

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 16, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Crippen, Vice Chairman Bishop, Senator Beck, Senator Brown, Senator Halligan, Senator Harp, Senator Mazurek, Senator Pinsoneault, Senator Yellowtail

Members Excused: Senator Jenkins

Members Absent: None

Staff Present: Staff Attorney, Valencia Lane, Committee Secretary Rosemary Jacoby.

Announcements/Discussion: There was none.

HEARING ON SENATE BILL 414

Presentation and Opening Statement by Sponsor: Senator Bishop of Billings, District 32, opened the hearing. He explained to the committee that non-residence aliens could may not own agricultural land in Montana. The reason for this was the number of non-residence aliens who own land in Montana and across the United States. In Washington D.C., the Weston Hotel, Embassy Suites Hotel, Willard Hotel, American Medical Association Building and dozens of other office buildings are owned by Japanese conglomerates. Even the Department of Justice Building was owned by a Japanese conglomerate and the United States was leasing that building from them. About 40% of Hawaii is owned by non-residence aliens and 30% of downtown L.A. The U.S. News Report Building is owned by non-residents. The reason he mentioned them, he said, was because in the Jan. 2, 1989 issue, there is an article that says "Japanese shoppers are ordering five hundred thousand dollar California houses from catalogs, sight unseen and paying for them by credit cards. He stated that Japan was about the same size as Montana with one hundred million industrious people. They have money, and their greatest needs was to expand, he stated. They need

land, he said, and have tried an expansionism program since the 1941 program which failed. Instead of bullets, they are now going to use money to expand to become successful. He thought the bill would not go anywhere but felt he was right in sponsoring the bill.

List of Testifying Proponents and What Group they Represent:

There were none.

List of Testifying Opponents and What Group They Represent:

Cort Harrington, Montana Association of Clerk and
Recorders

Al Littler, Montana Association of Realtors

Carol Mosher, Montana Stockgrowers Association, Montana
Cattlemen and the State Association of Grazing
Districts.

John Morse, himself

Tom Hopgood, Montana Association of Realtors

Ann McIntyre, Human Rights Commission

Testimony:

Cort Harrington, representing the Montana Association of Clerk and Recorders requested that amendments be made to assist clerks in identifying people who were aliens for the purpose of recording deeds. Section 3 of the bill indicated that the clerks couldn't record any of the transfer deeds and transferring titles. He felt that Section 1 needed to be clarified.

Al Littler, representing the Montana Association of Realtors, stated that they had a great deal of empathy for this particular subject. Research showed, in 1982, the United States was an exporter of capital. In 1988, it estimated that \$130 billion of our estimated \$660 million net credit demand would be financed from abroad, or one out of every \$5 credit. He also stated specific buyers would be hypocritical to their own basic constitutional rights and principles as far as private property ownership, if legislation to restrict the seller was supported. The ability to develop and own property to its highest and best use would be most profitable situation in the free enterprise market. Constitutionally and physiologically they could not restrict private property ownership in the best use of the free enterprise system.

Carol Mosher, representing the Montana Stockgrowers Association, the Montana Cattlemen and the State Association of Grazing Districts, opposed SB 414,

because it would be a violation of private property rights. She stated that to her knowledge, not one of the major agriculture organizations in the state was consulted about the effects this bill would have on them. There has not been available capital locally for the purchase of their agriculture land in the past few years, and were entitled to sell their private property to the highest bidder, if desired. She asked to vote no on this tenant bill. (See Exhibit 1).

John Morse, President of Beaverhead County, representing himself, stated that he opposed this type of legislation. He stated the reason why the company moved to Montana was because of the attitude towards foreign investments and the high quality of cattle that was available in the state. It was their intent to export the cattle to Japan and service a high quality market elsewhere in Montana. He also said that legislation set up by President Reagan would be extended by President Bush to further equalization of world trade. The U.S. meat industry would likely be on the main target for export. He urged that the committee not support this legislation.

Tom Hopgood, representing the Montana Association of Realtors, stated that there were very serious constitutional problems with this bill. He further commented that this bill was coming at a time when the state was attempting to attract foreign buyers, which would be counter productive.

Ann McIntyre, representing Administrator of the Human Rights Commission felt, if the bill was enacted, it would conflict with a provision of the Human Rights Act, which prohibits the owner, lessee manager or other person having the right to sell these programs to improve their property from discriminating on the basis of national origins.

Questions From Committee Members: Senator Yellowtail stated that the only way Americans could counter this alien ownership was by self improvement. Being more productive; increasing their productivity was the answer he felt.

Senator Halligan asked why they wouldn't be able to learn from them as well as they were learning from us. He felt it would enhance our own productivity, if we have the resources to share.

Senator Bishop stated if aliens might end up owning all of the land in Montana. He also stated that it might be a

good idea to increase some productivity in order to counter this. Otherwise, a lot of property in Montana would be owned by non-resident alien conglomerates.

Senator Yellowtail asked Mrs. Mosher if the production of beef, for export to Japan, would be profitable.

Mr. Morse stated the Japanese would follow the investment rules in terms of one third would be put back for a rainy day, another third would be for employees and the last third to the stock holders, if they were profitable.

Senator Yellowtail asked Mr. Hopgood to point out the constitutional problems which Mr. Hopgood stated earlier.

Tom Hopgood stated that the Montana Constitution, in the equal dignities clause, talked about discrimination against persons. He also said there were the Human Right statutes which said there could no discrimination in housing and real estate transfers on the basis of natural origin.

Senator Yellowtail asked Mr. Hopgood if he was aware that there were laws similar in South Dakota, Nebraska and perhaps other states. He also asked how they survived constitutionally.

Tom Hopgood stated that he was aware that there were laws similar in South Dakota, etc. He also stated that he was not able to find that information, but would suggest that there are some very serious constitutional problems in this bill.

Senator Brown asked Senator Bishop why he restricted this to agricultural land only.

Senator Bishop stated that there were nine states that prohibited non-resident aliens from owning any land, at the present time. Six other states prohibited them owning agriculture land. He believed that prohibiting non-resident aliens from owning land was constitutional. As far as the equal protection, they couldn't exclude residents, he said.

Closing by Sponsor: Seeing no further questions, Senator Bishop closed.

HEARING ON SENATE BILL 393

Presentation and Opening Statement by Sponsor: Senator Lynch of Butte, District 34, sponsor of SB 393 and 394, opened the hearing. He stated that both bills were brought to him by the Trial Lawyers Association. He stated that the reason he supported this bill was because he wanted to make sure that the people's rights were protected. He wanted to make sure that a judge or county commissioner could not claim immunity if someone was wrongfully discharged or sexually harassed. If someone were acting in a legislative or judicial action, they should have immunity, but otherwise not, he said.

List of Testifying Proponents and What Group they Represent:

Mike Sherwood, Montana Trial Lawyers' Association
Representative Kelly Addy, District 94
Kim Wilson, himself

List of Testifying Opponents and What Group They Represent:

Joe Thares, Board of Labor Appeals
Chris Tweeten, Attorney General of Montana
John Connor, Montana Attorneys Association
Ann McIntyre, Human Rights Division and Commission
Stan Kaleczyc, MMIA
Barry Hjort, himself
Gordon Morris, Montana Association of Counties
Leroy Schrom, Board of Regents
Mike Sherwood, Montana Trial Lawyers Association

Testimony:

Mike Sherwood, representing the Montana Trial Association (MTLA) appeared as a proponent. (See Exhibits 2-6). He told of cases of negligence where roads were improperly marked and accidents occurred. County commissioners were being sued, he said, and claimed immunity. Human rights violations have also resulted in suits, he said. He said there is a growing problem with the immunity laws enacted in 1977.

Representative Kelly Addy, District 94, stated that the legislature intended to grant immunity to legislative bodies, legislative officers, judicial officers for judicial acts, that were necessarily undertaken in the performance of their duties as legislators or as

judges. He felt that the legislature intended to give judges or legislators immunity from suit or anything they did while they were acting as legislators.

In the case Barns vs. Cockney and W.D. vs. County Commissioners, the Supreme Court failed to address the whole issue. The Supreme Court was emphatically not the intent of the Legislature in 1977. He stated that to clarify the languages that this statute meant what the people in 1977 meant it to mean. Also, please hold local governing boards responsible for their outrageous conduct that were not necessarily part of the legislative duties.

Kim Wilson, attorney, representing himself, stated as a law firm, they frequently represent people with employment cases, discrimination cases, etc. He felt that people were being treated unfairly in the way the Supreme Court had been interpreting the immunity statutes. He felt that it boiled down to the question of whether a legislative official, county commissioner, school board member, etc., was immune for all of his actions. The intent of the legislature when they drafted these immunity statutes, was clearly to grant a public official immunity merely for his legislative acts.

He felt that they should be aware that the common law grants were spelled out quite clearly. Legislative acts, executive acts and judicial acts were immune. Officials were immune to those actions for quite obvious reasons. If somebody was going to run for the Legislature, run for the Legislature or County Commissioner, make policy decisions for the governmental entity, that person should be immune. On the other hand, officials under common law have not been immune, traditionally for other actions, such as hiring and firing.

He thought that counties had been given blanket immunity to do anything. Essentially, anything that can be tied to the county commissioner was immune, he stated. That would cover anything ranging from instances of sexual discrimination, employment discrimination, wrongful discharges, breach of contract and tort actions. He felt that SB 393 should only apply to towards legislative or judicial acts. He said that present statute discriminates against citizens of Montana and urged the committee to vote for those bills to rectify that situation.

Opponents:

Chris Tweeten, representing the Attorney General of the State of Montana, stated that the Attorney General had two major areas of concern about this piece of legislation. First, it appeared the intent of this legislation was to abolish the prosecutorial immunity that was thoroughly enjoyed by counties and cities, in the State of Montana. He believed that this bill would remove prosecutorial immunity. The clear intention of the legislation was to specifically override the common law rules and prosecutorial immunity as they might otherwise apply to executive or administrative agencies. He stated that the law currently said that the counties and cities in Montana could not sue for the actions of prosecutors and prosecuting criminal matters before the State of Montana.

She said if the legislature enacted this bill in its current form the specific intentions of the legislature would be to overrule those decisions and to subject the State of Montana, the Attorney General, county attorneys and city attorneys to be prosecuted for their actions in taking criminal cases. There were strong reasons of public policy that were discussed by the courts in the cases that have recognized the common law. The prosecutors and agencies that employ them were immune from suit. The reason it was most frequently turned to was that, when a prosecutor was faced with a decision of whether to prosecute or not, he should make that decision based on the facts that were in front of him, rather than the concerns of whether or not he would be sued on a decision made.

He stated that SB 394 would leave the prosecutorial immunity in place for the prosecutor. If they were to pass SB 394 in its current form, the courthouse would be opened to lawsuits against counties, cities, and the State of Montana by every disgruntled man that had been prosecuted in the courts of the state, he said. The state would be divested of its defense, that had been enjoyed by common law since 1977. The second concern the Attorney General had regarded the areas of liability that exposed state agencies. In the case Koppen vs. Medical Examiners, Koppen held that the agencies of the State of Montana who exercise quasi-judicial functions were immune from the suit for the same reasons that prosecutors were immune from suit. When an agency, in the State of Montana, was deciding whether it should revoke a medical or liquor license or other action in which the licensee had the protection

of the contested case with the provisions of the Montana Administrative Procedures Act, that decision ought to be made on merit only.

He stated if SB 394 was enacted, taken the facts of the Koppen case, they were going to subject the Board of Medical Examiners to suit. The suggestion had been made that if the legislature didn't enact these bills, they are going to create a landslide litigation under section 1983 the Federal Civil Rights Claim statutes.

For those reasons the Attorney General urged that these bills receive a do not pass recommendation. (See Exhibit 7 - Koppen vs. Board of Medical Examiners).

John Connor, representing Montana County Attorneys Association stated that the county attorney was the individual responsible for representing local government entities. He also stated that the county attorney was by statute, charged with the responsibility of defending counties in law suits and defending county officials or employees when they act in their official capacities.

He felt that there was not a single action that his Board of County Commissioners didn't take that didn't have some concern related to my ability. These county officials were paid relatively little, and had very little to fall back on, he said.

John Connor said he had great respect for Mr. Wilson and Mr. Sherwood, but there were cynics among them that would suggest that these expressions of altruistic concern on the part of the downtrodden victim were almost inextricably lengthened to a one-third contingency fee, plus costs! He asked the committee to defeat both proposals. They would do a great disservice to local government services. On behalf of the County Attorneys, John Connor asked the committee not to give consideration to passing SB 393.

Ann McIntyre, standing in for Margaret Brown, representing Human Rights Division and Commission. (See Exhibit 8).

John Maynard, Tort Claims division, represented the Governor's Office. (See Exhibit 9).

Stan Kaleczyc, representing MMIA, stated that the reason he opposed these bills was because the towns, cities and state were at risk of being sued. Also, the cost of liability became too expensive. He said if SB 193 was adopted, it would not stop litigation; rather it would

shift to the issue of what is a legislative vs. a non-legislative act. SB 394, had an equally profound impact on the towns and perhaps a greater magnitude on the State of Montana.

Barry Hjort, attorney, member of School District 1's Board of Trustees, expressed concern that, if these bills were enacted, there would be more difficulty finding public servants.

Gordon Morris, representing Montana Association of Counties, stated that he would like to go on record in opposition to SB 393 and 394.

Leroy Schrom, representing Board of Regents, thought the bill might be to overturn the Beiber case, a case of a man who was fired in 1986. The wrongful discharge statute that they passed last time did not go into effect until July 1, 1987, before the Supreme Court Panel. The action was covered by that, but the immunity extended to specific violations of statute like the wrongful discharge statute that passed last session, he said.

Joe Thares, representing the Board of Labor Appeals, opposed the bill because it would effect the state in two ways. It would drive away the interest of people who willingly volunteer for these types of assignments. It might force the state to pay higher liability insurance on those board members and increase the cost of state government. He asked the committee to consider a do not pass recommendation on SB 394. (See Exhibit 10).

Questions From Committee Members: Senator Mazurek asked Mike Sherwood why hadn't someone defined "legislative act". Mike Sherwood responded by saying that his participation was by doing the research. He had deferred to people who were expert in that field in reviewing this language.

Senator Pinsoneault asked Representative Addy why he brought the case to their attention. He thought it might have something to do with a case being represented by him. Representative Addy stated that anything the legislature did would not have any impact on the outcome of that case.

Senator Halligan asked Ann McIntyre if someone would be covered by the statutory immunity if there was a situation where the county commissioner or other

official was acting beyond the scope of their judicial legislative authority. He asked if someone had sexually harassed someone, would they be covered by the statutory. Ann McIntyre replied that had a complaint of sexual harassment had been filed with the Human Rights Commission's would eliminate our processing of the same complaint. The district court agreed with the commissions position that they would not infer immunity when the alleged violation was a violation of the Human Rights Act. It would essentially allow for county commissioners and others to violate Article 2 of the Constitution, she said. There are many cases in Montana that suggest a judge that violated the discrimination law might have immunity, but the same argument can be made. Under Federal law, under title 7, was a clear line of authority that persons acting in a legislative capacity were not immune for those types of decisions.

Senator Halligan asked Ann McIntyre if there were cases right now in which the Supreme Court would give the legislature a clearer direction in terms of exactly what a legislative act may be. Ann McIntyre responded by saying that she was not aware of any.

Closing: Since the sponsor had to leave before the hearing was finished, the chairman announced that the hearing was closed.

HEARING ON SENATE BILL 417

Presentation and Opening Statement by Sponsor: Senator Gage, District 5, sponsor, stated the bill dealt with shooting or killing of police dogs. He also stated that the police dogs were very valuable animal and serve a valuable purpose for the law enforcement.

List of Testifying Proponents and What Group they Represent:

There were none.

List of Testifying Opponents and What Group They Represent:

There were none.

Testimony:

None

Questions From Committee Members: There were none.

Closing by Sponsor: Senator Gage closed.

DISPOSITION OF SENATE BILL 417

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 417 DO PASS. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 434

Presentation and Opening Statement by Sponsor: Senator Gage of Cut Bank, District 5, stated that this bill was primarily to put some statute in regarding cemetery burial sites and human remains, particularly relating to indian cemeteries. He said that many cemeteries had been disturbed or desecrated. The indians felt they had no designated places to bury the dead. Some religious and spiritual beliefs govern the places and methods of burial. He felt the situation was in need of being addressed by the legislature.

List of Testifying Proponents and What Group they Represent:

Germaine Du Montier, Flathead Culture Committee for the
Confederated Tribes
William Tallbull, Tribal Culture Protection Board and
Tradition Committee of the Northern Cheyenne Tribe
Steve Brady, Society of Northern Cheyenne People
Charles Brady, himself
Virginia Gilbertson, Indians Affairs Office
Beata Galda, Department of Highways

List of Testifying Opponents and What Group They Represent:

Marcella Sherfy, Montana Historical Society
Mitzi Rossillon, Montana Archeological Association

Testimony:

Germaine Du Montier, Flathead Culture Committee stated that this bill would protect all citizens across the state of Montana regardless of whether they were pioneer families or Native Americans. She also stated that this law did not provide for unmarked burials and had great concern about that.

William Tallbull, Chairman of Tribal Culture Protection Board, would like to support this bill. He stated that their customs and traditions had been guaranteed to allow them to bury their people as they wished. He felt it was the living who had more obligation to protect the graves and grave sites of Montana. (See Exhibit 11).

Steve Brady, representing Society of Northern Cheyenne People, was in support of SB 434. He felt that this kind of degradation and humiliation should come to an end. Although the bill could use a few improvements it nevertheless was a needed piece of legislation, he said. In addition, he stated that the people of this state were tired of such demoralization and exploitation of their loved ones. (See Exhibit 12).

Charles Brady, translating for Chief Headsman, told the committee that the Chief Headsman supported SB 434. He stated he was a Northern Cheyenne and their customs and traditions require respect and reverence for their people that have passed on. They do not appreciate their people being used for educational or commercial purposes. The dominant society had been doing this and should come to an end, he told the committee. He said that he represented the Dog Society who were a watchdog of the people. Hopefully, this piece of legislation would protect the peoples remains. (See Exhibit 12).

Virginia Gilbertson, representing Indians Affairs Office, supported SB 434.

Beata Galda, representing the Department of Highways, said that the Department of Highways was neither supporting or opposing this legislation, rather they are concerned about the matter. The bill conflicted with some of the federal requirements they had for federal funding highway projects. She felt that this issue dealing with human skeletal material was highly complex and controversial. Montana must be sensitive to the spiritual and cultural concerns of Native Americans respectful to human remains themselves. Yet, in compliance of federal laws such as to the Archaeology Resources Protection Act, Historic Preservation Act, and state laws, county coroners are required to exercise control over them. She asked for permission to prepare written testimony or oral testimony concerning the problems they might have with this bill as it was written in the act.

Marcella Sherfy, representing Montana Historical Society, urged strong support for this legislation. She felt that the Montana tribes should be involved in the decisions about the disposition of burial that they were affiliated with. She stated that they were glad to notify tribes and work with them in their decisions on disposition, although, they do not feel they need to be in the position to notify next of kin. (See Exhibit 13). She proposed an amendment to the bill (See Exhibit 13, page 3.)

Opponents:

Mitzi Rossillon, representing the Montana Archeological Association, would like to go on record as opposed to the bill. She said that scientific studies have taken precedence over archeological interests. The bill was an attempt to make amends for capital justice. The Association supports the provision for repatriation of the remains in museums for which no scientific value had been demonstrated or would be demonstrated for their continued disposition in museums. They also support a system for preventing malicious removal of human remains for science. They opposed Section 2(d) which stated that the scientific and religious interests were needed; but in fact, they saw evidence that the Advisory Committee had given no role to the Native Americans. Second, they were concerned with confidentiality regarding to burial sites, she said.

Questions From Committee Members: Senator Beck asked Senator Gage if there was any specific area chosen for these burial grounds. Senator Gage stated the entire state of Montana.

Senator Mazurek asked Senator Gage why there hadn't been input allowed by the committee of Indian Affairs that worked on the bill. Senator Gage stated that it may have been the fault of the Indian Affairs Committee. He thought they should have contacted some of those people, knowing they might have had interest in the program. He also stated that they were not trying to exclude them from gaining any benefits. They felt all of society would gain from burial sites.

Senator Mazurek asked Mr. Brady to state some of the improvements that were mentioned in his testimony.

Mr. Brady stated that it was a recommendation for a tribal attorney.

Senator Mazurek asked if there were any specific amendments that he would like in the bill.

Mr. Brady suggested to contacting Calvin Wilson for suggestions.

Closing by Sponsor: Senator Gage stated that the State of Montana could do nothing on an Indian reservation, narrowing it down to any place outside and Indian reservation. He stated that he didn't want anyone to get the understanding that the bill was a penalty bill. Directions would be given to people who run into a situation of how to handle Indian or non-Indian burials, he said. He closed the hearing.

DISPOSITION OF SENATE BILL 417

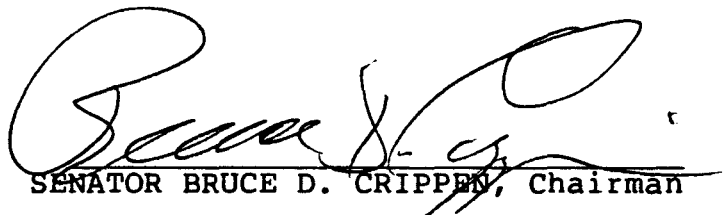
Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Mazurek moved that SB 417 DO PASS. The motion CARRIED.

ADJOURNMENT

Adjournment At:



SENATOR BRUCE D. CRIPPEN, Chairman

BC/rj

min216rj.sr

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2-16-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS			
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT			
SENATOR YELLOWTAIL	✓		

left

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 17, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 417 (first reading copy -- white), respectfully report that SB 417 do pass.

DO PASS

Signed: Bruce D. Crippen Chairman

Handwritten notes and initials in the bottom right corner, including "2-17b" and "8/18".

2-16-89

for Montana Stockgrowers, Cattle Women
Assoc. of State Grazing Assoc.

SENATE JUDICIARY

EXHIBIT NO. 1

DATE 2-16-89

BILL NO. SB 414

We are opposed to SB 414 because it
would violate ~~the~~ basic property rights
If this is such a good theory then
why does this bill address agricultural
land only. To my knowledge not one
of the major agricultural organizations
in the state were consulted about the
effects that this bill would have on us.

~~Many~~ There has not been available
Capitol locally for the purchase of our
ag land in the past few years and ~~we~~
~~we~~ ~~are~~ entitled to sell our private property
to the highest bidder if we so desire.
This is a very bad bill and we ask
that you vote no on SB 414.

Thank you.

Carol Mosher

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 2-16-89

BILL NO. SB 393

Testimony of Michael J. Sherwood, MTLA
RE: SENATE BILL NO. 393

SUPPORTING

The legislative history of this bill makes it very clear that in 1977 when this statute was passed the immunity extended was only for clearly legislative acts of bodies having legislative capacity.

The particular bill was Senate Bill No. 43. I have provided a copy of that Bill.

The intent behind this legislation was discussed extensively at two meetings of the interim committee which ultimately proposed the specific Bill. I have provided copies of the pertinent text of the minutes and transcript of those meetings.

On Nov. 22, 1975, the minutes reflect:

"While some members felt that there would have to be some type of limitation put on to protect the state, Senator Towe believed this not to be the case, except in the case of policy making decision when immunity should take effect. Once the decision has been made, however, and someone is injured because of negligence, the state should be just as liable for that action as the next person.

Senator Towe stated that he was afraid of the definition of "high level" and should not have immunity at that level if it is based on negligence or willfulness.

It was agreed by the subcommittee that when there was willful wrong or negligence then it should be compensated even at the highest level decision except for legislative and judicial."

The minutes from the February 28, 1976 meeting, which were transcribed, show multiple instances in which it was clear that the intent was to immunize officials having legislative capacity only when actually acting in that capacity. Senator Towe summarized the opinion of the committee best when he said:

" The idea being if a committee votes on something or the legislature votes on something then that's the official action of that

body and there would be immunity from that to both the legislature (the state) and the individuals."

The supreme court has refused to look beyond the plain meaning of the statute in interpreting this section. In a recent decision, District Judge Gordon Bennett, noted that the supreme court had refused to take this approach and, therefore, felt compelled to do the same. He did say, however, that if he had been "called upon to construe the meaning of the immunity statute in light of the legislative history, [he] would be compelled to limit the immunization to legislative acts of legislative bodies."

In that decision a Junior High School teacher named Richard Field was terminated from his employment and sued alleging that letters contained in his file had effectively "blacklisted" him. Judge Bennett granted summary judgment in dismissing the case, upon the grounds of governmental immunity. The case is on appeal.

In Fallon County this statute has been raised as a defense to a claim that a county road foreman failed to erect a warning sign on a particularly sharp corner resulting in a semi-truck's failure to make the curve. An independent trucker and his wife were injured. The district court has not yet ruled on the county's motion for summary judgment.

Senate Bill 43, the bill enacting this legislation was the product of two years of hearings, meetings and legislative drafting. The interim committee discussed this matter fully and their intent was clear. The statute should be clarified to accurately reflect their true legislative intent.

SENATE JUDICIARY
EXHIBIT NO. 2, p. 3
DATE 3-16-89
BILL NO. SB 393

Testimony of Michael Sherwood, MTLA

Re: Senate Bill No. 394

SUPPORTING

The legislative history regarding this statute clearly indicates that the intent of the legislature was to immunize the judiciary and its members only when acting in their judicial capacity.

The minutes of meetings conducted by the Interim Committee which I have submitted to the secretary in conjunction with my testimony on Senate Bill 393 bear this out. I have also submitted to the secretary a copy of pages 9 through 11 of the transcribed proceedings of the February 2, 1976 meeting of the committee in conjunction with my testimony on this bill.

The text of that discussion makes it clear that the committee only intended to include courts in the traditional sense and not quasi-judicial bodies.

In *Koppen v. Board of Medical Examiners*, however, the district court ruled that the language contained in Section 2-09-112 prohibited suit by two women whose babies had died while being treated by a particular doctor against the board of medical examiners for failure to defrock the doctor. The Supreme Court rule that the district court did not have to interpret the statute in such a fashion because the board was cloaked in a common law prosecutorial immunity which had not been limited by the language contained in Article II, section 18 of the 1972 constitution:

"The state, counties, cities, towns, and all local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a 2/3 vote of each house of the legislature.

I agree with the court. The Board's failure to act was a prosecutorial decision and should not have been open to review. There does seem to be a need, however, to resolve the issue of quasi judicial immunity in the context of this statute.

If every board which has quasi-judicial powers is immune from suit for any action taken by that board then haven't we seen a return to sovereign immunity---something the 1972 constitution intended to abolish.

FILE COPY
SENATE JUDICIARY
EXHIBIT NO. 3
DATE 2-16-89
BILL NO. SB 393

SENATOR TOWE read draft section I.A. and asked for comments.

SENATOR TURNAGE: You're not accomplishing anything if you don't grant the immunity to the acting individual. The legislature is immune, but the legislator or employee may be sued. In my mind that creates a question.

REPRESENTATIVE HUENNEKENS: Well doesn't that phrase about "officer or agent"...the officer would include the members wouldn't it?

SENATOR TURNAGE: But the immunity, I think, Herb, runs to the state the legislature, so we ought to do something about that... within the scope of their authority and acting in good faith and so on.

SENATOR TOWE: Well, let's analyze that a minute. Would you not suggest that this is not strictly sovereign immunity? That at the present time sovereign immunity does not protect the individual separately. That the theory now is that you can sue the officer but not the state?

SENATOR TURNAGE: But, I think you're gaining little or nothing, at least for insurance purposes by this provision. It seems incongruous to say, "You can't sue the state, but you can sue the individual even though he acts on behalf of the state in complete good faith."

MR. CONGER: There is a section 82-4323 that says if you sue the individual the state or the employer is stuck with the judgment anyway.

SENATOR TOWE: That's correct, we passed that in the '74 session as I recall.

SENATOR TURNAGE: Yes, but that doesn't answer the problem.

SENATOR TOWE: No. That just boosts the insurance rates up again.

MR. PERSON: This section, if passed, would abrogate the other section anyway.

SENATOR TURNAGE: Well, if there is validity in immunizing the state or the legislature we should immunize the people that that body causes to act on behalf of it. Provided they act in good faith and within the scope of their authority.

SENATOR TOWE: Well, how do you read this then: "The state is immune from suit for an act or omission of the legislature or of an officer or agent of the legislature."

REPRESENTATIVE HUENNEKENS: It says the state is immune, not the officer or agent.

SENATOR TURNAGE: Yes, that's what bothers me.

SENATOR TOWE: So you're satisfied on the first part that this covers as far as the state's concerned. It covers all its officers and agents for any action the legislature might take.

REPRESENTATIVE HUENNEKENS: I agree with Jean that this should be written to include the officers and agents because that's what we're really talking about.

SENATOR TURNAGE: Now let us be a little careful. We can always open a can of worms. I wouldn't want to immunize the state or its officers if, for example, this committee were touring say Warm Springs and the bus driver ran over an innocent individual. We don't want to immunize that type of accident.

REPRESENTATIVE HUENNEKENS: Well the bus driver wouldn't actually be an agent in that case would he?

SENATOR TOWE: Sure, you bet he would.

SENATOR TURNAGE: So we might have to go back to something like we had before the new constitution where some activities like with motor vehicles were covered this way. Can we define legislative act? I don't mean a bill. If we're jogging around the country peeking into this and that and we run over someone or cause our airplane to crash in a school yard, I don't think that should be covered.

REPRESENTATIVE HUENNEKENS: That would be covered under standard insurance shouldn't it?

SENATOR TOWE: We've got some statutes on tort liability for automobile accidents. But we've got to be careful also that we don't immunize some officer who is conducting himself some way that is not authorized.

SENATOR TURNAGE: That's right it's got to be within the scope of their authority.

SENATOR TOWE: I suspect that what we should actually say is that any legislator, officer, or agent who is actually conducting legislative business or operating under legislative business, or something like that...

REPRESENTATIVE HUENNEKENS: But Jean's example would still come under that because the driver would still be functioning officially on legislative business. I think, would you say Jean, we have to apply this more strictly to the legislators themselves, rather than just broad scale to all agents.

SENATOR TURNAGE: You don't want a legislator, Herb, to be immune when he is driving over here.

REPRESENTATIVE HUENNEKENS: No. Definitely not.

MR. PERSON: The immunity I thought you were concerned about was immunity from suit for the kinds of discretionary decisions that arise in the process of legislating that it is the duty of a legislator to make. Thus he couldn't be sued for voting one way or another on a bill. I don't know whether language like "discretionary acts relating to the legislative process" might lead in the direction of this kind of immunity.

REPRESENTATIVE ANDERSON: Could you give one example of a legislative act as you mean it here?

MR. PERSON: Voting on a bill would be an example. Giving a speech to influence a vote would be one.

SENATOR TURNAGE: Any act relative to the enactment of legislation.

SENATOR TOWE: Suppose we passed a bill and the net effect of it was to hurt someone individually in a way that we didn't realize or intend. That person wouldn't be able to sue the legislator or the state for an official act.

MIKE YOUNG: I think you could solve your problem here and with judicial officers by taking the officers employees and agents of the legislature out from under it because they do not perform a legislative function. I think what you're trying to immunize is the legislative function.

SENATOR TURNAGE: What we're really talking about is the passage or failure to pass legislation. To eliminate the human movement that might be collateral to that. Travel, for example, or the chief clerk dropping a pot of coffee on somebody's head - those shouldn't be immune. So the idea of eliminating the ministerial employees and immunize the legislature as an entity and the legislators as when acting strictly within that entity in the passage of legislation or the failure to pass it for that matter.

REPRESENTATIVE HUENNEKENS: Is the term discretionary as opposed to ministerial sufficiently defined in case law so we could use that?

SENATOR TOWE: No. I think the case law has area so fouled up I don't think there's any possible way we could bring any light to that. That's my opinion anyway.

Let's try this. Keep the same language we already have and then go on to say that any legislator, officer, or agent of the legislature would further be immune from suit as a result of any votes taken or official action taken by either house or by any of its committees as a body.

TOM MADDOX: Would that cover testimony? Speeches on the floor?

SENATOR TOWE: I think not. But I think that's not necessary. SB 34
If you're talking about the question of libel and slander. That is a point, but under libel and slander laws, there is a privilege for certain things including legislative conduct. So that activity is immune from suit without sovereign immunity. I don't think that sovereign immunity would touch that situation.

TOM MADDOX: This would be an opportunity to provide immunity for legislators' testimony in committee. Would you comment on that Jean?

SENATOR TURNAGE: Well, I think unless they act corruptly or in bad faith they should be immune.

SENATOR TOWE: Aren't they immune anyway?

SENATOR TURNAGE: I don't know.

REPRESENTATIVE HUENNEKENS: I think your point is that they're not specifically immune in statute isn't that right?

TOM MADDOX: Not in committee or subcommittee.

SENATOR TURNAGE: Well let's say you're hearing a bill about hiring of architects by the state and some dum-dum legislator gets up and accuses somebody of child molesting in his testimony on the bill. That's not only bad form - it's malicious and corrupt.

SENATOR TOWE: It's probably privileged.

SENATOR TURNAGE: Well, I don't know. It shouldn't be.

SENATOR TOWE: Let me read this over again and hear some comments because I think it's generally the direction we're headed.

In addition to the language we already have, we would add language to the effect that any legislator and any officer or agent of the legislature would also be immune from any claims brought against them as a result of any votes or official action taken by either house or by any of its committees when such action is taken as a body. The idea being if a committee votes on something or the legislature votes on something then that's the official action of that body and there would be immunity from that to both the legislature (the state) and the individuals. It would not apply if one individual happens to do something during the legislative process. Suppose a legislator throws a heavy object and hurts someone - it wouldn't cover that. Maybe the language needs to be improved, but that's the basic concept.

REPRESENTATIVE HUENNEKENS: What about legislators speeches before committees?

SENATOR TOWE: We could add another sentence that would say: Any legislator will further be immune from suit for libel, slander, or

defamation as a result of any statements or actions taken ~~by~~ by him SB 393 while directly involved in the legislative process.

REPRESENTATIVE HUENNEKENS: Tom, I really wasn't thinking of narrowing it down to libel, slander, etc - I was thinking in terms of a possible tort situation where an action by a legislator before a committee might result, through the passage of the bill that he testified on, in damage to some citizen and so on. I'm not sure I want the legislators protected from libel and slander, except perhaps for nuisance suits, but we're not talking about that.

SENATOR TOWE: Good point. You really want it to be more sophisticated than just libel and slander. Somebody might sue you as a legislator even though they can't sue the state simply because you were instrumental in getting this bill passed that caused him harm.

SENATOR CETRONE: Well, didn't we just eliminate that?

SENATOR TOWE: No. I think Herb is right, we have not. Herb is raising the question of whether the legislator is perhaps liable for his actions other than his vote. Under what we discussed, his vote would clearly not make him liable. But suppose he spearheaded it, brought it in, drafted the legislation, argued in favor of it at the committee and then was the real principal reason for causing its passage. The fact that he voted on it would impose no liability because of what we just proposed, but will that individual be liable for his other actions in securing passage?

SENATOR CETRONE: Can that be proven in court?

SENATOR TOWE: Well, I've never heard of any such claim being successful, so we may be talking about something that as a practical matter isn't very likely to come up.

TOM MADDUX: That is because we've had sovereign immunity in all fifty states until just recently.

SENATOR TOWE: No. The official or agent has never been immune. Only the state has been immune.

MR. PERSON: Uncertainty is one of the main problems in this area. The subcommittee might want to replace uncertainty with certainty.

SENATOR TOWE: I see no reason why we can't include that within this last statement. I think I said: Any legislator would be immune from any claim from damage for defamation. Then we would have to add to that: -- would be immune from any claim for harm or any damage caused by official action actually taken by the legislature as a result of any of his statements or activities actually conducted during the course of enacting legislation.

REPRESENTATIVE HUENNEKENS: I imagine Bob has enough material now to know what we're trying to get at.

MR. PERSON: I will work with it and send a draft to you. DATE 2-16-89

SENATOR TOWE: I will entertain a motion that we want language drafted to this effect. BILL NO. SB 393

REPRESENTATIVE VINCENT: Where are we now in light of this language in regard to a legislator slandering somebody at a committee hearing?

SENATOR TOWE: I think that's a privilege. This would make it clear whether it's a committee hearing or on the floor of the house, and as Tom has pointed out there is maybe some doubt in the committee at the present time. On the floor of the house you can say anything you darn well please and nobody can sue you for slander. I don't care whether somebody molesting a child in connection with a bill on architects. Under this language the same would be true in the committee.

REPRESENTATIVE VINCENT: There is no doubt however as to the validity of that, at least in law, on the floor.

SENATOR TOWE: That's correct at the present time and sovereign immunity would not change that anyway. That exists as a privilege in the law of defamation. There is also a privilege in the law of defamation on information that somebody is entitled to know. For example in an oversight committee if the question of some employer's integrity might come up, any information related by a member of the committee to those people who are charged with the oversight itself would be privileged. So therefore you could not be sued for that, if it was legitimately within the privilege and related to the business at hand.

SENATOR CETRONE: Responding to your call for a motion, I so move.

SENATOR TOWE: We have a motion that we adopt language relating to defamation and other actions of legislators. Any further discussion?

Motion carried.

SENATOR TOWE: The question of what constitutes the legislative body arises. You say the legislature is that body vested with legislative power by Article V of the constitution and that restricts it then just to the legislature of the state of Montana. Is that right? No city council, no county commissioners, or any other body.

MR. PERSON. That's right. I didn't expand beyond what was said at the November meeting. It does not include anything except the state legislature. I think it adequately includes the state legislature.

SENATOR TOWE: Any comments on that question?

TOM MADDOX: Shouldn't this be expanded to include anything that has an official convention such as a city council or an officially called meeting of the county commissioners, school boards, etc? We still need qualified individuals to serve and if they cannot be protected that is a bad thing.

REPRESENTATIVE HUENNEKENS: We move in that direction on the next page section III, not with respect to absolute immunity ^{but} with respect to limitation of liability. You are proposing though that immunity be applied all the way down to local government at all levels. NO. SB 39

TOM MADDOX: I'm saying that city and county lawmaking is in essence no different than state lawmaking.

SENATOR CETRONE: How can we justify protecting state legislators when we can't justify protecting city council members. I think what we're really getting at is can we through legislation protect and encourage responsible action by government officials. I don't think we've solved that through language so far. Would somebody fill me in? What is the rationale?

SENATOR TOWE: I'm not sure we got into that. My rendition of what we were talking about was the legislative and judicial branch. I don't know that we discussed the question of whether we were limiting it.

REPRESENTATIVE HUENNEKENS: We did discuss that. The question here is if we extend this immunity all down the line, are we beginning to touch on the complete immunity, which the new constitution has said shall not be?

SENATOR TOWE: We started with the assumption that the constitution has said we want no more sovereign immunity than we absolutely must have. Perhaps the state legislature is one place where we have to have it. I think the question is legitimately before us now whether the county and city level legislative bodies have an equal right to such protection.

RAY CONGER: Let me call your attention back to section 82-4323 so you will realize that the immunity you're talking about is immunity for the entity and no one need be fearful of serving on a board or committee.

SENATOR TOWE: That is a good point. Of course the other problem with that is that as a realistic matter then the entity when it goes out to get insurance has to recognize that if we don't protect the individuals from suit it's going to come back against them as a claim under that statute.

REPRESENTATIVE VINCENT: We're talking about immunity for not only the body but for the individuals involved. Is that correct?

SENATOR TOWE: I think we've decided that from official action taken as a body everybody is immune. The individual as well as the body (the state) itself. Also the individual legislator to the extent that there might be a claim for defamation in a committee meeting, on the floor or action he's taken leading up to an official action of the body. It does not include action that is unauthorized or clearly not leading up to a vote or a collective decision of the body.

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Sherwood

E. 3, p. 9

D. 2-16-89

SENATOR TOWE: Leave that out altogether - just talk about the state legislature - Well, that's the quandry at this point. SB 393

SENATOR CETRONE: How much is all this going to affect the insurance picture?

SENATOR TOWE: I think in legislative activities very little. I don't think this is the area that's really hot as far as the insurance rates are concerned. We may be talking about a lot of nothing. On the other hand it is an issue that is properly within the scope of this committee's activities.

SENATOR TOWE: Does someone want to make a motion?

SENATOR TURNAGE: I move we pass consideration.

REPRESENTATIVE VINCENT: I want to ask Bob to find out how other states handle this.

SENATOR TOWE: I don't think any other states have this situation, but we can ask our researcher to look into it.

REPRESENTATIVE VINCENT: I think once we make the step to immunize local legislative bodies we are going to be forced to extend to all local entities.

SENATOR TOWE: Motion is to pass for now. Motion passed.

SENATOR TOWE: Read proposal I. B. I guess that at the present time the law is quite clear that statements made in court are completely immune and completely protected from defamation. I believe the law, is that not true? The judge - perhaps his actions as opposed to his statements may not be privileged. I suspect the only way this could come up is if he makes a ruling on what he thinks is a proper basis in law or fact and it later develops that it is not. For instance, if the law is declared unconstitutional, is the judge open to a lawsuit for that reason? And this would prohibit that.

MR. PERSON: This section, as the first, protects the state not the individual. It is parallel to the other.

SENATOR TOWE: I think it would be appropriate to add language about official action much like we added for the legislature.

SENATOR TURNAGE: That's what I think.

SENATOR TOWE: Any judicial officer or agent of the judiciary would not be liable for damages resulting from any official action taken by any court.

SENATOR TURNAGE: I so move.

SENATOR TOWE: Discussion?

REPRESNATIVE ANDERSON: You're singling out a court.

SENATOR TOWE: We're just taking each branch separately. We covered SB 3, the legislative now we'll cover the judicial. I think it makes sense to apply this to the official actions of any court, even a J.P. court, and they are often very wrong, but I don't think the judge or the state should be subject to suit simply because of an action taken when a J.P. is trying to do an honest - the best job he is capable of doing.

REPRESENTATIVE HUENNEKENS: This action wouldn't be impinging on the jurisdiction of the Supreme Court in respect to its control of the district court nor would we be impinging on the impeachment process, is that correct?

SENATOR TOWE: I can't see that would be any problem.

REPRESENTATIVE HUENNEKENS: I think we still need some protection against the judges, in good faith or not.

SENATOR CETRONE: Frankly, I think we need some protection against any governmental body. The more I hear of this the more I question the whole intent of what we're doing here. We've decided it isn't going to be that important in terms of the insurance picture. Secondly how do we not only get good people in but how do we get them to be responsible. I think being subject to suit is one thing. Might we go into the issue of maliciousness or dereliction in some way. Exempt those areas some way.

SENATOR TOWE: I suppose that would be a possibility.

TOM MADDOX: Read Florida law regarding personal tort liability in tort as a result of acts in the scope of employment.

REPRESENTATIVE ANDERSON; That's what we had before.

SENATOR TOWE: I think that's right. That is the old sovereign immunity theory that we don't want. The question now is related to the official action of a legislator or a judge in court. That is different from executive implementation of acts.

MR. PERSON: Other recourse such as action for malfeasance misfeasance, and the ballot box is also available against these people.

REPRESENTATIVE HUENNEKENS: We don't want to interfere with those either.

SENATOR TOWE: I don't think we're doing that. Those things would stay on the book.

MIKE YOUNG: Would this apply to a writ of mandamus against the legislature. Suppose someone got a judgment against the state for breach of contract, and the legislature refused to appropriate money - you have your choice of remedies whether to attach bank accounts of the state or to bring a writ of mandamus against the legislature. Are you reaching a writ here?

SENATOR TOWE: No. Because we're talking about money damages. When you bring a writ of mandamus, or order to pay, your asking a state official to actually do an act. That's different than suing the state for damages for the failure of that state official to act, even though the measure of damages is exactly the same. That's a different theory and I don't think that that is involved at all.

There is a motion on the floor that the officers and agents of the judiciary be immune for any official action taken by the court.

Motion carried.

The "official actions" bothers me a little bit. I suspect we'll have to be awfully careful about that. Maybe judicial action would work.

SENATOR TURNAGE: We'll have to watch the wording very carefully.

REPRESENTATIVE VINCENT: I just have a question here. It's not very significant, I don't think, but how much evidence does a judge give to legislative intent if one of these things came before a court? Is that a viable argument? How would a court look into legislative intent?

SENATOR TOWE: I won a case just the other day on that very point. This was a federal statute and I cited the committee report that was prepared by the House committee, which made it just crystal clear that my facts were just right on point and the Internal Revenue service was on the other side and the U.S. Attorney's office said, "Yes, that may be their intent, but that's not what the law says and we don't think you should pay any attention to it." He asked Judge Battin what Judge Battin thought about it and Judge Battin didn't bat an eye on that one having been through the legislative process.

REPRESENTATIVE HUENNEKENS: Tom, however, let's keep straight on this: your federal courts and state courts are entirely different because your Congress has a complete record of committee hearings, subcommittee hearings, etc. We do not have that in this state. We do not even have floor records.

SENATOR TOWE: I know.

REPRESENTATIVE HUENNEKENS: So that sort of thing doesn't apply here.

SENATOR TOWE: Well except for we do in some instances. The coal tax committee has a very careful report. That's the only one where we really have a report on a bill.

SENATOR TURNAGE: Our records aren't as adequate as we might wish them to be. But for what they are, they are. There are some.

SENATOR TOWE: I've even been asked what I thought the legislative intent was by a judge on matters too. Which isn't very good evidence frankly - but

SENATOR TURNAGE: I've had some judges, once they get past the four-letter words, tell me what the intent must have been.

SENATOR TOWE: Well, I don't think this is a very significant matter really because you don't very often sue a judge. And I don't think you're going to get very far if you do sue a judge.

CAP BRYANT: Does "officer or agent of the judiciary" include the sheriff's office?

SENATOR TOWE: No. It would include, probably the probation officer. I am not 100% sure about that, but they are appointed by the judges. So I think it would. It would clearly include the court reporter, the bailiff, the clerk while the clerk is working in that type of case, that type of thing.

MR. PERSON: What about the Governor as in the report?

SENATOR TOWE: You could add it to the legislative language.

REPRESENTATIVE HUENNEKENS: It would be better to separate it.

SENATOR TOWE: The Governor could be covered in his legislative function.

I will entertain a motion to set forthe as item C. (and we'll renumber the other one D) that the Governor would be immune that the action of the Governor and the Governor himself would be immune from any action taken officially as a part of his legislative function.

SENATOR TURNAGE: Let's say in vetoing, or approving bills, or in calling sessions of the legislature to narrow it down a bit.

SENATOR TOWE: OK, I will entertain a motion to that effect.

SENATOR CETRONE: Could I add to that that we might want some research to see if the Governor has any other legislative functions that we might want to include.

SENATOR TOWE: We can look it up, but I don't think there would be anything.

OK. I haven't yet received a motion.

SENATOR CETRONE: So move.

Motion carried.

SENATOR TOWE: Read proposal I.C.

SENATOR TURNAGE: The only question I have about that - it's very clear but - ought not we to consider using the statutory language -

SUBCOMMITTEE ON JUDICIARY

Minutes of November 12-13, 1976 Meeting

The Subcommittee on Judiciary met November 12, 1976, at 7:30 p.m. in Room 432, Capitol Building, Helena. All members were present except Senator Cetrone and Senator Drake.

Other persons present were Dean Zinnicker, Montana Association of Counties; Mike Young, Department of Administration; Tom Maddox, Independent Insurance Agents; Dan Mizner, Montana League of Cities and Towns; and Bob Person, Legislative Council.

The minutes from the previous meeting were deemed read and approved.

Dean Zinnicker, Montana Association of Counties, testified. He commended the committee for a job well done. He thought the committee should consider immunity from suit by the governor in the state or discharging his duties in vetoing a bill. This should all be extended to a local government executive if the case ever arose. The 120-day limitation for filing an action should be left in the bill. The limitations of occurrence should be based on the locality and ability to pay.

Dan Mizner, Montana League of Cities and Towns, testified. His convention passed a resolution which said the limitation should be \$300,000 instead of \$1,000,000. A lower limitation for local units of government should be considered. He was still concerned about the filing deadline.

Mike Young, Department of Administration, said from the executive department's point of view, the bill was very good.

The committee agreed that the summary of recommendations was very good, and should be the first page of the committee report.

The committee discussed the draft sovereign immunity bill. Mr. Young explained Section 2 to the committee as it related to existing law and old statutes. This whole chapter has not been used since 1973 since the tort claims act literally repealed by implication the chapter. This section merely says there are certain cases where immunity exists where they are now provided for. Mr. Young referred to the underlined portion of the draft bill on page 2 and said there might be a problem here since it is a jurisdictional statute. The whole section is stated elsewhere in the tort claims act.

Senator Turnage moved that Section 2 be deleted in its entirety. The motion was seconded and passed. All sections thereafter should be renumbered.

Senator Turnage wondered why Article II, Section 18, was necessary in the underlined portion on page 1 of the draft bill. He thought it was redundant. Chairman Towe thought a good reason to keep it in the bill was for a lawyer who wasn't familiar with the whole question of sovereign immunity to be able to see the reference therein. It was decided to leave Section 1 as written.

Senator Turnage moved that Chapter 7 of the Title 83 (repealer bill) in the second bill be deleted. The motion was seconded. Mr. Young pointed out that this chapter has no use because of the tort claims act. It is a source of conflict and confusion. The motion was passed unanimously.

The committee approved Sections 3 and 4 as written.

Section 5 was discussed. Representative Lory wondered if a separate section would have to be put in to include local government officials. Chairman Towe said he thought the committee had already discussed this matter, and decided not to include local government executives. If Mr. Zinnicker's suggestions were adopted, a county, city or town, and city or town executives and county executives would be immune from suit. Representative Huennekens said this would also include appointed officials as well as elected officials, and he objected to that. Mr. Zinnicker said they would be satisfied to limit this just to elected executives.

Representative Huennekens moved that a new Section 6 be added to read as follows: "Immunity from suit for certain actions by local elected executives: A local governmental entity and the elected executive officer thereof are immune from suit for damages arising from lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of that unit's legislative body." Representative Lory seconded the motion, and it was passed unanimously. Subsequent sections should be renumbered.

The committee noticed and changed the following typographical errors:

On page 4, line 3, after "exemplary" add "and punitive".

On page 4, lines 9 and 10, after "faith" insert a comma, and change the following to read: "faith, without malice and or corruption and"

On page 4, (2), lines 21 and 22, the same change as above: "faith, without malice and or corruption and".

Section 8, pages 5 and 6, of the draft bill were discussed by the committee.

Mike Sherwood

SENATE JUDICIARY

ENR 5

DATE 2-16-89

BILL NO. 513393

SUBCOMMITTEE ON JUDICIARY
MEETING AND PRIVACY HEARING
July 17, 1976

The Subcommittee meeting was called to order by Senator Towe at 9:30 a.m. in the Senate Chambers of the State Capitol, Helena. All members of the subcommittee were present except Representative Vincent.

Senator Towe noted there were three items for discussion at this meeting. They are sovereign immunity, judicial districts, and the privacy hearing, which will start about 11:00 a.m. Material furnished by the researcher on creation of an insurance reserve fund, risk retention, self-insurance and risk management will be discussed later if time permits.

The subcommittee discussed the draft sections relating to sovereign immunity and approved the following language:

I. Provisions for Immunity From Suit.

Immunity from suit for legislative acts and omissions.

(1) The state or other governmental unit is immune from suit for an act or omission of the legislature or of an officer or agent of the legislature.

(2) Any legislator and any officer or agent of the legislature is immune from suit for damages arising from his proper lawful discharge of an official duty associated with the introduction or consideration of legislation. The immunity provided for in this section shall not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation.

(3) The legislature is that body vested with legislative power by Article V of The Constitution of the State of Montana, or the legislative body of any local government unit.

Immunity from suit for judicial acts and omissions.

(1) The state, or other governmental unit, is immune from suit for an act or omission of the judiciary.

(2) Any officer or agent of the judiciary is immune from suit for damages arising from his proper lawful discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from proper lawful discharge of an

official duty associated with vetoing or approving bills or in calling sessions of the legislature.

State or other governmental unit immune from suit-for exemplary and punitive damages. The state or other governmental unit is immune from suit-for exemplary and punitive damages.

II. Establishing a Defense of Good Faith Enforcement of a Law or Rule. Actions under invalid law or rule - same as if valid - when. (1) If an officer, agent, or employee of the state, or of a county, municipality, taxing district, or of any other political subdivision of the state acts in good faith and without malice or corruption under the authority of law, and that law is subsequently declared invalid as in conflict with the Constitution of Montana or the Constitution of the United States, neither he nor any other officer or employee of the governmental unit he represents, nor the governmental unit he represents, is civilly liable in any action in which he, such other officer, or such governmental unit would not have been liable had the law been valid.

(2) If an officer, agent, or employee of the state, or of a county, municipality, taxing district, or other political subdivision of the state acts in good faith and without malice or corruption under the authority of a duly promulgated regulation, ordinance, or rule and that regulation, ordinance, or rule is subsequently declared invalid, neither he nor any other officer, agent, or employee of the governmental unit he represents, nor the governmental unit he represents, is civilly liable in any action in which no liability would attach had the regulation, ordinance, or rule been valid.

III. Limitations on Liability for Damages.

Limitation on governmental liability for damages in tort - petition for relief in excess of limits. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for: (a) noneconomic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$300,000 for each occurrence claimant and \$1 million for each occurrence.

(2) The legislature or the governing body of the county, municipality, taxing district, or other political subdivision of the state may authorize payments for economic

damages in excess of the sum authorized in subsection 1(b) of this section upon petition of plaintiff following a final judgment.

(3) As used in this section:

(a) "Economic damages" means tangible pecuniary losses.

(b) "Noneconomic damages" means those damages not included in economic, punitive, or exemplary damages including, without limitation, damages for pain and suffering, loss of consortium, mental distress, and loss of reputation.

IV. How Judgment Against Governmental Entities May Be Satisfied.

Judgments against governmental entities except state - how satisfied. (1) A county, municipality, taxing district, or other political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

(a) Insurance;

(b) The general fund or any other funds legally available to the governing body;

(c) A property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills; or

(d) Proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment liability. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually.

(2) No penalty or interest may be assessed against any governmental entity as a result of a delayed payment of a judgment liability.

V. Exemption of Public Property From Attachment and Execution.

Public property exempt from attachment or execution. All property owned by the state, a county, municipality,

taxing district, or other political subdivision is exempt from attachment or execution.

VI. Liability of Individuals for Their Own Torts.

Delete entirely.

VII. Limitation of Attorney Fees:

Attorney fees in tort action against governmental entities to be reviewed by the court when award in excess of \$50,000. If an award in excess of \$50,000 is granted in any tort suit against the state or a county, municipality, taxing district, or other political subdivision of the state, the fee of plaintiff's attorney shall be approved by the court. The court may approve a reasonable fee with due regard to the time spent by the attorney, the complexity of the case, and the skill demonstrated by the attorney in the case.

Add severability clause.

Add: This act shall be effective for all claims arising subsequent to July 1, 1977.

Senator Drake moved that Mr. Person investigate and check into the definition of "governing body" or "governmental agency" as used by the Commission on Local Government so that the same term can be used in the draft bills. The motion carried.

The subcommittee suggested that wording in the draft bills be coordinated with wording used by the Commission on Local Government.

Senator Towe suggested that Mr. Person rewrite the bill providing for self-insurance and also cover the following subjects:

- (1) authority for payment prior to judgment;
- (2) authority for deductible;
- (3) option of local government;
- (4) provision for self-insurance if funds are appropriated by legislature;
- (5) specific authority for local government units to join if they wish, with costs of administration spelled out a little better.

The subcommittee discussed judicial districts and approved five draft bills (attached).

Bill No. 1 creates a new judicial district, alters certain judicial district boundaries, and changes the number of judges in certain judicial districts.

Bill No. 2 establishes the office of court administrator.

Bill No. 3 provides for state payment of court reporters' salaries and expenses, and provides that court reporters' hours are set by the district judges.

Bill No. 4 establishes annual judicial training standards for appellate and trial judges.

Bill No. 5 is a joint resolution requesting a statistical report of the business transacted by the district courts to be submitted to every legislative session.

Note: On Bill No. 1, all members voted yes with the exception of Senator Turnage, who voted no.

On Bill No. 3, the final vote was as follows: Senator Towe, No; Senator Cetrone, No; Representative Huennekens, No; Senator Drake, Yes; Senator Turnage, Yes; Representative Anderson, Yes; and Representative Lory, Yes.

On Bill No. 4, all members voted yes with the exception of Senator Turnage, who voted no.

Consideration of a draft bill providing for law clerks was passed for the present time.

Senator Turnage moved that the report of Mr. Hargesheimer be approved. The motion was seconded and carried, and the subcommittee commended Mr. Hargesheimer for his report.

PRIVACY HEARING

Senator Towe opened the privacy hearing by pointing out that the subcommittee was asked to consider two things: (1) the legislation that was introduced in the past, namely SB 400; and (2) the Federal Privacy Act of 1974. He said there was no limitation on what the witnesses wanted to address themselves to and suggested that it may be more appropriate to address matters related to criminal justice information to the other committee studying that area unless they are matters related to the Federal Privacy Act or to SB 400.

Dorothy Eck, State-Local Coordinator, was the first person to testify. She said she was speaking as a member of the Bill of Rights Committee of the Constitutional Convention, and she thought there were two sections in the Montana Constitution to be considered and she did not think they could be considered separately. The first one is Section IX, the Right to Know. She noted that in their committee's deliberations during the Constitutional Convention they really emphasized that unless

45th Legislature SB 0043/02

SB 0045/01

SENATE BILL NO. 43 INTRODUCED BY HOME TURNGAGE

(INTERIM JUDICIARY COMMITTEE BILL)

A BILL FOR AN ACT ENTITLED "AN ACT TO SPECIFICALLY PROVIDE

THE STATE, COUNTIES, TOWNS, AND ALL OTHER LOCAL GOVERNMENT

ENTITIES AND THE OFFICERS, AGENTS, AND EMPLOYEES OF THOSE

ENTITIES IMMUNITY FROM SUIT FOR INJURY TO A PERSON OR

PROPERTY IN CERTAIN CASES IN ACCORDANCE WITH THE PROVISIONS

OF ARTICLE II, SECTION 10 OF THE CONSTITUTION OF THE STATE

OF MONTANA; AMENDING SECTION 02-4310, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 02-4310, R.C.M. 1947, is amended to

read as follows:

"02-4310. Governmental entities liable for torts

except as specifically provided by the legislature. Every

governmental entity is subject to liability for its torts

and those of its employees acting within the scope of their

employment or duties whether arising out of a governmental

or proprietary function except as specifically provided by

the legislature under Article II, section 10 of the

Constitution of the State of Montana."

Section 2. Immunity from suit for legislative acts and

omissions. (1) As used in this section:

(a) the term "governmental entity" includes the state,

counties, municipalities, and school districts;

(b) the term "legislative body" includes the

legislature vested with legislative power by Article 2

of the Constitution of the State of Montana and any local

governmental entity given legislative powers by statute,

including school boards;

(2) A governmental entity is immune from suit for

act or omission of its legislative body or a member

of its legislative body or an officer or agent thereof;

(3) A member, officer, or agent of a legislative body

is immune from suit for damages arising from the law

discharge of an official duty associated with

introduction or consideration of legislation or action by

the legislative body;

(4) The immunity provided for in this section does not

extend to any tort committed by the use of a motor vehicle,

aircraft, or other means of transportation.

Section 3. Immunity from suit for judicial acts and

omissions. (1) The state and other governmental un-

its are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary

is immune from suit for damages arising from his law

discharge of an official duty associated with

actions of the court.

DATE: 10/10/84
BILL NO: SB 393
6
Mike Sherwin

REFERENCE BILL

(3) The Judiciary includes those courts established in accordance with Article VII of the Constitution of the State of Montana.

Section 4. Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving bills or in calling sessions of the legislature.

Section 5. Immunity from suit for certain actions by local elected executives. A local governmental entity and the elected executive officer thereof are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of the legislative body.

Section 6. State or other governmental entity immune from exemplary and punitive damages. The state and other governmental entities are immune from exemplary and punitive damages.

Section 7. Actions under invalid law or rule. — same as if valid — when (1) if an officer, agent, or employee of the state or of a county, municipality, taxing district, or other political subdivision of the state acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as

1 conflict with the constitution of Montana or the
 2 constitution of the United States, neither he nor any other
 3 officer or employee of the governmental entity he
 4 represents, nor the governmental entity he represents, is
 5 civilly liable in any action in which he, such other
 6 officer, or such governmental entity would not have been
 7 liable had the law been valid.
 8 (2) If an officer, agent, or employee of the state or
 9 of a county, municipality, taxing district, or other
 10 political subdivision of the state acts in good faith,
 11 without malice or corruption, and under the authority of a
 12 duly promulgated rule or ordinance and that rule or
 13 ordinance is subsequently declared invalid, neither he nor
 14 any other officer, agent, or employee of the governmental
 15 unit he represents, nor the governmental entity he
 16 represents, is civilly liable in any action in which no
 17 liability would attach and the rule or ordinance been valid.

Section 8. Limitation on governmental liability for damages in tort. — petition for relief in excess of limits.

(1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for:

(a) noneconomic damages or
 (b) economic damages suffered as a result of omission of an officer, agent, or employee of the

SENATE JUDICIARY
 EXHIBIT NO. 619
 DATE 2-16-89
 BILL NO. SB 393

SR 0043702

1 excess of \$300,000 for each claimant and \$1 million for each
 2 occurrence.
 3 (2) The legislature of the governing body of a county,
 4 municipality, taxing district or other political
 5 subdivision of the state may, IN ITS SOLE DISCRETION,
 6 authorize payments for NONECONOMIC DAMAGES OR economic
 7 damages in excess of the sum authorized in subsection (1)(b)
 8 of this section, OR BOTH upon petition of plaintiff
 9 following a final judgment, NO INSURER IS LIABLE FOR SUCH
 10 NONECONOMIC DAMAGES OR EXCESS ECONOMIC DAMAGES UNLESS
 11 SPECIFICALLY AUTHORIZED IN THE CONTRACT OF INSURANCE.

12 (3) As used in this section,
 13 (a) "economic damages" means tangible pecuniary
 14 losses;
 15 (b) "noneconomic damages" means those damages not
 16 included in "economic" punitive, or exemplary damages
 17 including, without limitation, damages for pain and
 18 suffering, loss of consortium, mental distress, and loss of
 19 reputation.
 20 Section 9. Severability. If a part of this act is
 21 invalid, all valid parts that are severable from the invalid
 22 part remain in effect. If a part of this act is invalid in
 23 one or more of its applications, the part remains in effect
 24 in all valid applications that are severable from the
 25 invalid applications.

KOPPEN v. BOARD OF MEDICAL EXAMINERS

Cite as 759 P.2d 173 (Mont. 1988)

SENATE JUDICIARY
Mont. 173
EXHIBIT NO. 7

Under these circumstances, the lack of an award for other future damages could have followed from the instruction set out above. We hold that Walls has failed to show that the jury ignored the instructions.

Affirmed.

Sheehy, J., concurred in part and dissented in part and filed opinion in which Hunt, J., joined.

DATE 2-16-89
SB 393
Tweeter

We affirm.

TURNAGE, C.J., and HARRISON, WEBER and GULBRANDSON, JJ., concur.



1. Judges ←36

Statute providing that state and other governmental units are immune from suit for acts or omissions of the judiciary does not provide for quasi-judicial immunity. MCA 2-9-112; Const. Art. 2, § 18.

2. Judges ←36

The abolishment of sovereign immunity did not affect the separate and distinct doctrine of quasi-judicial immunity. Const. Art. 2, § 18.

3. Physicians and Surgeons ←1

States ←112.2(1)

The discretion vested in the Board of Medical Examiners to weigh information relative to doctor and determine fitness to practice medicine rendered it a quasi-judicial body, entitling both it and state to absolute immunity in negligence suit against Board and State for Board's failure to revoke doctor's license which allegedly caused avoidable complications in the death of two infants.

William KOPPEN and Kimberly Koppen, Individually; and William Koppen, as Personal Representative of the Estate of Cally Jane Koppen, Deceased; and Alan R. Buck and Susan K. Buck, Individually; and Alan R. Buck, as Personal Representative of the Estate of Melissa Sue Buck, Deceased, Plaintiffs and Appellants,

v.

BOARD OF MEDICAL EXAMINERS
and State of Montana, Defendants
and Respondents.

No. 87-472.

Supreme Court of Montana.

Submitted April 28, 1988.

Decided Aug. 11, 1988.

Plaintiffs brought negligence action against Board of Medical Examiners and State based on Board's failure to limit or revoke doctor's license to practice medicine, which allegedly caused avoidable complications in two pregnancies and resulted in deaths of two infants. The District Court, Eleventh Judicial District, County of Flathead, Leif Erickson, J., dismissed action, and plaintiffs appealed. The Supreme Court, McDonough, J., held that doctrine of quasi-judicial immunity precluded suit against Board of Medical Examiners and State.

Trieweiler Law Firm, Terry N. Trieweiler (argued), Whitefish, for plaintiffs and appellants.

Harrison, Loendorf & Poston, John Poston and Stephen McCue (argued), John H. Maynard, Dept. of Admin., Helena, for defendants and respondents.

McDONOUGH, Justice.

Plaintiffs William and Kimberly Koppen (Koppens) and Alan and Susan Buck (Bucks) appeal from the order of the District Court of the Eleventh Judicial District, Flathead County, dismissing their complaint against defendants Board of Medical Examiners (Board) and State of Montana. We affirm.

The appellants present one issue on appeal:

Ann Mc Intyre
Human Rights
Comm.
for:

SENATE JUDICIARY

EXHIBIT NO. 8

DATE 2-16-89

BILL NO. SB 393, 394

Testimony of Margery H. Brown, Chair
Montana Human Rights Commission

I wish to express my concern about Senate Bill 394. Governor Schwinden appointed me to the Human Rights Commission in 1981, and I have served as its chair since 1983. The State of Montana, by legislative action, has established a number of quasi-judicial boards and commissions, like the Human Rights Commission. Some of the reasons for establishing these forums are the ability to have decision makers with specialized expertise in particular areas of the law and to provide more informal, accessible adjudication. We members of these boards and commissions are, for the most part, citizen volunteers who devote considerable time and energy to the tasks the state asked us to do. We receive expense reimbursement and a small per diem for performing this valuable public service. The enactment of Senate Bill 394 would have a serious chilling effect on we who perform this service for the state. We should not be subject to liability should we make a decision in a case which is later reversed by a court. In particular, we should not be subject to personal liability. The plain language of Senate Bill 394 provides for such a result. The bill needs to be clarified to insure that it does not deny immunity to those boards and commissions for their acts which are truly judicial in nature.

JUDICIARY COMMITTEE
FEBRUARY 16, 1989
JOHN MAYNARD, ADMINISTRATOR
CHIEF DEFENSE COUNSEL
TORT CLAIMS DIVISION
SB 393 and SB 394

SENATE JUDICIARY
EXHIBIT NO. 91 p. 1
DATE 2-16-89
BILL NO. SB 393, 394

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS JOHN MAYNARD AND I'M THE ADMINISTRATOR AND CHIEF DEFENSE COUNSEL FOR THE TORT CLAIMS DIVISION OF THE STATE OF MONTANA. I AM HERE TODAY AT THE REQUEST OF THE GOVERNOR'S OFFICE TO RELATE TO YOU HIS CONCERN ABOUT THESE BILLS AND HIS STRONG OPPOSITION TO BOTH OF THESE BILLS. WHILE SB 393 HAS VERY MARGINAL IMPACT AS I READ THE DECISION, ON STATE GOVERNMENT, THIS ADMINISTRATION SUPPORTS THE IMMUNITIES, FEW AS THEY ARE, THAT COUNTY GOVERNMENTS ARE ABLE TO AVAIL THEMSELVES OF.

WITH RESPECT TO SB 394, WHICH IS IN RESPONSE TO THE "KOPPEN DECISION", I WOULD SIMPLY LIKE TO POINT OUT ONE PARTICULAR COMMENT IN THE "KOPPEN DECISION", WHICH IS, "CONTROVERSY SUFFICIENTLY INTENDS TO ERUPT IN LITIGATION NOT EASILY CAPPED BY A JUDICIAL DECREE. THE LOSER IN ONE FORM WILL FREQUENTLY SEEK ANOTHER CHARGING THE PARTICIPANTS IN THE FIRST WITH UNCONSTITUTIONAL NEMESIS. ABSOLUTE IMMUNITY IS NECESSARY TO ASSURE THAT JUDGES' ADVOCATES AND WITNESSES CAN PERFORM THEIR PERSPECTIVE FUNCTIONS WITHOUT HARASSMENT OR INTIMIDATION.

THE DECISION IN THE "KOPPEN CASE" HAS SOMEWHAT WIDE-RANGING EFFECT THROUGHOUT STATE GOVERNMENT. OF THE 175 LAWSUITS THAT ARE PRESENTLY PENDING AGAINST THE STATE OF MONTANA AND ARE HANDLED

STATE JUDICIARY
EXHIBIT NO. 9, p. 2
DATE 2-16-89
BILL NO. SB 393, 394

PAGE 2

THROUGH MY OFFICE, THERE ARE JUST A HANDFUL, PERHAPS LESS THAN 10 THAT ARE AFFECTED BY THE "KOPPEN DECISION", BUT THOSE ARE VERY SIGNIFICANT CASES, INVOLVING FOR THE MOST PART LICENSING BOARDS AND PRIVATE CITIZENS WHO ARE APPOINTED TO THOSE BOARDS FOR LICENSING FUNCTIONS. THEY ARE PLACED, AS WITHOUT THE "KOPPEN DECISION" ON THE BOARDS, OF THE DILEMMA POINTED OUT BY MR. TWEETEN, OF BEING IN A POSITION IF THEY DECIDE TO GO AHEAD AND REVOKE SOMEONES LICENSE THEY ARE SUBJECT TO SUIT BY THAT PERSON, AND IF THEY DECIDE NOT TO REVOKE, BEING SUBJECT TO SUIT BY THE THIRD PARTIES WHO WOULD OTHERWISE BRING MALPRACTICE ACTIONS AGAINST THAT INDIVIDUAL. I BELIEVE MR. CONNOR AND MR. TWEETEN HAVE SAID EVERYTHING THAT I COULD SAY ABOUT THESE SO I'LL SIT DOWN.

MR. CHAIRMAN - MEMBERS OF COMMITTEE

JOE THARES - HELENA RESIDENT -

MEMBER BOARD OF LABOR APPEALS
FOR PAST FOUR YEARS.

B.O.L.A. IS QUASI-JUDICIAL BOARD AND IS COVERED
BY S.B. 394.

SUE HAPPY SOCIETY
SB 394 DENIES IMMUNITY TO THE B.O.L.A. BOARD MEMBER

B.O.L.A. HANDLES 300-400 CASES PER YEAR
SOME GO ON TO DISTRICT COURT.
ANY ONE COULD BE CAUSE FOR ACTION

IF SB394 PASSES NEED TO RE THINK IF WOULD BE
ABLE TO SERVE. PLACES ENTIRE FAMILY
FINANCES IN JEOPARDY. POSSIBLE LOSS OF
LIFE SAVINGS. NOT FAIR OTHER FAMILY MEMBERS.

NOT WORTH TO TAKE SUCH LARGE RISK TO SERVE
ON UNCOMPENSATED BOARD.

OTHER REMEDIES ARE ALREADY AVAILABLE TO
PARTIES WHO FEEL INJURED.

- 1) POOL OF POTENTIAL MEMBERS WILL DRY UP
- 2) OR ADD EXPENSE IF STATE MUST PROVIDE INS.

DONOT PASS SB 394

cordance with the comprehensive plan: *Provided*, That the maximum amount of such grants for all projects shall not exceed \$2,500,000.

(c) *Costs of maintenance*

The Secretary, pursuant to an agreement with the State of Wisconsin, may pay up to 50 per centum of the annual costs of management, protection, maintenance, and rehabilitation of the reserve.

(d) *Termination of Federal contributions*

Whenever the Secretary determines that appropriate management and protection set down in the comprehensive plan are not being afforded the nationally significant values within the reserve or that funds are not being provided on the prescribed matching basis by the State of Wisconsin or other non-Federal sources, he may terminate contributions under sections 469d to 469j of this title.

(Pub.L. 88-655, § 5, Oct. 13, 1964, 78 Stat. 1088; Pub.L. 91-483, § 1(3), Oct. 21, 1970, 84 Stat. 1083; Pub.L. 96-199, Title I, § 109, Mar. 5, 1980, 94 Stat. 69.)

Historical Note

References in Text. The Land and Water grants in addition to those under the Land Conservation Fund Act of 1965, referred to and Water Conservation Fund Act of 1965, in subsec. (b), is Pub.L. 88-578, Sept. 3, 1964, not exceeding 25 per cent of the actual cost of 78 Stat. 897, as amended, which is classified each development project and up to a maximum of \$425,000 and to share equally the generally to section 460f-4 et seq. of this title. annual costs of management, protection, For complete classification of this Act to the maintenance and rehabilitation of the reserve section 460j-4 of this title and Tables volume. for provisions for part recovery of the funds

Sections 469f and 469i, included within the granted in case of conversion, and use or repealed by sections 469d to 469i, were re- disposal contrary to the purposes of the establishment of the Ice Age National Scientific Reserve, and reenacted provisions for the termination of the grants.

1980 Amendment. Subsec. (b). Pub.L. 96-199 substituted "\$2,500,000" for "\$425,000".

1970 Amendment. Pub.L. 91-483 substituted provisions authorizing the Secretary to also, Pub.L. 96-199, 1980 U.S. Code Cong. provide technical assistance and financial and Adm. News, p. 133.

Cross References

Plan for continental glaciation, see section 469e of this title.

§ 469i. Repealed. Pub.L. 91-483, § 1(4), Oct. 21, 1970, 84 Stat. 1083

Historical Note

Section, Pub.L. 88-655, § 6, Oct. 13, 1964, to \$800,000 for carrying out the provisions of 78 Stat. 1088, authorized appropriations of up sections 469d to 469j of this title.

SUBCHAPTER II—NATIONAL HISTORIC PRESERVATION

§ 470. Short title; Congressional finding and declaration of policy

(a) This subchapter may be cited as the "National Historic Preservation Act".

(b) The Congress finds and declares that—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

(Pub.L. 89-665, § 1, Oct. 15, 1966, 80 Stat. 915; Pub.L. 96-515, Title I, § 101(a), Dec. 12, 1980, 94 Stat. 2987.)

Historical Note

1980 Amendment. Pub.L. 96-515 added redesignated, substituted "heritage" for subsec. (a), designated existing provision as "past", and added pars. (3), (4), and (6), subsec. (b), and in subsec. (b) as so designated, redesignated pars. (a) to (d) as (1), (2), (5), and (7), respectively, in par. (1) as so redesignated. That this Act

SENATE JUDICIARY
EXHIBIT NO. 11
DATE 2-16-89 P.1
BILL NO. SB 434

WITNESS STATEMENT

NAME William Tall Bull BUDGET _____

ADDRESS Box 101 Basby MT 59016

WHOM DO YOU REPRESENT? Northern Cheyenne Tribe

SUPPORT SB 434 OPPOSE _____ AMEND _____

COMMENTS: _____

attached testimony

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE JUDICIARY

EXHIBIT NO. _____

DATE _____

BILL NO. _____

EX. 11, p. 2

SB 434

2-11-89

February 16 1989

TO WHOM IT MAY CONCERN:

GREETINGS FROM THE Northern Cheyenne Tribe Lame Deer MONTANA
MY NAME IS WILLIAM TAILBULL

CHAIRMAN OF THE TRIBAL CULTURAL PROTECTION BOARD AND
A MEMBER OF THE TRADITIONAL COMMUNITY OF THE Northern
Cheyenne Tribe.

Our Customs and Traditions have long guaranteed
that our dead be properly buried. Our burial Customs
include reburial of our people wherever they may be.

We are in support of SB 434 in its entirety.

It is the living that has the moral obligation to ^{protect} ~~bury our dead~~ all graves and grave sites.

William Tail Bull

Lame Deer, Mt.

PS.

Last summer at the request of BLM Miles City MT
OFFICE I WAS ASKED if I could re bury remains of ^{70 yr old} man
who was accidentally uncovered during road building. I quickly
responded to perform a reburial ritual and re bury this
old man. Science and Native American met a balance in this case.

At Terry Montana area an ancient ^{maimed} grave was uncovered.
exposing the remains of a child. State preservation office
called me to discuss the reburial procedure. I consented
to carry out a tribal reburial ritual and reburied the
remain in the same area.

SENATE JUDICIARY

EXHIBIT NO. 12

DATE 2-16-89

BILL NO. SB434

WITNESS STATEMENT

NAME STEVEN C. BRADY SR. BUDGET _____

ADDRESS BOX 542 LAME DEER, MT 59043

WHOM DO YOU REPRESENT? NORTHERN CHEYENNE - CRAZY DOGS

SUPPORT ⁴³⁴ ✓ SENATE BILL OPPOSE _____ AMEND _____

COMMENTS: SEE ATTACHED

Multiple horizontal lines for additional text or comments.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE JUDICIARY

EXHIBIT NO. 12.p. 2

DATE 2-16-89

BILL NO. SB 434

WITNESS STATEMENT

NAME CHARLES BRADY BUDGET _____

ADDRESS BOX 155 LAME DEER, MT 59043

WHOM DO YOU REPRESENT? NORTHERN CHEYENNE - CRAZY DOGS

SUPPORT ⁴³⁴SENATE BILL OPPOSE _____ AMEND _____

COMMENTS: SEE ATTACHED

Multiple horizontal lines for additional text or comments.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE JUDICIARY
EXHIBIT NO. 12, p. 3
DATE 2-16-89
BILL NO. SB 434

February 16, 1989

SENATE JUDICIARY
STATE OF MONTANA
HELENA, MONTANA

RE: SENATE BILL 434
"HUMAN REMAINS AND BURIAL SITE PROTECTION"

DEAR SIR:

PLEASE BE ADVISED THAT WE
ARE IN SUPPORT OF THE BILL (434).

IT CERTAINLY IS COMMENDABLE THAT THE
STATE OF MONTANA RECOGNIZES THE NEED FOR
THIS SORT OF LEGISLATION. IT IS TIME THAT THIS
TYPE OF DEGRADATION AND HUMILIATION COMES TO
AND END. ALTHOUGH THE BILL COULD USE A FEW
IMPROVEMENTS IT NEVER THE LESS IS A MUCH NEEDED
PIECE OF LEGISLATION. THE INDIGENOUS PEOPLES
OF THIS STATE ARE TIRED OF SUCH DEMORALIZATIONS
ON BEHALF OF THE NORTHERN CHEYENNE ~~PEOPLE~~ PEOPLE
SINCERELY,

W. GAYTON (NAME)

THE ABOVE NAMED INDIGENOUS PEOPLES ARE TO BE
REPRESENTED BY THE STATE OF MONTANA

Montana Historical Society Statement on SB434

The Montana Historical Society strongly supports the need for legislation that gives Montana tribes clear involvement in decisions about the disposition of burials that may be affiliated with them. In our judgment, treatment of burials that are likely Native American in association is all too often disrespectful or focused on concerns unrelated to those of tribes. There is an imbalance in assumption and action that needs to be corrected. Burials not located within cemeteries are not afforded any specific protection or investigation other than criminal investigation. Native American burials on public land tend to be viewed as a source of scientific information by archaeologists. Personal and cultural values associated with tribal human remains--especially of any antiquity--have tended to be ignored. So we very much support the need for legislation to address the imbalance.

We cannot, however, support the bill as written. Principally, it places the State Historic Preservation Office, within the Historical Society, in a notification role that is not appropriate to our duties or knowledge. We are glad to notify tribes; we are not in a position to notify next-of-kin. Second, the mechanisms proposed for considering how a tribally affiliated burial should be treated do not seem clear to us and are lodged wholly with tribal representatives--which then appears to overcorrect the current imbalance. ~~The advisory committee proposed is ad hoc and not created in statute.~~ The role played by private landowners is unclear.

enforce
or establish confidentiality
for the tribes.

Hence, we are glad to offer substantive amending language that would at least set up a process in which coroners must be notified of any burial outside of a cemetery, in which coroners must notify us if they believe that a burial may have cultural affiliations with tribes, in which we notify tribes that might have an interest in the burial and direct them to consult

Page 2 SB434 Statement by the Montana Historical Society

with the coroner involved. Then we recommend that tribes, landowners, and the involved coroners be given a short, specific time period in which to discuss the disposition of such a burial--final decisions resting with the legal entity that would otherwise be responsible. We have not, in considering amending language, had an opportunity to contact coroners to determine their thoughts on the issue. However, in our experience, they currently accomplish many of the contacts that we would recommend.

Again, we strongly support the need for legislation to insure tribal involvement in decisions about burials with cultural affiliations. We are glad to be of assistance in offering amending language, since the present bill does not seem to us to be a good way to accomplish its goal.

Marcella Sherfy
State Historic Preservation Officer
Montana Historical Society

Proposed Amendments to SB434 - Montana Historical Society

NEW SECTION. Section ~~4~~⁵ Discovery, reporting and consultation requirements.

- (1) In every instance in which a burial is discovered outside a cemetery, the county coroner, county sheriff, or county medical examiner shall be notified.
- (2) In any instance in which the coroner, county sheriff, or county medical examiner has reason to believe that the burial is of Native American origins, they shall notify the State Historic Preservation Officer. The State Historic Preservation Officer shall then inform the tribe(s) most likely to be affiliated with the burial and direct them to the local official handling the burial. Tribes and other interested publics will then have no less than 7 days and, ordinarily, no more than 30 days in which to provide the local official or other legally responsible entity with information that should influence the final disposition of the burial-avoidance, reburial, or scientific study.
- (3) Excavation or disinterment should be the selected choice only in instances when the action appears to be scientifically justifiable or in cases where imminent destruction in the original location is likely to occur.

NEW SECTION. Section ~~5~~⁶.

- (2) Repatriation or reburial should occur absent evidence of scientific justification.

SENATE JUDICIARY
EXHIBIT NO. Addendum
DATE 2/16/89
BILL NO. SB 434

rec'd day
after hearing

DEPARTMENT OF HIGHWAYS



STAN STEPHENS, GOVERNOR

2701 PROSPECT AVE.

STATE OF MONTANA

HELENA, MONTANA 59620

February 17, 1989

Senator Bruce Crippen, Chairman
Senate Judiciary Committee
State Capitol
Helena, MT 59620

SENATE BILL NO. 434
CEMETERY BURIAL SITES AND
HUMAN REMAINS PROTECTION ACT

The Department of Highways requests that you consider tabling this bill in order that it may be reintroduced next session with input from the state and federal agencies and private concerns that will be affected by it. The issues raised by this bill are too important and complicated to be handled with a brief hearing and a few hasty amendments.

The bill has a commendable motive - to protect human remains and to insure proper respect for the beliefs and feelings of the descendants and the tribal groups where Native American remains are involved. Section (2) of the bill discusses the need to protect human remains from disturbance and vandalism and to balance the interests of the descendants, next of kin and tribal groups with those of science. What the bill does not address are projects that are in the public interest, but will necessarily result in the disturbance of a burial site.

Section (5) of the bill excepts inadvertent disturbance from the criminal penalties if the disturbance is immediately reported. The next step is notification. The problem arises under subsection (4), beginning at line 25:

Excavation or disinterment may occur only upon a showing of scientific justification or to prevent further disturbance or destruction, provided that the excavation and disinterment occur following consultation with and the concurrence of the tribal group, next of kin, or descendants identified pursuant

Senator Bruce Crippen
February 17, 1989
Page 2

to subsection (2). Curation may take place upon a showing of scientific justification and following consultation with and concurrence by the tribal group, next of kin, or descendants identified pursuant to subsection (2).

What happens to the project which is partially constructed? The section allows disinterment only to prevent further disturbance or destruction and only with the concurrence of the tribal groups, next of kin, or descendants. If they refuse to concur, does the project stop? There is no requirement that concurrence be given, no standards as to when it should be given, and no method to appeal the refusal to give concurrence. A governmental or private entity may have invested millions of dollars in planning and constructing a project with the chance that part of an excavation will reveal human remains which cannot be removed or disturbed without the concurrence of a tribal group, next of kin or descendant of the deceased.

The bill also does not address the situation where it is known that a proposed project is likely to disturb human remains. In the case of a highway project, the Department does a cultural assessment which generally determines the likelihood of finding human remains. The Department agrees that human remains must be treated with proper respect but it is often not possible to reroute a project to avoid human remains. Under the bill, there is no method to deal with this type of situation. Once the Department is aware of human remains, under this bill it could not proceed with the project. It would not be an accidental or inadvertent discovery and it would not necessarily be a scientifically justifiable excavation.

The Department of Highways is not the only public agency in Montana whose projects or whose use or ownership of land could be affected by this bill. It could affect projects or land of the Forest Service, Park Service, Bureau of Land Management, Bureau of Reclamation, Corps of Engineers, various military branches, Federal Highway Administration, and U.S. Fish and Wildlife Service at the federal level. At state level it could affect the Department of State Lands, the Department of Fish, Wildlife and Parks, the Department of Natural Resources and Conservation, the Department of Commerce in urban development, the Department of Military Affairs, the Department of Institutions, the Historical Society and the University System. It could also affect local governments and their projects. There is a need to have input from affected agencies and private groups who may find that if this bill becomes law, their project could be halted by the discovery of human remains. Montana needs a carefully drafted law which balances all of the legitimate concerns. The proposed

Senator Bruce Crippen
February 17, 1989
Page 3

bill addresses the concerns of the descendants and tribes but does not provide for other valid concerns.

Agencies with projects regulated by the National Historical Preservation Act are already complying with the Advisory Council on Historic Preservation's regulations and policy. As I mentioned in my testimony yesterday, the Department has been working on a plan for the proper handling of human remains. The tribes have been kept informed of the development of the plan and are individually notified whenever there is a possibility of Native American remains of persons belonging to the tribe being discovered or disturbed during highway construction. I have attached examples of correspondence relating to this issue and the policy of the Advisory Council on Historic Preservation for your information. Past practices of public agencies and archaeologists have changed, and Native American groups are consulted and do take part in the decision-making process.

If you do feel that it is necessary to pass this bill at this time, I have also proposed a brief amendment which would exclude projects which must comply with the requirements of Section 106 of the Historical Preservation Act and the regulations adopted under it. I have also attached a copy of the section and regulations for your information.

Thank you for your consideration of our concerns.



BEATE GALDA, ATTORNEY
LEGAL DIVISION

BG:ml

Attachments

DEPARTMENT OF HIGHWAYS



STAN STEPHENS, GOVERNOR

2701 PROSPECT AVE.

STATE OF MONTANA

HELENA, MONTANA 59620

February 3, 1989

Clarence Woodcock, Program Director
Flathead Culture Committee
Box 418
St. Ignatius, MT 59865

Scheduled meeting May!

F 7-1(4)16
Conner N & S

Thank you for advising me of your concern for the protection of sites important to your people for cultural and spiritual reasons. As you suggest, I will be pleased to meet with you and your elders in order to assure that we design our program with your concerns in mind, and consequently minimize impacts as much as we reasonably can. If we are unable to resolve the issues at Longhouse, we can also go to the project site with you to make sure we all understand the situation, and take advantage of every opportunity to find the best solution.

Prior to our scheduling a meeting, I should let you know that we are presently working on a plan to deal with human remains, just in case, as appears possible, we encounter them on this project. As I am sure you know, the issue of dealing with human skeletal material is highly complex and controversial. We must be sensitive to the spiritual and cultural concerns of Native Americans, respectful of the human remains themselves, yet in compliance with federal laws such as the Archaeological Resources Protection Act, the Historic Preservation Act, and with state laws which require County Coroners (usually County Sheriffs) to exercise control over them. At the same time, we need to be aware of, and when possible adhere to, currently accepted Anthropological research designs that are essential to developing a better understanding of the human race. The issue is far too complicated to rely on spur-of-the-moment decisions as to what to do. Therefore, careful planning is essential, and we'd like you to be a part of it.

Our schedule calls for a draft of the plan probably about late April. What I would like to do is send you a copy, and let you have an opportunity to study it, so we can discuss it when we meet, and go over the project plans at the same time. Mr. Bob Lajoie has agreed to accompany me, so he can deal with your engineering questions at the same time.

In light of this plan, I suggest we meet sometime in late April or very early May, certainly before we do any testing on the site. The specific date would

Clarence Woodcock
February 3, 1989
Page 2

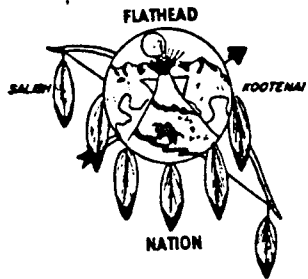
be set as soon as we have the plan ready to send you. I hope you will find this tentative schedule agreeable. If you feel it is necessary to meet earlier, that too can be arranged. We, of course, will have less specific information to deal with. But you may rest assured that we are very interested in working with you to carefully find the best design in our project. You are welcome to discuss this or any other cultural resource issue with me by phone at 444-6258. Thank you again.

Edie Vinson

EDIE VINSON
ARCHITECTURAL HISTORIAN

EV:gg:5kk

cc: Steven Kologi
Kenneth Skoog
Jim Weaver
Janene Caywood, HRA



THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION



P.O. Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 675-2806

January 20, 1989

Date Recd. Preconst. 1/22/89		MAIL ROUTE	THEALED
<input type="checkbox"/>	30		
<input checked="" type="checkbox"/>	31	Eng. Committee	Louis W. Adams
<input type="checkbox"/>	32	Planning Dept	Laurence J. Mille
<input checked="" type="checkbox"/>	33	Arch. Board Design	Robert L. Bob) McCrea
<input type="checkbox"/>	34	Construction	Lloyd D. Ivine
<input type="checkbox"/>	35	Academics	Joe Dog Fisman
<input type="checkbox"/>	36	Architecting Design	Pat Gerhard
<input type="checkbox"/>	37	Public Hearing	
<input type="checkbox"/>	38	Photogrammetry	
<input type="checkbox"/>	39	Construction Design	
<input type="checkbox"/>		Clarence Woodcock	
<input type="checkbox"/>		Russell	

COUNCIL MEMBERS:
 (Mickey) Pablo - Chairman
 Fred) Matt - Vice-Chairman
 Morigeau, Jr.

Joseph E. Dupuis - Executive Secretary
 Vern L. Clairmont - Executive Treasurer
 Bernice Hewankorn - Sergeant-at-Arms

Flathead Culture Committee
 Box 418
 St. Ignatius, MT 59865

Edrie Vinson, Architectural Historian
 Environmental Unit
 Montana Department of Highways
 2701 Prospect
 Helena, MT 59620

Dear Ms. Vinson,

We were pleased to receive your correspondence regarding Project F 7-1(4)16 Conner N. & S. Due to the significance in terms of historic and cultural as well as present day spiritual use of this site, it is important that our communication throughout the planning and implementation of this project be close and on-going.

It is important that you understand from the onset that we have many concerns on this matter and, therefore, we would suggest a meeting be arranged at your earlist convenience to discuss in detail these numerous concerns which require a high degree of sensitivity.

We have concerned elders advisory council who would be available to review this project with you if you can arrange to be available to meet here at the Longhouse.

Please contact me personally at 745-4572 or Longhouse , Box 418, St. Ignatius, MT 59865 for any further clarification or for justification of the need for this type of meeting.

Sincerely,

Clarence Woodcock
 Clarence Woodcock
 Program Director
 Flathead Culture Committee

Fort Belknap Community Council

(406) 353-2205
 P.O. Box 249
 Fort Belknap Agency
 Harlem, Montana 59526



Fort Belknap Indian Community
 (Tribal Govt.)
 Fort Belknap Indian Community
 (Elected to administer the affairs of the community
 and to represent the Assinibone and the Gros
 Ventre Tribes of the Fort Belknap Indian
 Reservation)

January 17, 1988
 DATE

Edrie Vinson, Architectural Historian
 Environmental Unit
 Department of Highways
 2701 Prospect
 Helena, MT 59620

J 7-1(41)
Connor

Dear Edrie:

I am sending this letter to you in response to your letter to Poncho Bigby of November 28, 1988. In your letter you requested our input regarding the State of Montana Department of Highway's proposal to widen U.S. Highway 93 south of Darby, Montana which may impact the "Medicine Tree" or "Ram's Horn Tree." We wish to thank you for your considerateness, care, and sensitivity to your Native Montana and Native American past.

Since receiving your letter we have learned that the Medicine Tree or Ram's Horn Tree is a very religious Salish site. In history, culture, and religion of the Salish or Bitterroot People who used to inhabit that area, this tree has an important place in their Tribal History, lore and culture. Members of the Salish Tribe have expressed to us their deep concern in maintaining the sacredness and sanctity of the site. Your sincere consideration would be greatly appreciated. We appreciate your sensitivity to the views and feelings of Montana's Native People. Please keep us informed regarding matters such as this. If you have any further questions, please don't hesitate to contact us.

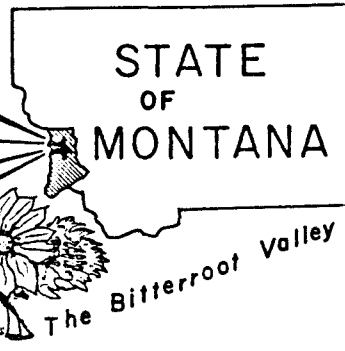
Sincerely,

Gilbert Horn Sr.
 Gilbert Horn, Sr.
 Chairman

cc: file

Date Recd. Preconst. <i>1/18/89</i>		MAIL ROUTE	Attach	Initial
		30		
		<input checked="" type="checkbox"/> 30 Eng. Specialist		
		<input checked="" type="checkbox"/> 31 Contract Plans		
		<input checked="" type="checkbox"/> 32 Loc. Road Design		
		<input checked="" type="checkbox"/> 33 Environment		
		<input checked="" type="checkbox"/> 34 Hydraulic		
		<input checked="" type="checkbox"/> 35 Surveying Design		
		<input checked="" type="checkbox"/> 36 Traffic		
		<input checked="" type="checkbox"/> 37 Pub. Hearing		
		<input checked="" type="checkbox"/> 38 Photogrammetry		
		<input checked="" type="checkbox"/> 39 Consultant Design		
		<i>W. Weaver</i>		
		<i>Russell</i>		

COUNTY OF RAVALLI



HAMILTON, MONTANA 59841

December 8, 1988

F7-1(41)16
Canner N-S

Edrie Vinson
Architectural Historian
Environmental Unit
Department of Highways
2701 Prospect
Helena, Montana 59620

Dear Edrie,

Thank you for your letter dated December 5th.

I would request you notify me in advance of your test so I may be in attendance.

Very truly yours,

Jay
JAY PRINTZ, Sheriff

JP/ts

Date Recd. Preconat *12/12/88*

NO.	INFO	MAIL ROUTE	Attach
	<input checked="" type="checkbox"/>	01 Eng. Specifications	
	<input checked="" type="checkbox"/>	02 Contract Plans	
	<input checked="" type="checkbox"/>	03 Loc. Road Design	
	<input checked="" type="checkbox"/>	04 Environment	
	<input checked="" type="checkbox"/>	05 Hydraulic	
	<input checked="" type="checkbox"/>	06 Surfacing Design	
	<input checked="" type="checkbox"/>	07 Traffic	
	<input checked="" type="checkbox"/>	08 Pub. Hearing	
	<input checked="" type="checkbox"/>	09 Photogrammetry	
	<input checked="" type="checkbox"/>	10 Consultant Design	
	<input checked="" type="checkbox"/>		

Borden

F7-1 (4) 16
Canner N-5

Nov. 29, 1988

Edrie Vinson
Architectural Historian
Dept. of Highways
2701 Prospect
Helena, Montana 59620

Dear Edrie,

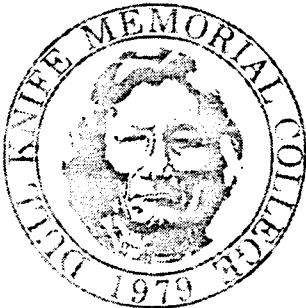
Thank you for your letter of November 28, 1988. I wish to be kept informed of the road project, particularly the possible grave site. If the examination of the site indicates that it is a burial I would be interested in the re-burial activity, if this should be determined.

I have no comments regarding the indian trees as this area is far from our ancestral hunting grounds.

DULL KNIFE MEMORIAL COLLEGE
P.O. Box 98
Lame Deer, Montana 59043

Sincerely,

William Tall Bull
William Tall Bull
P.O. Box 101
Busby, Mont. 59016



Tele: Home (406) 592-3537
Work (406) 477-6215

Date Recd.	Project	12/1/88	Act	Info	MAIL ROUTE	Archd	Initial
					30		
			✓		30 Eng. Specalties		
					31 Contract Plans		
			✓		32 Eng. Road Design		
			✓		33 Environment		
					34 Hydraulic		
					35 Surfacing Design		
					36 Traffic		
					37 Pub. Hearing		
					38 Photogrammetry		
			✓		39 Consultant Design		
			✓		Russell		
			✓		Stinson		
			✓		File		

DEPARTMENT OF HIGHWAYS



TED SCHWINDEN, GOVERNOR

2701 PROSPECT

STATE OF MONTANA

HELENA, MONTANA 59620

December 2, 1988

Janene Caywood
Historical Research Associates
P.O. Box 7086
Missoula, MT 59807

F 7-1(4)16
CONNER - N. & S.

Enclosed please find the Advisory Council on Historic Preservation's Policy Statement Regarding Treatment of Human Remains and Grave Goods. In light of the sixth principal, I suggest we begin getting our act together so that we are well prepared by spring.

Consider this letter your authorization and direction to develop a plan for the excavation and analysis of human remains. We want to know what data will be recorded, what analysis done, and the scientific relevance of the research questions. I personally would prefer to see a reburial, but I think we need to know under what, if any, conditions curation in perpetuating would be desirable. The plan should be applicable to any burial situation you or any of our contractors encounter.

You are encouraged to such contract for the expertise of a physical anthropologist, and to have a draft reviewed by experts in the field. I will send a draft to SHPO for review as soon as we are comfortable with one. Once adopted, all of our contractors would be required to follow it as a minimum, when performing such work, so you may also wish to obtain comments from them. Should I find any relevant material, I will forward it to you. Meanwhile, if you have any questions or wish to discuss it by telephone, please feel free to call.

Edrie Vinson

EDRIE VINSON, ARCHITECTURAL HISTORIAN
ENVIRONMENTAL UNIT

EV:cm:5/e

Enclosure

cc: S. C. Kologi
K. F. Skoog
V. D. Borden

DEPARTMENT OF HIGHWAYS



TED SCHWINDEN, GOVERNOR

2701 PROSPERITY

STATE OF MONTANA

HELENA, MONTANA 59601

December 5, 1988

Jay Printz
Ravalli County Coroner
Ravalli County Courthouse
Hamilton, MT 59840

F 7-1(41)16

In the course of conducting planning activities for future highway construction projects in your county, it has come to our attention that we may impact what initially could be an Indian burial. We have not found human remains, but the site situation and the presence of a glass bead were very suggestive to our consultant archaeologist that one might be present.

In accordance with our obligations under the American Indian Religious Freedom Act, we have requested information from Indian tribes known to inhabit the area. If any so desire, we will notify them when the site is examined so that they may be present.

We are preparing a plan for the excavation and analysis of human remains just in case it is a burial and we need to act quickly.

As a part of our preparation to treat this site and any similar situation that may arise in the future, please advise us how you wish to deal with the state law requiring your notification and subsequent investigation. Since our test will be scheduled in advance, should you wish, you could be in attendance and perform your legal requirements while our legal obligations are being met.

As you probably know, federal law requires that we keep archaeological site locations information confidential. Also, laws, regulations, and standards are very circumspect for excavating such sites. A new policy statement by the Advisory Council on Historic Preservation, which I am enclosing for your information, controls the ultimate disposition of the human remains. Considering this narrow framework within which we must work, I do

Jay Printz
December 5, 1988
Page 2

hope we can coordinate in such a fashion as to fulfill all of our responsibilities. In addition to the manner in which you wish to be notified and whether you wish to be present when the site is investigated, could you advise me of any legal obligations you have and what you need to accomplish in such circumstances. Your cooperation will be greatly appreciate.

Edrie Vinson

EDRIE VINSON, ARCHITECTURAL HISTORIAN
ENVIRONMENTAL UNIT

EV:nr:5/j

Enclosure

cc: Stephen Kologi
Kenneth Skoog
James Weaver
Janene Caywood, HRA

DEPARTMENT OF HIGHWAYS



TED SCHWINDEN, GOVERNOR

2701 PROSPEC

STATE OF MONTANA

HELENA, MONTANA 5962

November 28, 1988

Tribal Chairman
Confederated Salish & Kootenai Tribes
Box 278
Pablo, MT 59855

*Sent to all Montanans
value and the
of Salish*

F 7-1(4)16
Conner N. & S.

In accordance with your request at the Blue Bay Conference, the Department is now officially notifying you that one of its proposed projects is in the vicinity of a site known to be historically significant to American Indians. The "Medicine Tree", also known as the "Ram's Horn Tree" is located on U.S. 93 south of Darby in Ravalli County.

The proposed highway widening, planned for construction in 1994, may place the roadway closer to the tree than it presently is. The tree would not be removed, or be impacted by the project. The retaining wall that presently separates the site from the roadway would be preserved in tact. A fence likely would be added to prevent pedestrians from falling into the roadway, but it would not prevent access to the tree. The pull-out and parking area immediately north of the tree would be expanded to the east to compensate for loss due to highway widening.


I am interested in hearing any comments you have on this proposal, and would be pleased to find answers to any of your questions.

Also, on this project, just north of the Robbins Gulch Road, is an area of rock outcrops on a steep slope. One of the outcrops forms an overhanging ledge, under which a glass bead was discovered. Our consultant archaeologist, Janene Cayood, suspected that this might be a burial, so she did not examine the site further. Our preliminary plan is to cut into this slope, and remove the area in which the bead was found. The alternative would place the road in conflict with the Bitterroot River. Before final design, we need to determine whether a burial site or sites exist, and if so, whether the burial can be relocated. If you have any knowledge of a burial or other Native American activities in the Robbins Gulch area, I would very much appreciate receiving that information from you.

Tribal Chairman
November 28, 1988
Page 2

Our plan is to examine the site further when weather permits in the spring. As you know, if any human remains are located, state law requires they be left undisturbed, and the County coroner notified. Should you wish to be present when the examination occurs, please advise me, giving me your name, address and telephone number, so that we may contact you when the visit is scheduled.

And finally, if you have no comments but wish to be kept advised on this project, let me know, and I will keep your name on the notification list. Otherwise, you will not automatically receive anymore correspondence on this particular project from me. Thank you for your consideration.



EDRIE VINSON, ARCHITECTURAL HISTORIAN
ENVIRONMENTAL UNIT

ED:dh:3gg

cc: S. Kologi
K. Skoog
Jim Weaver
Marcella Sherfy, SHPO

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

OCT 12 1988

Memorandum

To: Federal Agency Preservation Officers
State Historic Preservation Officers

From: Executive Director

Subject: Treatment of human remains under Section 106

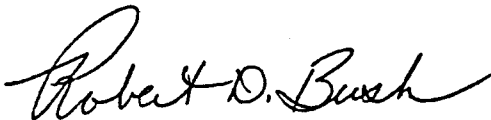
When review of a Federal undertaking under Section 106 of the National Historic Preservation Act results in a decision to excavate an archeological site, graves are often disturbed. Human remains are often exhumed, together with the artifacts that were buried with them. Graves and their contents are important sources of information when studied by archeologists and other specialists. However, they also represent deceased human beings, whose remains should be treated decently, and they often have powerful emotional importance for their descendants.

In recent years, the question of how to dispose of human remains and grave goods has become a controversial one. American Indian groups in particular tend to insist that the remains of their ancestors be reburied, or returned to them for reburial. Archeologists tend to argue that such remains should be kept in scientific institutions for study, because of the information they represent.

At its September 27, 1988 meeting in Gallup, New Mexico, the Council reviewed the question of how human remains and grave goods should be treated when they have to be exhumed in connection with a Federal undertaking. Based on this review, the Council adopted the attached policy statement. This policy statement will guide our work in review of undertakings under Section 106, and we recommend that all Federal agencies, State Historic Preservation Officers, and other participants in Section 106 review follow it as well.

In its deliberations the Council noted that the Archeological Resources Protection Act of 1979 (ARPA) may be interpreted to

conflict with application of the Council's policy statement to human remains found on public lands. ARPA requires that archeological resources exhumed from public lands (including human remains and grave goods) be maintained in curatorial institutions for long-term scientific study, effectively prohibiting the reburial of human remains and grave goods unless their archeological research value has been exhausted. Accordingly, the Council directed me to draft an amendment to ARPA giving Federal land managers the flexibility to allow reburial to occur when cultural and religious interests in human remains or grave goods outweigh their scientific research value. I was directed to consult with the Department of the Interior, the Department of Agriculture, the Smithsonian Institution, American Indian, archeological, museum and other groups, and other interested parties in preparing this amendment, and to submit it to the Council at a subsequent meeting for possible recommendation to the President and Congress. I have directed the staff to begin preparation of this draft amendment; if you would like to review and comment on it, or to provide us with recommendations regarding its form and content, you are invited to do so. For further information regarding the policy statement and the draft ARPA amendment, please contact Dr. Thomas F. King at (202) 786-0505.



Robert D. Bush

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

POLICY STATEMENT REGARDING TREATMENT OF HUMAN REMAINS AND GRAVE GOODS

Adopted by the Advisory Council on Historic Preservation

September 27, 1988

Gallup, New Mexico

When human remains or grave goods are likely to be exhumed in connection with an undertaking subject to review under Section 106 of the National Historic Preservation Act, the consulting parties under the Council's regulations should agree upon arrangements for their disposition that, to the extent allowed by law, adhere to the following principles:

- o Human remains and grave goods should not be disinterred unless required in advance of some kind of disturbance, such as construction;
- o Disinterment when necessary should be done carefully, respectfully, and completely, in accordance with proper archeological methods;
- o In general, human remains and grave goods should be reburied, in consultation with the descendants of the dead.
- o Prior to reburial, scientific studies should be performed as necessary to address justified research topics;
- o Scientific studies and reburial should occur according to a definite, agreed-upon schedule; and
- o Where scientific study is offensive to the descendants of the dead, and the need for such study does not outweigh the need to respect the concerns of such descendants, reburial should occur without prior study. Conversely, where the scientific research value of human remains or grave goods outweighs any objections that descendants may have to their study,, they should not be reburied, but should be retained in perpetuity for study.

DRAFT

October 5, 1988

Advisory Council on Historic Preservation

PROPOSED AMENDMENT TO THE ARCHEOLOGICAL RESOURCES PROTECTION ACT OF 1979 (ARPA), P.L. 96-95, 16 U.S.C. § 470aa

Public Law 96-95 is amended by revising Section 4(b) to read as follows:

"A permit may be issued pursuant to an application under subsection (a) of this section if the Federal land manager determines, pursuant to uniform regulations under this chapter, that--

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, provided, that human remains and other contents of graves may be reburied, or transferred to Indian tribes and other groups for reburial."

DISCUSSION

Purpose

The purpose of this amendment is to provide Federal land managers with the clear discretion to permit, direct, or otherwise provide for human remains and grave goods to be reburied in accordance with the wishes of Indian tribes and other groups that are related to the deceased by descent, history, or cultural association. Without the amendment, ARPA can be and has been interpreted to prohibit such reburial where the remains in question possess any archeological or other scientific research value, without consideration for the wishes of the deceased or for the cultural or religious importance of the remains to those who believe themselves to be descended from, and often responsible for the well being of, the dead.

Intent

It is the intent of this amendment to ensure that in decisionmaking about the issuance of permits under ARPA, and in other decisionmaking regarding treatment of human remains on public lands, Federal land managers have sufficient flexibility to provide either for reburial or for permanent curation of human remains and grave goods. It is not the intent of the amendment to require that reburial take place in every instance, but to ensure for land managers the unambiguous discretion to provide for reburial where it is justified. It is expected that Federal land managers will provide for reburial where the cultural or religious importance of human remains or grave goods outweigh their scientific research value, and to provide for permanent curation where the scientific research value of such remains outweigh

their cultural or religious importance. Federal land managers are encouraged to follow the Council's general policy regarding treatment of human remains, which provides that:

- Human remains and grave goods should not be disinterred unless required in advance of some kind of disturbance, such as construction;
- Disinterment when necessary should be done carefully, respectfully, and completely, in accordance with proper archeological methods;
- In general, human remains and grave goods should be reburied, in consultation with the descendants of the dead;
- Prior to reburial, scientific studies should be performed as necessary to address justified research topics;
- Scientific studies and reburial should occur according to a definite, agreed-upon schedule; and
- Where scientific study is offensive to the descendants of the dead, and the need for such study does not outweigh the need to respect the concerns of such descendants, reburial should occur without prior study. Conversely, where the scientific research value of such remains or grave goods outweighs any such objections that descendants may have to their study, they should not be reburied but should be retained in perpetuity for study.

Explanation of Terms

"Human remains" means the remains of deceased human beings, including but not limited to bone, teeth, mummified flesh, burials, and cremations.

"Grave" means the pit, tomb, or other facility in which human remains have been interred.

"Grave goods" means artifacts or other material remains included in a grave.

"Group" means any community, ethnic group, or organization that may be related culturally or by descent to the deceased persons represented by human remains, for example, a Native Hawaiian group that may be descended from individuals interred during Hawaiian prehistory, a Chinese-American community that may be related to individuals interred in an early historic mining town, or an organization representing the urban neighborhood in which a historic cemetery is found.

"Scientific research value" means the value of human remains or grave goods to the study of specific research topics of importance to such scientific disciplines as archeology, physical anthropology, human biology, or medicine.

Relation to Regulations

It is expected that the uniform regulations implementing ARPA, which appear at 43 CFR Part 7, 36 CFR Part 296, 18 CFR Part 1312, and 32 CFR Part 229, together with other related regulations and guidelines, will be amended to reflect the intent of this amendment.

ance with the agreement until it expires or is terminated.

(f) *Notice.* The Council shall publish notice of an approved Programmatic Agreement in the FEDERAL REGISTER and make copies readily available to the public.

(g) *Failure to carry out a Programmatic Agreement.* If the terms of a Programmatic Agreement are not carried out or if such an agreement is terminated, the Agency Official shall comply with §§ 800.4 through 800.6 with regard to individual undertakings covered by the agreement.

§ 800.14 Coordination with other authorities.

To the extent feasible, Agency Officials, State Historic Preservation Officers, and the Council should encourage coordination of implementation of these regulations with the steps taken to satisfy other historic preservation and environmental authorities by:

(a) Integrating compliance with these regulations with the processes of environmental review carried out pursuant to the National Environmental Policy Act, and coordinating any studies needed to comply with these regulations with studies of related natural and social aspects;

(b) Designing determinations and agreements to satisfy the terms not only of section 106 and these regulations, but also of the requirements of such other historic preservation authorities as the Archeological and Historic Preservation Act, the Archeological Resources Protection Act, section 110 of the National Historic Preservation Act, and section 4(f) of the Department of Transportation Act, as applicable, so that a single document can be used for the purposes of all such authorities;

(c) Designing and executing studies, surveys, and other information-gathering activities for planning and undertaking so that the resulting information and data is adequate to meet the requirements of all applicable Federal historic preservation authorities; and

(d) Using established agency public involvement processes to elicit the views of the concerned public with regard to an undertaking and its effects on historic properties.

§ 800.15 Counterpart regulations.

In consultation with the Council, agencies may develop counterpart regulations to carry out the section 106 process. When concurred in by the Council, such counterpart regulations shall stand in place of these regulations for the purposes of the agency's compliance with section 106.

PART 801—HISTORIC PRESERVATION REQUIREMENTS OF THE URBAN DEVELOPMENT ACTION GRANT PROGRAM

Sec.

- 801.1 Purpose and authorities.
- 801.2 Definitions.
- 801.3 Applicant responsibilities.
- 801.4 Council comments.
- 801.5 State historic preservation officer responsibilities.
- 801.6 Coordination with requirements under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).
- 801.7 Information requirements.
- 801.8 Public participation.

APPENDIX 1—IDENTIFICATION OF PROPERTIES:

GENERAL

APPENDIX 2—SPECIAL PROCEDURES FOR IDENTIFICATION AND CONSIDERATION OF ARCHEOLOGICAL PROPERTIES IN AN URBAN CONTEXT

Authority: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470); Pub. L. 94-422, 90 Stat. 1320 (16 U.S.C. 470(i)); Pub. L. 96-399, 94 Stat. 1619 (42 U.S.C. 5320).

Source: 46 FR 42428, Aug. 20, 1981, unless otherwise noted.

§ 801.1 Purpose and authorities.

(a) These regulations are required by section 110(c) of the Housing and Community Development Act of 1980 (HCDA) (42 U.S.C. 5320) and apply only to projects proposed to be funded by the Department of Housing and Urban Development (HUD) under the Urban Development Action Grant (UDAG) Program authorized by Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301). These regulations establish an expedited process for obtaining the comments of the Council specifically for the UDAG program and, except as specifically provided, substitute for the Council's regulations for

the "Protection of Historic and Cultural Properties" (36 CFR Part 800).

(b) Section 110(c) of the HCDA of 1980 requires UDAG applicants to: (1) Identify all properties, if any, which are included in the National Register of Historic Places and which will be affected by the project for which the application is made; (2) identify all other properties, if any, which will be affected by such project and which, as determined by the applicant, may meet the Criteria established by the Secretary of the Interior for inclusion in the National Register (36 CFR 60.6); and (3) provide a description of the effect, as determined by the applicant, of the project on properties identified pursuant to (1) and (2). If the applicant determines that such properties are affected, the Act requires that the information developed by the applicant must be forwarded to the appropriate State Historic Preservation Officer (SHPO) for review and to the Secretary of the Interior for a determination as to whether the affected properties are eligible for inclusion in the National Register.

(c) Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), requires the head of any Federal agency with jurisdiction over a Federal, federally assisted or federally licensed undertaking that affects a property included in or eligible for inclusion in the National Register of Historic Places to take into account the effect of the undertaking on such property and afford the Council a reasonable opportunity to comment. Under the UDAG program, applicants assume the status of a Federal agency for purposes of complying with section 106.

§ 801.2 Definitions.

The terms defined in 36 CFR 800.2 shall be used in conjunction with this regulation. Furthermore, as used in these regulations:

(a) "Urban Development Action Grant (UDAG) Program" means the program of the Department of Housing and Urban Development (HUD) authorized by Title I of the Housing and Community Development Act (HCDA) of 1977 (42 U.S.C. 5318) to assist revitalization efforts in dis-

tressed cities and urban counties which require increased public and private investment.

(b) "Applicant" means cities and urban counties or Pocket of Poverty Communities which meet the criteria at 24 CFR 570.453. Except as specifically provided below, applicants, rather than the Secretary of HUD, must comply with these regulations.

(c) "Project" means a commercial, industrial, and/or neighborhood project supported by the UDAG program of the Department of HUD, as defined in 24 CFR 570.451(g). A project includes the group of integrally related public and private activities described in the grant application which are to be carried out to meet the objectives of the action grant program and consists of all action grant funded activities together with all non-action grant funded activities. A project is an "undertaking" as defined in 36 CFR 800.2(c).

(d) "State Historic Preservation Officer Review Period" is a 45 day period provided to the appropriate State Historic Preservation Officer by section 110(c) of the Housing and Community Development Act (HCDA) of 1980 for comment on the formal submission by the applicant of data on properties listed in the National Register or which may meet the Criteria and which will be affected by the proposed UDAG project. This period does not include any period during which the applicant seeks information from the State Historic Preservation Officer to assist the applicant in identifying properties, determining whether a property meets the Criteria for listing in the National Register of Historic Places and determining whether such property is affected by the project.

(e) "Secretary of the Interior Determination Period" is a 45 day period provided by section 110(c) of the HCDA of 1980 for a determination as to whether the identified properties are eligible for inclusion in the National Register.

§ 801.3 Applicant responsibilities.

As early as possible before the applicant makes a final decision concerning a project and in any event prior to

AMENDMENTS TO SENATE BILL NO. 434

Proposed by the Department of Highways

Page 8

Following: line 25

Insert: "NEW SECTION. Section 9. [This act] does not apply to activities on projects which have complied with the requirements of section 106 of the National Historic Preservation Act and 36 CFR, part 800, as amended."

VISITORS' REGISTER

Sudbury COMMITTEE

BILL NO. 414

DATE 16 Feb, 1989

SPONSOR Bushy

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John Morse	4000 Carrigan Lane Dillon, Mt		X
Al Litterer	4704 Burlington Mont Assoc Billings & Realtors		X
Murty Heller	608 Dearborn Helena, MT. MARY		X
Loreal Masher	Mt. Stockgrower Cattle Ranch		X
Elsie Oiet	Livingston, MT		X
Tam Hopgood	Mont Assoc Realtors		✓

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. 393

DATE 2/16

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John Connor	Mt. County Atty Assn		✓
John Maynard	Tort Claims Div.		✓
Tom Williams	Helena	✓	
Gordon MacCis	MALC		✓
Mike Sherwood	MTLA	✓	
C. Roy H. Schram	Board of Regents		✓
STAN KALECZYC	HELENA		✓
			✓

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. 394

DATE 2/16

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John Connor	Mt. County Atty Assn		✓
Chris Tweeten	Helena - Attorney General's Office		X
John Maynard	Tort Claims Div.		✓
Tom Wilk	Helena	✓	
Joe Charles	Helena		X
Anne MacIntyre	Helena - Human Rights Council		X
Goran Mnis	MACo.		✓
Mike Sherwood	MTLA	✓	
John F. Shrum	Bd of Regents		✓
STAN KALEWIC	HELENA		✓

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VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. 434

DATE 16 Feb., 1989

SPONSOR Asbit Gay

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
GERMAINE Du MONTIER	Box 418 ST. IGNATIUS, MT	X	
STEVEN C. BRADY SR.	BOX 542 LAME DEER, MT 59043	✓	
Charles Brady	Box 155 LAME DEER, MT 59043	✓	
WILLIAM TALLBULL	BOX 101 BUSBY MT 5901	✓	
Mitzi Rossillon	714 Breckenridge, Helena		✓
Berte Galda	Dept of Highways		
Eddie Vinson	Dept of Highways		
Virginia Sellstrom	Wholesaler Coffman	✓	
Marcella Shervy	Montana Historical Society	✓	
David Schwab	" "	✓	N/A

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.