

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 22, 1991,
at 8:10 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chair (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Legislative Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON HB #198 REDUCE TIME FOR FILING POSTCONVICTION RELIEF PETITION

Presentation and Opening Statement by Sponsor:

REP. RICE, HOUSE DISTRICT 43, stated this particular issue which is being addressed in a big bill in the Senate which is the general revisions to the full general procedure section votes, addresses the same issues this bill does and I suggest to the committee to Table HB #198 and discuss it when the big bill comes out of the Senate.

EXECUTIVE ACTION ON HB #198

Discussion: REP. BROWN stated he felt the committee should take REP. RICE'S advice and table this bill until the big bill comes out of the Senate.

Motion/Vote: REP. BROWN MOVED HB 198 BE TABLED. Motion carried.

HEARING ON HJR #9JOINT RES. URGING CONGRESS TO PASS LEG. REVERSING DURO DECISIONPresentation and Opening Statement by Sponsor:

REP. RUSSELL, HOUSE DISTRICT 99, stated this is a resolution that covers those things we may want to convey to another board and expresses our opinion on a request to the legislature. This resolution deals with a case called DURO. The U.S. Supreme Court in May of 1990 in DURO stated that Indian Tribal Government and their courts do not have criminal misdemeanor jurisdiction over non-member Indians who commit acts upon the reservation or members of the tribe. Because of the state generally does not have jurisdiction over crimes committed by Indians in what we refer to as indian country, this decision of the Supreme Court, DURO, has created a serious jurisdiction problem. These potential for serious lawlessness was created. Many non-tribal Indians who had violated tribal laws were not prosecuted. This amendment language was applied for only one year. That year terminates on 9/30/91. Tribes are posing to the U.S. Congress to make the amendment permanent. This HJR #9 requests Montana's Congressional Delegation support this legislation confirming that tribal government in the United States has authority to maintain jurisdiction over non-member Indians. If the Congress does not make the amendment permanent, the state will be forced to take over these areas of law enforcement and will be a great expense to the state. Tribes in this country have always exercised jurisdiction over any intent regarding tribal laws.

Proponents' Testimony:

Daniel Decker, Tribal Attorney for the Kootenai Tribe, we would like to register our support for this HJR. Many people do not realize there are Federal areas of law that limit the ability of State authorities dealing with misdemeanors. We have been assuming this void for the state government. The Federal Government has passed legislation that fills this void. He submitted a resolution from the Blackfeet Nation and a background sheet. EXHIBIT 1 & 2

Kathleen Fleurry, Coordinator for Indian Affairs, stated she supports HJR #9. Having spent 7 years with the Bureau of Indian Affairs, I was involved in assisting Tribal Governments to revise

their laws and codes to include all indian people who reside on the reservation and civil and criminal jurisdiction. It is my belief that with out having criminal jurisdiction over non-member Indians an administrative nightmare is created.

Opponents' Testimony: none

Questions From Committee Members:

REP. BOHARSKI asked Ms. Fleurry what has been the practice of the tribes concerning crimes with the three groups of people involved? Ms. Flurry said tribes do not have criminal jurisdiction over non-tribal members. Until "Duro" tribes have jurisdiction over any indian person who commits a crime on the reservation against any person.

Closing by Sponsor:

REP. RUSSELL stated this is a resolution that would be helping our congressional delegation that would further the situation for help in giving misdemeanor delegation to the tribal government.

HEARING ON HB #131
HUMAN SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE BROOKE, HOUSE DISTRICT 56, stated this bill addresses what our State policy will be with regard to skeletal remains and unmarked burial sites. We are dealing with those skeletal remains, not necessarily property. These pieces of discovery are from centuries ago we are trying to converge those items with the Montana Codes Annotated. Currently, Montana has no statutes that provide any procedures on how unmarked burial sites are regulated. State law regulates cemeteries but not unmarked burial sites. As a result, there is no consistency on how county coroners treat remains and burial material. This bill is intended to provide consistent procedure for what is now occurring. It is not intended to change or supersede any other powers of the county coroners or the state medical examiner.

Because of religious and cultural beliefs stemming from a fundamental belief in respect of the dead, most Native Americans desire that their ancestors' remains be put back into the earth. Once the coroner determines the remains are not involved with any criminal investigations all remains are returned to the State Board.

In this bill, we have a provision for an open meeting law exemption. The purpose of the bill is to protect burial sites once discovered. The only time the board would be involved would

be to discuss the site and possible discovery location. Also in a discovery the whole board does not have to meet. It can be 2 or 3 members from a 9 or 11 member board. They do not meet on a regular basis. We are asking for \$5000 appropriations to be drawn from the cultural and aesthetics project account. The section that enables this fund is vague and does not list any criteria other than that grants are for the purpose of cultural and aesthetics projects. It was thought if this bill deals with the protection of burial sites, it would be considered cultural. This is an area that it certainly up for debate. I urge your careful consideration of this bill.

Proponents' Testimony:

Gloria Hermanson, representing the Montana Cultural Advocacy, gave written testimony in favor of HB #131. EXHIBIT 3

Lawrence Sommer, Director, Montana Historical Society, gave written testimony in favor of HB #131. EXHIBIT 4

Karen Atkinson, Tribal Attorney, Salish & Kootenai Tribes, stated they have two amendments for HB #131. These have been agreed upon by all tribes. In the past, tribes have been cheated out of precedence. Human remains have been studied, used for data, and stored in the name of science. Recently 31 states have passed legislation to protect unmarked graves. Today the Indian Tribes of Montana are asking you to extend these protections that already exist to unmarked burials.

Patrick Chief Stick, Sr., Tribal Legal Department, gave written testimony in favor of HJR 9. EXHIBIT 5

Paul Johnson, Assistant Attorney General State Medical Examiner, stated he is here as a proponent of the bill with the provision of the amendments that have been admitted by the State Medical Examiner. Our concerns have to deal with protecting the integrity of the investigation process particularly in cases where there is evidence of a crime being involved. The amendments, adequately this concern.

Francis Auld, Confederated Salish and Kootenai Tribes, gave written testimony in favor of HB #131. EXHIBIT 6

Carl Fourstar, Cultural Liaison, gave written testimony in favor of HB #131. EXHIBIT 7

Jermaine Montier, stated Indian people have been here thousands and thousands of years. We are only asking for you to provide the sanctity and dignity of our ancestors' graves. We hold these graves in the same regard as you do your grandparents' graves.

Nadia Lefthand, Confederated Salish and Kootenai Tribes, gave written testimony in favor of HB #131. EXHIBIT 8

Dave Schwabb, State Archeologist, stated there are many states that have enacted similar legislation to protect unmarked graves. The vast majority of unmarked and unregistered graves in Montana that are encountered are historic people. The concept of confidentiality is an issue. Under Federal Law information concerning location of cultural resources are exempt from public disclosure. That is a good law and we do have this as a guideline. This is to insure protection of preservation of these sources. I believe it would be a travesty of justice for Montana not to have some form of burial protection legislation in place during 1991 which marks the 500th anniversary of Christopher Columbus discovering America.

T. Weber Greiser, President, Montana Archaeological Association, gave written testimony in favor of HB #131. EXHIBIT 9

Edrie Vinson, Supervisor Environmental Section - Department of Highways, gave written testimony in favor of HB #131. EXHIBIT 10

Little Weasel, Medicine Man for Kootenai Tribe, began his introduction in his native language. He then stated the people he represents are asking support of this bill to afford them the dignity and respect that any human remains should receive. The respect and dignity of our people has been handed down to my people for many years. We are taught the respect for our dead ancestors. We have worked together with the other tribes in Montana, the archaeologists, and the coroner's office, to come up with legislation that we agree with.

Dave Nelson, stated his support of this bill hopes the committee would consider the issue of permanent funding.

Kathleen Fleurry, stated she urged the passing of the bill. All tribes in Montana do expect passage of this bill.

Lance Foster, student, stated he was in favor of the passage of this bill. The tribes deserve the respect of preserving their ancestors' graves.

Bill Tall Bull, stated he is in support of this bill. I have reburied many of my ancestors. Anytime I am called on to do this, I was ready to do my best. I think this bill makes people aware we have obligations to protect the graves.

Opponents' Testimony: none

Questions From Committee Members:

REP. MEASURE asked Paul Johnson what are the penalties for disturbing by an individual, accidentally or on purpose? **Mr. Johnson** stated no penalty for an accidental disturbance now. If there is an intentional disturbance without the involvement of the coroner, it is a 6 month, \$500 misdemeanor.

REP. MESSMORE asked REP. BROOKE if she believes the \$5000 funding is adequate for board meetings and does this board require a staff member? REP. BROOKE said the bill proposes we are to be put on the list on Cultural and Aesthetic Grant Proposals. I don't think it would need to have a fiscal note. I have not been told that there would be a staff member required for the board. The board covers their own expenses. REP. MESSMORE asked what department would this board respond to? REP. BROOKE said the board would be under the Department of Commerce.

REP. JOHNSON asked Ms. Atkinson during the time of the construction of the bill, was the funding consideration taken under advisement? If there is no funding, even the passage of the bill doesn't get done what you want it to. Ms. Atkinson stated they were looking for funds for the initial start-up. We don't envision the board will meet regularly. We also have a provision in the bill that allows for the board to seek funds or accept gifts. REP. JOHNSON stated there are a number of places in the bill that require funding. If the committee decided to take it out of the funding sources and put it here, would you be in agreement with that. Ms. Atkinson said she would have to speak with the other tribes.

REP. RICE asked REP. BROOKE if other states setting up their statutes stating it is a felony to let out information of where a burial site is located? David Schwab said yes other states charge these people with a felony. There is a group of people who do this constantly and that is why the offense goes in terms of the violation of the crime.

Closing by Sponsor:

REP. BROOKE stated she was honored to be the sponsor of this bill. She would urge you to take a close look at this bill. Rep. Brooke said she would be able to clarify the amendments when the bill is considered in Executive Session.

HEARING ON HB #173
REVISE PROCEDURES OF JUDICIAL STANDARDS COMMISSION

Presentation and Opening Statement by Sponsor:

REP. PAVLOVICH, HOUSE DISTRICT 70, stated; "This is basically a clean up bill and I will let Judge Sullivan give you the specifics as to what the bill says."

Proponents' Testimony:

Judge Sullivan, Butte, stated he had been elected by the other judges to come today and explain this bill we are supporting.

This bill deals with the commission having complaints against judges. We hope this will resolve some of these conflicts and clean up the chapter on Judicial Standards so in the future our committee won't have these same problems.

There are four statutes in our dilemma in Title 3. Confidential proceedings - rules for commission, states that all papers filed with proceedings before the commission are confidential. The filing of papers with testimony given before the commission is privileged communication. Any hearing conducted before the Supreme Court relative to a recommendation by the commission together with all papers pertaining to such recommendation shall be accessible to the public. The bill does not deny that.

Another statute involves publication. This entitles Judges a waiver of confidentiality. The commission must allow public access to all papers filed for testimony and hearing before the commission in a given case, if the Judge against the complaint has been filed, waives his right for confidentiality and asks for the proceedings be heard in public. There is confidentiality before the commission at the commission level unless the Judge wishes to waive. In the case we had at the commission hearing, we asked the Judge if he wanted to waive. He said he didn't want to waive and the commission gave him his right of privacy and excluded the public from this hearing. Here is the statute that I suggest is in conflict and should be repealed. This is a personal view.

If the commission finds good cause for a hearing, the commission must allow public access to all papers pertaining to the findings of good cause of charges against the Judge. If the Judge wanted to keep the hearing private until the outcome of the trial as one statute provides, this statute says we must make all the papers pertaining to the trial public knowledge.

Our next concern is in regards to 1106, investigation of Judicial Offices. Once we decide that there should be an investigation, either an extension, or removal, or retirement and make that declaration known to the Supreme Court, that is when suspension immediately takes effect. We didn't ask for suspension in our hearing. "I feel this is fair and it is unfair if the complaints are unfounded and the judge has been suspended."

Opponents' Testimony:

Steve Brown, stated the statutes you have before you have not been amended before this legislation. Up until 1980 there was no information about the Judicial Standards System. This led people to believe the Judges were acting in their own best interest. I do not believe there are any conflicts and the process works well. The statutes that were enacted, clearly protects the confidentiality of the judges who are wronged or accused. There is no requirement in these statutes, that the name or complaints about any judge who is wrongly accused

disposed to the public. It is the opposite. These statutes only require public disclosure after the commission has conducted their full investigation and then recommend disciplinary action to the Supreme Court. Only at that time, are proceedings open to the public. The waiver provision is to enable any individual to get a fair trial if they feel they are not getting a fair trial. The commission does have to give notice of their meetings.

I would urge you to strike section 5 from the bill. There is no need to repeal section 5 of the bill. The public has a right to be a these proceedings and if the Judge that has the complaint filed against him, want to waive his right he is entitled to do so in the Constitution.

Charles Walk, Executive Director, Montana Newspaper Association, gave written testimony opposing HB #173. EXHIBIT 11

Ray Foot, Editor, Montana Standard Newspaper, stated he strongly opposes this bill, particularly section 5. This would strip the public of the right to know about Judicial System hearings. I urge you to take a very close look at the pension provisions to assure that a class of employee is not created.

Mike Fuller, stated they strongly object to section 5.

C.B. Pearson, Executive Director of Common Cause, stated we oppose taking out section 5 of this bill and urge that you amend it. We think public disclosure is healthy. In addition, it has some safeguards for an individual to feel like they are being railroaded through.

Questions From Committee Members:

REP. MEASURE asked **Mr. Steve Brown** what his recommendation is as far as the bill. Do you approve of the rest of the bill, excluding section 5? **Mr. Brown** said he has no major objections with the rest of the bill.

REP. WHALEN asked **Judge Sullivan** what happens when the Commission initially receives a complaint and how is it decided to have a hearing? **Judge Sullivan** said when they are investigating a complaint, it is completely confidential. We, normally, would hire an investigator to check if the allegations made are valid. After he reports back, we then have a hearing to decide if we should pursue the matter further. This is where 1121-22 come in conflict.

REP. WHALEN clarified with **Judge Sullivan** that the procedure is to start with filing of the complaint, then the investigation by the committee, if warranted. After the investigation by the commission, there is a hearing to see if the allegations against the judge in question, are valid. Is everything confidential up to this point? **Judge Sullivan** said yes. **REP. WHALEN** asked if 1122 provides the Judicial Officer under investigation, to have

the investigatory part of the commissions actions, open to the public? Judge Sullivan said it would seem to be that way.

REP. TOOLE stated that this seems to be a matter of timing problems. Would it be agreeable to you if 1122 was amended to make it clear the waiver applies during a portion of the proceedings prior to the findings? Judge Sullivan said that would be fine.

Closing by Sponsor:

REP. PAVLOVICH stated he would ask the committee to look closely at the bill and consider the conflict of the statutes Judge Sullivan mentioned.

EXECUTIVE ACTION ON HB #159

Motion: REP. TOOLE MOVED HB 159 DO PASS.

Motion: REP. TOOLE moved to amend HB 159. EXHIBIT 12

Discussion:

REP. TOOLE stated the amendment define how the measure of damages would be determined.

Vote: Motion carried.

Motion: REP. RICE moved to amend HB 159.

REP. RICE stated the bill does not restrict the number of unsuccessful bidders that could bring suit against the person who got the contract. It should be restricted to the person who is really cheated out of a job, which would be the second place bidder. My amendment would be to change the language of line 13 to read "a person who submits the next lowest competitive bid".

Discussion:

REP. BROOKE asked REP. RICE what if the second lowest bidder does not have worker's comp? REP. RICE said he thought it was triggered by him not paying the worker's comp. So, I don't think that would become an issue.

REP. WHALEN asked REP. RICE if he thinks putting the term submits the next lowest "valid" bid would clarify that question? REP. RICE said yes, he would make that part of the amendment and his motion.

Vote: Motion carried.

Discussion:

REP. RICE asked if John MacMaster could work up some language regarding the issue in the situation where bids are private and confidential. We could add at the end of the paragraph on line 19 "if the bids are sealed or for any other reason kept confidential the person solicited the bids, must, on request, by a bidder who indicates an intent to sue another person, inform him of the identity of the next lowest bidder. A person so informed must keep the identities confidential if not sued".

Motion/Vote: REP. TOOLE moved to amend HB 159 with the amendment described by REP. RICE. Motion carried.

Motion: REP. DARKO moved to amend HB 159 with the amendments submitted by Gene Fenderson. EXHIBIT 13

Discussion:

REP. WHALEN stated that currently the Labor Committee is working on a bill having to do with whether or not the entire prevailing wage booklet has to be attached to public works contracts and the language of that bill might help out this bill.

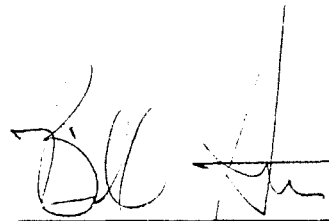
REP. KELLER stated he opposed this amendment.

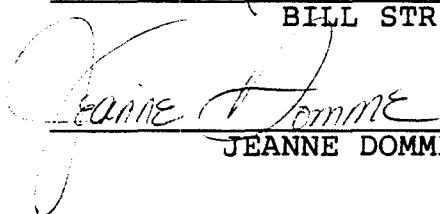
Vote: Motion carried 14 to 6 with Rep's: Johnson, Gould, Keller, Nelson, Clark, and Lee voting no.

Motion/Vote: REP. DARKO MOVED HB 159 DO PASS AS AMENDED. Motion carried.

ADJOURNMENT

Adjournment: 11:07 a.m.


BILL STRIZICH, Chair


JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE

Jan. 22, 1991

NAME

PRESENT

ABSENT

EXCUSED

REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/	<i>xxx</i>	
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/	<i>xx</i>	
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

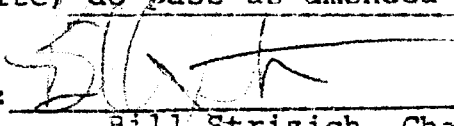
10:05
1-23-91
103

HOUSE STANDING COMMITTEE REPORT

January 23, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 159 (first reading copy -- white) do pass as amended.

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Page 1, line 7.

Following: "PAY"

Insert: "STANDARD PREVAILING WAGES OR"

2. Page 1, line 12.

Following: "pay"

Insert: "standard prevailing wages or"

3. Page 1, line 13.

Strike: "loses a"

Insert: "submitted the next lowest valid"

4. Page 1, line 16.

Following: "not"

Insert: "pay standard prevailing wages, as required by Title 18, chapter 2, part 4, does not"

5. Page 1, line 19.

Following: "39-71-401."

Insert: "If the bids are sealed or for any other reason kept confidential, the person who solicited the bids shall, on request by a bidder who indicates an intent to sue under this section, inform the bidder of the identity of the next lowest valid bidder after the successful bidder. A bidder so informed shall keep the identity of the next lowest valid bidder confidential if he does not sue. The measure of damages is the same as in a contract action by an unsuccessful bidder against a person who wrongfully awards a contract to another bidder."

BLACKFEET NATION

P.O. BOX 850

BROWNING, MONTANA 59417

(406) 338-7179

EXHIBIT 1
DATE 1-22-91
HB HB 9
BLACKFEET TRIBAL BUSINESS COUNCIL

EXECUTIVE COMMITTEE

EARL OLD PERSON, CHAIRMAN
ARCHIE ST. GODDARD, VICE-CHAIRMAN
AL POTTS, SECRETARY
ELAINE GUARDIPEE, TREASURER

EARL OLD PERSON
ARCHIE ST. GODDARD
AL POTTS
BOB GERVAIS
DAN BOGGS
CHARLES CONNELLY
GEORGE KICKING WOMAN
TED WILLIAMSON
JESS BLACKWEASEL

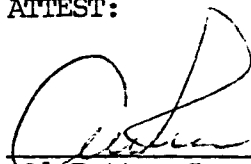
R E S O L U T I O N

NUMBER: 85-91

- WHEREAS, The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation, and
- WHEREAS, The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests, education and resources of people the Blackfeet Indian Reservation, and
- WHEREAS, The sanctity of Native American human skeletal remains have long been disrespected by the dominate, non-Indian society, as evidenced by the untold thousands of Native American burial sites that have been subject to pilferage and destruction, and
- WHEREAS, Respect for the deceased is a basic human right that is fundamental to all cultures, societies and religions, and
- WHEREAS, The Blackfeet Tribe is deeply concerned about the mistreatment of burial sites of Blackfeet Tribal members and has experienced problems in the past concerning protection of burial sites and repatriation of skeletal remains of Tribal members, and
- WHEREAS, The Blackfeet Tribal Business Council has expressed full support of U.S. Congressional proposed legislation (H.R. 3237/S.1980) "Native American Grave Protection and Repatriation Act", and
- WHEREAS, The Blackfeet Tribal Business has further discussed and reviewed proposed legislation of the State of Montana known as the "Human Skeletal Remains and Burial Protection Act", now
- THEREFORE BE IT RESOLVED, That the Blackfeet Tribal Business Council hereby expresses full support of the adoption and enactment into law of Montana State legislation known as the "Human Skeletal Remains and Burial Protection Act.

ATTEST:

THE BLACKFEET TRIBE OF THE BLACKFEET
INDIAN RESERVATION



Al Potts, Secretary
Blackfeet Tribal Business Council



Earl Old Person, Chairman
Blackfeet Tribal Business Council

Ex. 1

1-22-91


HJR 9

Page 2

Blackfeet Resolution # 85-91

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council during a duly called, noticed and convened Special Session held the 17th day of January, 1991, with Six (6) members present to constitute a quorum and by a vote of Six (6) members For and No (0) members Opposed.



Al Potts, Secretary
Blackfeet Tribal Business Council

HB #9

Western Governors' Association
Resolution 90-014

July 17, 1990
Fargo, North Dakota

SPONSOR: Governor Carruthers
SUBJECT: Response to Duro v. Reina

EXHIBIT 2
DATE 1-22-91
HB HB 9

A. BACKGROUND

1. In May of 1990, the U.S. Supreme Court issued a decision in Duro v. Reina that Indian tribes do not have criminal jurisdiction over non-member Indians.
2. It appears that the decision creates a jurisdictional gap for certain classes of crime where neither federal nor tribal courts have jurisdiction. States may be the only enforcement and court system which could fill the gap.
3. The feasibility of states expanding their criminal jurisdiction is unclear, from both a tribal and state perspective.
4. Tribes are concerned that the problem of crimes committed by non-member Indians on reservation be addressed.

B. GOVERNORS' POLICY STATEMENT

1. Better understanding is needed to determine the size and nature of the problem as well as the options for resolving it.
2. Until final resolution is achieved, the jurisdictional gap must be closed. Congress has authority to do that.
3. Accordingly, we urge Congress to:
 - a. Hold hearings in the West to illuminate the extent and nature of the problem; and
 - b. Pass legislation promptly to allow tribes temporary jurisdiction to enforce criminal laws and prosecute all Indian violators, both member and non-member Indians on their reservation.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. Convey this resolution to the Secretary of the Interior, the Senate Select Committee on Indian Affairs, the House Interior Committee, the western congressional delegation, the western attorneys-general, the National Congress of American Indians and the Native American Rights Fund.

Adopted unanimously.

90rasos\duro.res

EXHIBIT 3
DATE 1-22-91
HB 131

TESTIMONY ON HB 131
Human Skeletal Remains and Burial Site Protection Act
Sponsored by Vivian Brooke

House Judiciary Committee
January 22, 1991
8:00 AM - Rm. 312-2

Mr. Chairman, Members of the Committee:

I am Gloria Hermanson. I reside in Helena. I represent the Montana Cultural Advocacy, a broad cross-section of Montanans committed to the development of our state's cultural resources.

I stand as a proponent to HB 131 with the exception of its proposed funding. Cultural and Aesthetics grant monies are awarded to cultural and aesthetics "projects" that go through a process of review, recommendation, and approval that involves a statewide committee review of every proposal with recommendations to the Legislature for funding. The Long-Range Planning Committee then reviews recommended projects for final funding proposal to Appropriations. Evaluation criteria include quality of project, cultural impact of project, cost factors, geographical diversity, cultural diversity, project diversity, and cost diversity. For this coming biennium, projected available dollars for both projects and administration are \$1,397,437. Proposal funding requests totalled \$3,638,854. There is no extra money in C & A.

We agree with the basic intent of this bill, but it should be funded from the State's general fund, not through cultural and aesthetics.

An amendment to that effect has been drawn up and will be presented to you later in the hearing.



EXHIBIT 4
DATE 1-22-91
HB 131

MONTANA HISTORICAL SOCIETY

225 NORTH ROBERTS STREET • (406) 444-2694 • HELENA, MONTANA 59620-9990

January 21, 1991

Representative Vivian Brooke
Montana House of Representatives
Capitol

Dear Representative Brooke:

The Montana Historical Society is pleased to support HB 131. This bill addresses two very critical needs: it establishes penalties for vandalism of burial sites not in cemeteries, and it establishes a procedure for determining how to treat burials outside cemeteries that are inadvertently disturbed.

Such bills have been on the dockets of legislatures nationwide. The need is well established: for far too long we have treated scattered burials at best haphazardly and often very callously.

The Montana Historical Society supports this bill for a number of reasons:

--It is simple and understandable. We have seen examples of burial bills that do not solve the problems because the time periods and number of groups involved are so great that the end result is confusion, not resolution.

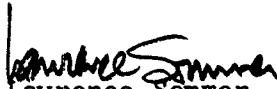
--It leaves the right people involved at the right time. Coroners continue to play the critical role they now play--determining whether a burial is recent or potentially related to a crime. If a coroner so determines that, his call prevails and no other procedures are set in motion. If a burial has antiquity, disposition of it falls under the direction of a simple, straightforwardly comprised Board. This bill offers methods to resolve decisions about burials quickly. Since most of our random burials are Native American in origin, Board composition reflects that. But Board procedures offer a clear avenue for interaction among archaeologists and people representing different historical backgrounds. It creates no new power roles or bureaucracies.

--House Bill 131 has evolved from 2 years of concentrated consultation among tribes, archaeologists, coroners, and agency personnel. We have been impressed with the consensus building that has occurred over the last two years.

DATE 1-22-91
HB 131

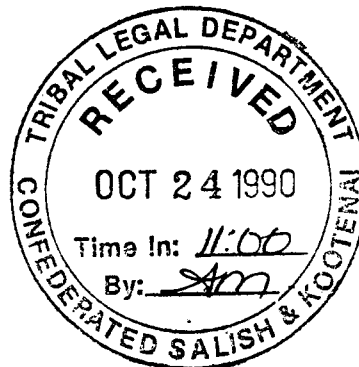
The Montana Historical Society urges passage of House Bill 131 as a distinctive, workable Montana solution to a nationwide need.

Sincerely,


Lawrence Sommer
Director

LS/db

EXHIBIT 5
DATE 1-22-91
HB 121



October 22, 1990

Karen J. Atkinson
Tribal Attorney
Salish & Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

RE: Montana Burial Legislation and Repatriation

Dear Ms. Atkinson:

I have reviewed the contents of the Montana Burial Bill and I cannot add anything to it because it is pretty well written.

Your memorandum specifically states you are going to shoot it to the Montana State Legislature. If the repatriation sections of the federal bill does not pass in Congress, this is also a good move.

The human skeletal remains and burials are most sacred, especially to my Tribe. We have to have some kind of protection, whether it is federal or state.

Repatriation is most important to all Indians in this state and if it has to be a separate bill, let's do it this way to satisfy our Indian people.

With best regards,


Patrick Chief Stick, Sr.

EXHIBIT 6
DATE 1-22-91
HB 131

SUPPORT OF H.B. 131

KISUK KİYUKYIT HU İNNI AKSMAKNİK WIYSIYAḡ. HU İNNI HUPAK NA
AQANKMI.

Greetings my name in English is Francis Auld, I'm Kootenai Indian and a member of the Confederated Salish and Kootenai Tribes.

I want to voice my support for the "burial bill". Throughout history very little respect has been shown to the Indian people in general as to burials.

This law would give me some hope that someday that my children won't have to fight to keep me buried. Or they don't have to worry about having their bones dug-up.

I was taught in a manner that everything we do has a reflection in our afterlife. And this can start to put the past that was disturbed back into a harmonious balance with what we Indians believe in.

I'm sure that anyone opposing this if they were to take a walk through the Arlington National Cemetary and the next day heard that some team of archeologist were about to dig-up the remains of those buried there would have some emotional reaction.

I hope and pray that this will start a good balancing that the bones of my ancestors will be respected in the manner of those that lay in eternal rest such as in Arlington National Cemetary.

FORT PECK TRIBES

WATER RESOURCE OFFICE
Management and Development

January 18, 1991

EXHIBIT 7
DATE 1-22-91
HB 131

To Whom It May Concern,

The following comments are intended as support for the enactment of House Bill 131, "Human Skeletal Remains and Burial Site Protection Act".

These comments are made after consulting with Tribal Elders, Spiritual Leaders and members of the Tribal Executive Board.

The language of the Bill, as well as intent, is well received by the Fort Peck Tribes.

We feel that the needs of the development interests are properly addressed as well as the concerns of Native Americans and other Ethnic groups.

Enactment of this Bill will go a long way toward enabling the people of Montana to move forward together instead of dwelling on concerns of past differences.


Carl Fourstar
Cultural Liaison

EXHIBIT 8
DATE 1-22-91
HB 131

Statement of Naida Lefthand

Confederated Salish and Kootenai Tribes

Ki suk Wiñnam

Good Morning

I am Naida Lefthand in the English language. I work for the Confederated Salish and Kootenai Tribes in the Kootenai Culture Program. I am here today representing the Kootenai people. We are in support of H.B. 131 the proposed burial bill which would provide protection to unmarked Indian burials within the State of Montana.

The Kootenai Culture Program is responsible for preserving, protecting, perpetuating, and enhancing the culture, language, and traditions of the Kootenai people. We do this in many ways, but we also encounter many problems. One of the biggest problems which causes us great distress and concern is the desecration of our ancestral burial grounds.

Before the coming of the non-Indians, my people had vast territorial boundaries. Whenever a death occurred, the Kootenai would bury the individual within the area of where the people camped at that time. As a result, graves of my people are found throughout Montana and Indian country. The passage of this bill would protect those burials wherever they are found. This bill would assure that the old unmarked graves of my people would be treated respectfully and with dignity.

Ex. 8

1-22-91

HB 131

Too often my people have been treated as if they were not human. Their remains have been dug up in the name of science.

These bones and burial material were studied, stored, or displayed in museums and universities with out permission.

Scientists wanted to know what my people ate, how they lived, how long my people have been here. Much of the knowledge sought by these scientists is known by my living elders today. The creation of my people and their continuing life styles are part of the oral history that has been handed down generation to generation by the Kootenai people.

This bill would assure that Kootenai remains or burial materials are no longer appropriated and put into museums, universities, or private collections without the voluntary consent of the Kootenai people, those who hold the living memory of their ancestors. This bill was drafted with cooperation among tribes, state agencies, and scientists. Passage of this bill would bring about continued cooperation to assure that all human remains burials are treated equally and with dignity and respect. This not only protects the sanctity of the burial site itself but also protects the physical, emotional, and spiritual well-being of Kootenai people living today. We urge you to pass this bill. This will reinforce our pride as Kootenai people, the first inhabitants of this beautiful land.

EXHIBIT 9
DATE 1-22-91
HB 131

**STATEMENT OF THE MONTANA ARCHAEOLOGICAL ASSOCIATION
IN SUPPORT OF HOUSE BILL 131**

The Montana Archaeological Association (MAA) is a voluntary association that promotes and supports the goals of professional archaeology in the State of Montana. The goals of the MAA include working for the preservation and conservation of the prehistoric and historic heritage of the State. The membership consists of people with degrees in archaeology, cultural anthropology and history who are actively engaged in, or have been engaged in, professional archaeology in Montana.

The Montana Archaeological Association established a committee in the Spring of 1989 to work with representatives of Montana's Indian Tribes to prepare a bill for the protection of human skeletal remains and burial sites located in Montana. The bill before you is the result of the cooperative efforts of the Tribes, the MAA committee and the MAA membership.

The Montana Archaeological Association feels that House Bill 131 will fill a major gap in Montana cemetery or marked burial statutes which do not include unmarked graves or burial grounds. The U.S. Government has recently passed legislation covering such sites on Federal lands. H.B.131 also provides for protection of all burial sites and cemeteries through penalties. At the same time the bill provides a procedure for scientific study of burials.

A recent poll of the Montana Archaeological Association Executive Committee resulted in unanimous support for House Bill 131. The MAA feels that as professionals we can conduct archaeological research in Montana under this bill. Therefore, as representative of the MAA, I am here today to speak in favor of House Bill 131.

T. Weber Greiser
President
Montana Archaeological Association

DEPARTMENT OF HIGHWAYS

EXHIBIT 10
DATE 1-22-91
HB 131



STAN STEPHENS, GOVERNOR

2701 PROSPECT AVE.

STATE OF MONTANA

HELENA, MONTANA 59620

January 21, 1991

Testimony

Before the House Judiciary Committee
HB 131 "The Human Skeletal Remains
and Burial Site Protection Act"

Over the past two years, the department has studied the issues, reviewed similar legislation from other states, and has worked with representatives of other state agencies, the Indian tribes, and the Montana Archaeological Association in drafting this legislation. We have no objection to its passage.

This bill has been revised to provide timeframes within which review must occur when remains are inadvertently discovered during construction projects. It is clear that the responsible authorities have to act quickly. The department can operate within those time constraints.

Last session the department requested time to determine whether this bill would conflict with other obligations or requirements it had as a result of its receiving federal funding for highway construction projects. In the past, a burial would have been treated as an archaeological site, and the department would have been required to comply with the National Historic Preservation Act in dealing with it. A previous version of this bill stated clearly that human remains were not archaeological artifacts. We would like the intent of the legislation to be as specific as possible so as not to have a conflict in requirements, and we would appreciate the written assurance of the SHPO that burials will not be considered "historic properties," which we believe would be in conflict with the bill.

Edrie Vinson

Edrie L. Vinson, Supervisor
Environmental Section

ELV:D:ENV:27.mb

cc: D. S. Johnson
C. S. Peil

G. L. Larson
J. R. Beck

HB#173

EXHIBIT 11
DATE 1-22-91
HB 173

Testimony by Charles W. Walk, Executive Director, Montana Newspaper Association, on HB 173 before House Judiciary Committee, 1-22-91.

Mr. Chairman, members of the committee, for the record, I am Charles W. Walk, executive director of the Montana Newspaper Association, which represents all 11 daily newspapers and 64 weekly newspapers in Montana.

I rise today in opposition to House Bill 173.

To be specific, I rise in opposition to Section 5 of the bill, a section which would repeal - and thus eliminate - the entire public disclosure section of the existing code 3-1-1121.

At a time when we badly need all the public disclosure of public business we can currently have - particularly, I believe, in the area of our judicial system - this section of the proposed bill would effectively shut off the public's right to know in a critical area.

Adoption of this section of HB 173 would leave the public with section 3-1-1122 which means the public could gain access to the papers and testimony of a hearing before the Judicial Standards Commission only if the judge against whom the complaint has been filed waives his right to privacy. This does not seem to us to be adequate provision for public access, given the serious nature of the commission's business.

Existing code, on the other hand, specifically outlines the information available from the commission, including findings of good cause, the charges, and the proceedings, transcripts and recordings of commission hearings. This, we believe, is what open government is all about and where all government hearings and meetings should be.

Ex. 11
1-22-91
HB 159

I hope the committee will bear in mind that we are dealing at a time when I believe the public feels isolated from too much of the workings of its governmental system, including that of the judiciary. Repeal of any section of the code which would hinder the public's access to information in this area would only heighten that feeling of isolation, and, thereby, threaten the confidence of the public in the entire system.

No part of government - simply by its nature - should demand or expect less scrutiny by the public. But that is exactly what the repeal of 3-1-1121 would do. It would effectively close off critical information the public has every expectation of obtaining.

We urge the committee to defeat HB 173 as introduced or, at very least, to amend it by eliminating Section 5 of the bill, which would repeal 3-1-1121 of the existing code. Thank you.

EXHIBIT 12
DATE 1-22-91
HB 159

Amendments to House Bill No. 159
First Reading Copy

Requested by Rep. Toole

For the Committee on the Judiciary

Prepared by John MacMaster
January 21, 1991

1. Page 1, line 19.

Following: "39-71-401."

Insert: "The measure of damages is the same as in a contract
action by an unsuccessful bidder against a person who
wrongfully awards a contract to another bidder."

Amendments to House Bill No. 159
First Reading Copy

EXHIBIT 13
DATE 1-22-91
HB 159

For the Senate Judiciary Committee

Prepared by Gene Fenderson
January 19, 1991

1. Title, lines 7 and 8.
Following: "INSURANCE" on line 7.
Strike: "OR"
Insert: ", "
Following: "INSURANCE" on line 8
Strike: ". "
Insert: "OR PREVAILING WAGE RATES."
2. Page 1, lines 17 and 19.
Following: "39-51-1103," on line 17
Strike: "or"
Following: "39-71-401" on line 19
Strike: ". "
Insert: "or does not pay the proper prevailing wage, on public
works contracts as required by 18-02-403."

House Coderazzi
DATE Jan 22 1991 SPO

BILL NO.

198

DATE _____

SPONSOR (S)

COMMITTEE
Sp. Rice

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[illegible]

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**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HJR #9

DATE Jan. 25, 1991 SPONSOR(S) Rep. Russell

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[illegible]

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**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

House Judiciary COMMITTEE BILL NO. 131
DATE Jan 22 SPONSOR(S) Rep Brooke

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Edrie Vinson	Dept Highways		
Lyron Atkinson	CS+KT	✓	
Pharaly A Patty		✓	
TAMILIAN WILLIAMS Helen		✓	
Hattie Steele		✓	
Bill TALLBULL	Northern Cheyenne Tribe	✓	
Curly Bear Walgren	Blackfoot	✓	
Nicol Price	med indial affairs	✓	
David Schwab	Montana SHPO		
David Nelson	Mt Bull Council	✓	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. 173
DATE 1-22-91 SPONSOR(S) Rep. Parlorich
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Mike Hall Helens</u>	<u>Lee Enterprises</u>	<u>2m end</u>	
<u>Chuck Hall</u>	<u>MNA</u>	<u>Amend</u>	
<u>Rick Ford</u>	<u>Montana Attorney</u>		<u>✓</u>
<u>K. Atkinson</u>	<u>CS+ICT</u>	<u>Support</u>	
<u>Steve Brown</u>	<u>Self</u>		<u>✓</u>
<u>SALLY JOHNSON</u>	<u>Institutions</u>		
<u>Rep Carlson</u>	<u>AD #10 Guide</u>	<u>✓</u>	
<u>Mark B. Sullivan</u>	<u>Self</u>	<u>✓</u>	
<u>Joe Lynch</u>	<u>Self</u>	<u>✓</u>	
<u>CB Pearson</u>	<u>Common Cause / Montana</u>	<u>Amend</u>	

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