985
REPRESENTS W.I.F.E. BILL NO. HB 520
SUPPORT X OPPOSE AMEND

Mr. Chairman, members of the committee for the record, my name is Jo Brunner and I represent the Montana Women Involved in Farm Economics organization at this hearing today.

Mr. Chairman, W.I.F.E. wishes to go on record in support of House bill 520.

Our organization has worked with the agriculture alliance on the stream bed situation for a good many months and this has been a concern of our members. We do not believe that the Supreme Court decision was meant to, or should, apply in the particular instances mentioned in HB 520.

I live on a Federal Irrigation Project and we have many man-made drains and a great many natural drains running through our project, ~~but not through~~ thus through our individual farms, not only through the pasture lands, but through our crop lands, as do most projects. Many of us do allow hunting and fishing when it will not hurt or hamper our operations, but we believe that to have sports people able to enter at will, on diverted waters, is not really beneficial to our operations, and sometimes costly.

Again, we do not beleive that the Supreme Court decision indicates that diverted waters are included and we would like to see this bill passed in order to verify it. *We support the amendments offered by*
We ask that you do concur with HB 520.

HB 520

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

February 11, 1985

Mr. Chairman, the Department of Fish, Wildlife & Parks supports the intent of HB 520 and appreciates the attention to our concerns by the sponsor in proposing amendments to clarify the bill. However, we have two additional concerns that we would like addressed.

It appears even with the amendments that it will be illegal to boat or fish on some presently popular boating and fishing areas. Reservoirs such as Fort Peck, Canyon Ferry, Hungry Horse and Lake Koocanusa are not under the federal power act, although they are federal reservoirs.

We would suggest adding language on page 1 after the word "Act" in Sub 4 which would state "or which are not owned or operated by the federal government."

We also have situations such as Deadman's Basin, Nelson Reservoir, Pishkun Reservoir, Dailey Lake and Park Lake where through the years public access has been provided. In fact, many of these areas have been developed by this agency to the point of owning sites on the banks of the project. HB 520 is not clear as to whether the public can use the surface water or if this use is to be discontinued until such time as a formal agreement can be worked out.

To address this matter, we suggest that on page 1, Sub 5, line 21, after the figure "3" the following statement is added: "except for impoundments or diversion channels to which the state or federal government or the owner has provided public access."

We feel these two changes would provide a clearer understanding of the definitions intended.

WITNESS STATEMENT

Name BILL ASHER Committee On JUDICIARY
Address P.O. Box 3285 BOZEMAN Date 2-11-85
Representing APA, PCLA & MCPA * Support ✓
Bill No. HB520 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. THE INTERMINGLING OF APPROPRIATED AND UNAPPROPRIATED WATERS
IN DITCHES + CANALS NEEDS STATUTORY CLARIFICATION, RELATIVE TO
2. THE STREAM ACCESS ISSUE.

3.

4.

* AGRICULTURAL PRESERVATION ASSOCIATION
PARK COUNTY LEGISLATIVE ASSOCIATION
MENAGHER COUNTY PRESERVATION ASSOCIATION

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

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. 520; 529; 620

DATE February 11, 1985

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
K.M. Kelly	Helena	HB 520	
BILL ASHER	Bozeman APA	HB 520	
Jim Jensen	Billings / HINA (Magistrate)	HB 620	
JOHN HUDAK	114. HEN. OF MONTIC	620	
M. Ke Abley	Supreme Court	HB 620	
Margaret S. Davis	League of Women Voters	X HB 620	
Richard Pratt	MT Restaurant Assoc	X 529	
Larry Wanklyn	MT. Univ. Syst.	No 529 position	
George Wood	Int. Life Insurance Assoc		52-9
Molly Munro -	MONTANA - Helena	529	
Jo Brunner	W.I.F.E.	520	
Trish McInnis	WETA	520	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

JUDICIARY

BILL NO. 300; 313; 431; 644

DATE February 11, 1985

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.