

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 1, 1991,
at 7:39 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (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, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

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

EXECUTIVE ACTION ON HB 289

Motion: REP. BROWN MOVED HB 289 DO PASS.

Discussion: REP. MEASURE felt the committee should not raise the
filing fee to \$100 because most couples wanting an uncontested
divorce are very young and probably made a rash decision to get
married in the first place. REP. MEASURE stated that easy
divorces shouldn't be discouraged by adding an extra \$40 to the
filing fee just for uniformity.

Motion/Vote: REP. MEASURE moved to amend HB 289 by retaining the
fee of \$60. Motion carried.

Motion/Vote: REP. BROWN MOVED HB 289 DO PASS AS AMENDED. Motion carried 19 to 1 with Rep. Whalen voting no.

EXECUTIVE ACTION ON HB 292

Motion/Vote: REP. MESSMORE MOVED HB 292 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 291

Motion: REP. WHALEN MOVED HB 291 DO NOT PASS.

Discussion: REP. WHALEN felt there wasn't any way to fix this bill. The bill does not address the problem that was brought into this committee.

Motion/Vote: REP. JOHNSON MADE A SUBSTITUTE MOTION to amend HB 291 by adding "city of municipal courts" on line 21.

Discussion: REP. MEASURE inquired as to what a person would do in a situation where a school is involved in a suit for trespassing on property if you give this authority to Justice, City, and Municipal courts? REP. MEASURE stated that none of those courts have the authority to handle real property matters. Rep. Measure said, "I don't think you want to add those three courts in the bill because you already have that authority whether it be justice, municipal, or district."

REP. BOHARSKI inquired as to how much it would change the current law if the committee were to change the word "must" to "may" after city municipal courts?

REP. MEASURE stated that it would be the same as current law. The smart thing to do is get the District Court to say that a restraining order, for purposes of family disputes, could be filed in the District Courts so they would be filed in the same place every time.

REP. BOHARSKI felt he might have misunderstood the testimony on the bill. It was his understanding that one of the problems in a potential dissolution of a marriage was someone wanting the expediency of a lower court could only use the District Court.

REP. WHALEN stated that Justice Courts have TRO's at this time.

REP. BROWN stated that the committee has been very careful when changing the law so that and this bill cannot alter the authority of lower courts.

Motion/Vote: REP. BROWN MOVED HB 291 BE TABLED. Motion carried 17 to 3 with Rep's: Johnson, Clark, and Keller voting no.

EXECUTIVE ACTION ON HB 379

Motion: REP. BROOKE MOVED HB 379 DO PASS.

Discussion: REP. GOULD stated that he is opposed to this bill. He talked with some judges after the hearing and they feel if a person is not going to be a good example to be out on the street, they are going to give them a longer sentence. REP. GOULD felt the bill should not pass.

REP. BROWN stated that this bill can help the work load of probation officers and it provides another avenue for lessening impact on the whole imprisonment system in the state. Rep. Brown said, "Whenever we get an opportunity like this to provide some relief to that system, then I would support it."

REP. BOHARSKI inquired as to whether the committee wants to cut the system off or leave that person under your supervision and retain that jurisdiction?

CHAIRMAN STRIZICH stated that he doesn't deal with parolees, but from the testimony the committee heard, this bill will help the assignment of cases in terms of work load.

Motion/Vote: REP. BECKER moved to amend HB 379 on page 3, section 2, after "persons" inserting "on parole or". Motion carried.

Motion/Vote: REP. BROWN MOVED HB 379 DO PASS AS AMENDED. Motion carried 17 to 3 with Rep's: Gould, Clark and Boharski voting no.

HEARING ON HB 364
DEFINE THE LIABILITY FOR NEGLIGENCE IN EQUINE ACTIVITIES

Presentation and Opening Statement by Sponsor:

REP. GRADY, HOUSE DISTRICT 47, stated that this bill is an act to extend liability limits on equine activities. Equine is defined as a characteristic of a horse but it also covers mules. HB 364 was proposed by the Montana Horse Council and the operators are interested in equine activities. The committee will want to look closely at this bill and decide what is and is not needed.

Proponents' Testimony:

Jo Brenner, Montana Outfitters & Guide Association, gave written testimony in favor of HB 364. EXHIBIT 1

Sarah Hollatz, Dude Rancher's Association, gave written testimony in favor of HB 364. EXHIBIT 2

Leo Hargrave, Montana Ranchers, gave written testimony in favor of HB 364. EXHIBIT 3

Kim Kelsey, Dude Rancher, gave written testimony in favor of HB 364. EXHIBIT 4

Ellen Hargrave, Montana Ranchers, gave written testimony in favor of HB 364. EXHIBIT 5

Carol Mosher, Montana Cattlemen Association, stated that the Cattlemen's Association is in support of HB 364. The passage of this bill would relieve people of the worry they now experience whenever taking part in horse related activities.

Kim Enkerud, Montana Stockgrowers, stated that the Stockgrowers are in support of HB 364.

Tom Harwood, self, stated that he has been in the process of trying to develop a tourist facility on the basis of cattle drives that were done in the Centennial. The very first problem was the liability scope of being an organizer. He said he would support this bill without any problem.

Shirlee Wirth, Montana Horse Council, stated that the Montana Horse Council is in support of this bill.

Gaylyn Wagner, Montana Horse Council, stated that this bill could help the horse and ranch business in our state.

Opponents' Testimony:

Michael Sherwood, Montana Trial Lawyers Association, gave written testimony opposing HB 364. EXHIBIT 5

Questions From Committee Members:

REP. BOHARSKI asked Michael Sherwood if his redrafting of the non-profit section makes this bill better public policy? Mr. Sherwood said that if this committee were to decide, as a matter of public policy, that the horse industry in this state does not have to be careful they only have to avoid public negligence, the bill would still have problems. This bill allows protections for activities that occur in the course of equine activities that don't stem from whether someone fell off a horse. It is very broad.

REP. TOOLE asked Mr. Sherwood if subsection 3 creates an exception of subsection 1 in section 2? Mr. Sherwood stated that he felt that was the original scheme of the bill.

REP. JOHNSON asked Ms. Hollatz if she would tell the committee what exactly is needed in this bill that would satisfy the proponents? Ms. Hollatz said that a separate sheet along with Ellen Hargrave's testimony explains the definition of inherent risks of equine activity as was stated in the state of Colorado. "I recommend that it be posted on each ranch."

REP. KELLER asked Mr. Sherwood if he could tell the committee how many cases have come up in the past related to this particular subject? Mr. Sherwood stated that there are no Supreme Court cases in which this is reviewed. He did find a case on outfitter liability, in which there was a fall from a horse and that case has not been resolved.

Closing by Sponsor:

REP. GRADY stated that he does not agree with Mr. Sherwood that outfitter businesses cannot compare with mainstream businesses. There needs to be separate liability laws for separate activities. Montana is a very variable state with many different recreational activities. This bill does not state that an individual does not have to be careful. REP. GRADY stated he would be willing to sit with a sub-committee and felt a sub-committee was a good idea.

HEARING ON HB 353
SUBMIT CONSTITUTIONAL AMEND. TO THE PEOPLE
TO CLARIFY JUDICIAL SELECTION

Presentation and Opening Statement by Sponsor:

REP. STRIZICH, HOUSE DISTRICT 41, stated that HB 353 is presented on behalf of the Secretary of State, Mike Cooney. It closes a loophole in the election and appointment of judges. It is a proposed constitutional amendment effecting article 7, section 8 of the constitution. The intent is to protect the voter's right to vote for Supreme Court and District Court judges. The bill has a provision that places before the voter the ability to elect an appointed position in any of our courts in a more expeditious fashion and guarantees that each judicial appointment filling a vacancy will be required to face an election as soon as practical. Currently, the judge or justice appointed whose term is expired before the legislature convenes and receives Senate confirmation, the judge is then exempted from the electoral process for an additional couple of years. This means people can be kept from voting on a particular judicial position for quite a length of time.

Proponents' Testimony:

Mike Cooney, Secretary of State, gave written testimony in favor of HB 353. EXHIBIT 7

John McCarthy, Lobbyist - Common Cause in Montana, gave written testimony in favor of HB 353. EXHIBIT 8

Jerry O'Neil, Vocal of Montana, stated that he is in support of this bill and urges a do pass.

Chester Kinsey, Montana Senior Citizens Association, stated that

the Senior Citizens Association are in support of HB 353.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor:

REP. STRIZICH stated that the bill clarifies the appointment and election process. It goes further and insures integrity and consistency in the terms of office in the Montana Judicial Branch of Government. It will protect a fundamental right of Montana citizens to vote and choose Judicial Branch officials. Rep. Strizich said, "I hope you will support this bill, as it is very important."

HEARING ON HB 212
FREEDOM OF EXPRESSION FOR STUDENTS

Presentation and Opening Statement by Sponsor:

REP. COHEN, HOUSE DISTRICT 3, stated that this bill provides for Freedom of Expression for the students. Rep. Cohen asked, "Isn't this right enumerated in the U.S. Constitution? The Montana Constitution, the document the Legislature pledges to uphold and serve, states in article 2, The Declaration of Rights, section 7, says Freedom of Speech Expression and Press: no law shall be passed barring the freedom of speech or expression. Every person shall be free to speak and publish whatever he will on any subject being responsible for all breach of that liberty."

Proponents' Testimony:

Ben Darrow, student - Whitefish High School, gave written testimony in favor of HB 212. EXHIBIT 9

Eileen Sheehy, Journalism Teacher - Billings High School, stated that as a teacher she considers herself a professional. She said she was a pro in the classroom and when she doesn't know answers to legal questions she calls a lawyer. Ms. Sheehy said, "I am in a better position to know about liable law than the Administrator who is mainly interested in keeping a lid on things in the school." Ms. Sheehy said another point she would speak about is the first amendment, the constitution, and what we are teaching our students. Students are learning about Government when Government butts up against them. The most valuable lesson about Government is when they realize the first amendment is an amendment which protects the innocent or the weak against the proud and strong - the majority. When Freedom is applied to a newspaper class, where is it vitally needed, it is gone. Ms. Sheehy said, "We are teaching students that the weak in our society is not protected by the first amendment. Students are a

powerless group. I don't want to be a teacher who teaches students that the constitution doesn't mean anything to them."

Miki Hazard, student - Billings West High School, stated that it should be the student's educational priority to be shown both sides of an issue, especially a controversial one. The positive and the negative should be printed in a school newspaper. Instead, the students are being taught what to say and how to say it. Students should be allowed to do this for themselves.

Jenna Pike, student - Billings West High School, stated that the administration in schools feel that if students are given this freedom they will abuse it. "I am here to tell you that we will not abuse the privilege of freedom of speech but instead, we will appreciate and respect it."

Casey Ruble, student - Billings West High School, stated that giving the administration the power of censorship tends to create a power struggle between the faculty and the students. Ms. Ruble stated she felt this would be harmful to everyone. This bill eliminates the power struggle between the faculty and the students. It promotes union and cooperation.

Kirk Enstrom, student - Billings Senior High, stated that the administration at Billings Senior High recognizes the HAZEL decision but they do not feel justified in censoring the school's press. With an administration that fosters freedom of the press, students can actually do what student press is designed to do. "We can make students aware of what they should be aware of in society."

Debra Hagen, student - Hellgate High School, felt that students are capable of dealing with censorship on their own. Ms. Hagen said, "We attend high school to get an education and to learn to deal with life in many different aspects. Freedom of speech is one aspect we are given to us as an American through the Constitution. We are not asking for something that isn't already ours."

Josh Henderson, student - Hellgate High School, stated that education has not occurred if one is not allowed to experience. Experience is the fertilizer of education. The power of school administrators to prohibit, inhibit or oppress the students rights is an attack on this nations principles. A child must experience heat to learn both pain and want. The right to experience to learn heat is a lot like the right to say what you wish. The students are asking permission to enjoy equal rights to expression. This is not a polite request it is an emphatic plea.

David Severson, Journalism Teacher - Sentinel High School, stated that it is difficult for him to teach journalism when he has to discuss how students are guaranteed the right to free speech under the constitution and then later turn around and say that

this doesn't apply to students. Mr. Severson said, "Fortunately, I have a good relationship with my principle, but we have experienced pressures from the community. Parents put pressure on a principle or an advisor to do a certain story and feel students should not be allowed to express themselves. Students will differ as to how to censor themselves. They are seriously looking at what is controversial and if it should be allowed, not whether it will be published. I am here in support of HB 212."

Rebecca Palmer, student - Sentinel High School, stated she felt it is in order for students to fully understand the aspect of journalism and the right to a free press = they should have the opportunity to experience it first hand. This bill will help the students understand and appreciate the seriousness and responsibility of being a journalist.

Dave Speer, student - Sentinel High School, stated that as a student of journalism, this bill will further students rights as American citizens. It will guarantee students rights to the same freedom of expression that other newspapers enjoy. A journalist is constantly in check with his advisors and administrator, but the final responsibility comes back to the journalist. Students need to experience and learn this first hand.

Shane Graff, student - Sentinel High School, stated that students cannot learn the responsibility of free speech if it is not granted to them. Without freedom of speech, a student will not learn how to be a good journalist.

Linda Balleu, Journalism Education Association, stated she is a Language Art teacher from Great Falls High School. Language Art is a very complex and difficult area to teach and has recently been made more complex by the Legislature of 3 years ago. The Montana Legislature mandated modification in Language Art curriculum. Through language, students learn through their own experiences. The education program in Communication Art encompasses the study of languages, literature, the development of reading, writing, listening and speaking skills. A Language Art teacher finds him or herself in a position of teaching a very dynamic, flexible, ethical, and moral area. In teaching journalism, she has found that it is important to allow students to acquire and integrate those language skills into their daily lives. They provide practical experience and everyday tools for learning because journalism furnishes students with the opportunity to connect with real life experiences and events that have been shaped by their input and personal experiences.

Daniel Andrzejek, student - Great Falls High School, stated that many people might not believe there is a power struggle over censorship. He feels if students are supporting the paper monetarily then they shouldn't have to relinquish control of the contents of the paper.

Kristin Page, Mont Pirg, stated that Mont Pirg is a public

research group on the U of M campus. It is a student based organization with public citizen members. HB 212 is a good government issue. According to the United States Constitution and the Montana Constitution, freedom of expression is a personal liberty of each individual, including persons that are not adults. She stated that Mont Pirg is in support of this bill.

Linn Parish, student - University of Montana, gave a written resolution and stated she was in support of HB 212. EXHIBIT 10

Carol Van Valkenburg, Journalist Professor - University of Montana, gave written testimony in support of HB 212. EXHIBIT 11

Clem Work, Assistant Journalist Professor - University of Montana, gave written testimony in support of HB 212. EXHIBIT 12

Mike Gold, student - Billings Senior High, stated that if this bill is passed it will keep the administration from treating the students like children. "I have heard many administrators complain about the youth, what they are doing, that they are complacent and don't really get involved in politics." This bill will send a message to everyone that the youth are responsible and bright enough to make their own decision.

Eric Fever, Montana Education Association, stated that he can do no less than rise in support of the quality, excellence and dedication of the students and the teachers that have already appeared before the committee. The MEA supports HB 212.

Tom Harwood, self, stated he supports this bill with one exception.

Scott Crichton, American Civil Liberties Union, gave written testimony in favor of HB 212. EXHIBIT 13

Opponents' Testimony:

Janice Frankino Doggett, Montana School Boards Association, stated she commends the students on the well orchestrated testimony given today. The Association has two concerns about this bill. The problem is the bill. This bill gives high school students greater latitude than that enjoyed by professional journalists working on daily and weekly newspapers. The bill does not talk about the limitations that professional journalists follow. It does not incorporate those limitations on Free Expression. The problems are the same as professional journalists face. Many journalism professors are exceptional and will take time to make the students understand how to edit materials. She cited two Constitutional Provisions. "The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law." This bill incorporates another realm of free expression.

Greg Fine, Montana County High School Board of Trustees, stated

he is the youngest person on the board in the state. He feels he has worked very hard to champion the rights of students. While he rises in opposition to this bill, he does not rise in opposition to the fact that the fundamental right of free expression needs to be protected. There are some technical things in this bill that make it a bad idea because how it implements what it is asking school board trustees to do. The language prohibiting the school from firing, transferring or removing a journalism teacher from their position if they fail to suppress the first amendments rights of their students, sounds like a good idea but the bill does not talk about burden of proof. "Is it the responsibility of the school districts to prove they are not violating this law or is it the responsibility of the teacher to prove that the school district is violating this law?" He felt the burden of proof will fall back to the school district and there needs to be clarification in that area.

Loren Frazier, Association of School Administrators of Montana, stated the administrators do not have a problem with freedom of expression. He hopes the administrators throughout Montana do protect that right for their students. There are some superintendents and principals that are doing this. This Association feels that the issues addresses in the bill lie with the local board of trustees and should not be legislated. Mr. Frazier said, "Is a school newspaper a learning experience or is it free as the Independent Record or Great Falls Tribune and do you have professional staff publishing it?" School newspapers are part of the journalism class which is part of the curriculum. Who is responsible for the curriculum? The Board of Trustees in your local areas. There are many issues that different localities in the communities put up with and others won't put up with. He felt if the committee goes with the bill the way it is with journalism and making it an independent factor, then we should probably bring sex education and some hot issues back to the Legislature.

Questions From Committee Members:

REP. TOOLE asked REP. COHEN who is ultimately responsible for a libelous situation? REP. COHEN stated that the journalist/teacher is faced with teaching the students what is morally right and wrong.

REP. TOOLE stated that this bill places a burden on school administrators with respect to those kinds of communications. The school administration may review the material for compliance but may not exercise prior restraint except when the material violates certain provisions in section one. There is a place in this bill for review of publications by the school administrators and this does place a responsibility on them. If school administrators are expected to have that responsibility for review of these kinds of extreme communications and one slips through, isn't it fair to make them responsible for those limited

and highly extreme communication that they themselves are supposed to prevent? Ms. Van Valkenburg stated she felt they would be liable. If a school administrator has that function to be reviewing with the possibility of changing it then they should have the liability upon them.

REP. WHALEN asked Ms. Frankino Doggett what the applicability is to a private religious school and how she sees the reaction to Montana's Constitutional Provisions related to Free Exercise of Religion? Ms. Frankino Doggett said that this bill says a student "in a public school", which makes the bill specifically apply to public school issues.

Closing by Sponsor:

REP. COHEN stated that he was concerned about the liability issue also. He felt the bill should be looked over closely and the committee should decide what is reasonable and what is not.

EXECUTIVE ACTION ON HB 131

Motion: REP. BROOKE MOVED HB 131 DO PASS.

Discussion:

REP. BROOKE handed the committee a gray bill that was agreed upon by the sub-committee. EXHIBIT 14. The first amendment deals with the funding source. Sections 13, 14 and 15 deals with the concept of funding. The amendment set outs a special revenue fund of \$10,000 for two years and thereafter, the fees, grants and donations would then fund the work of the board through the rest of its existence. These fees, grants and donations would be put in that account just for that purpose.

Motion/Vote: REP. BROOKE moved to amend HB 131 with the funding amendment previously discussed. Motion carried unanimously.

Discussion:

REP. BROOKE stated that on page 6, there is reference under subsection 7 of who is to gain control of the Human Skeletal Remains and the priority order in which they gain control. In that wording, the sub-committee used the term "Cultural Group" and adopted a definition of cultural group which is at the end of section. The language was taken from suggested language from Federal Legislation.

Motion/Vote: REP. BROOKE moved to amend HB 131 with the amendment previously discussed regarding who gains control of the

Human Skeletal Remains. Motion carried unanimously.

Discussion:

REP. BROOKE stated that the next amendment is on page 8 dealing with definition of cultural group. She asked John MacMaster to explain the amendment to the committee.

John MacMaster stated that the committee should read the two offered subsections on page 8 and decide which subsection is more agreeable to them. The one on the bottom is the Boharski amendment and the one above is the sub-committees choice.

Motion: REP. TOOLE moved to amend HB 131 with the sub-committee version of subsection c.

Discussion:

REP. TOOLE stated that it will be easier to prove the sub-committees version than the Boharski version of c. The prosecution is going to have to prove, in Boharski's version, that the person's specifically intended to cause, by disclosing information, someone to disturb the site. That kind of intent is very difficult to prove. The sub-committee version makes it easier to prove.

REP. MEASURE stated that even though the sub-committees alternative c is easier to prove the committee has to look at the fact that it is an attempt at a crime in Rep. Boharski's version. Whereas, the subcommittees version there is only a conveyance of knowledge. The problem with the subcommittee version is that it is unconstitutional.

Motion: REP. MEASURE MADE A SUBSTITUTE MOTION to amend HB 131 with the Boharski version of c.

Discussion:

REP. RICE stated that he supported the motion on the sub-committee but hearing the discussion he support Rep. Measure's motion.

REP. TOOLE stated that there are very few criminal cases that require specific intent to prove the ultimate destruction or damage. It is usually the case that knowledge that such an occurrence is likely to occur is sufficient. "If we use the Boharski version we will render this a superfluous thing and won't be used to prosecute."

Vote: Motion failed 9 to 10. EXHIBIT 15

Motion/Vote: REP. TOOLE moved to amend HB 131 with the sub-committees version of c. Motion failed.

Motion: REP. GOULD MOVED TO REVERSE THE VOTE.

CHAIRMAN STRIZICH stated that without objection we will reverse the votes. The motion will pass by the same vote.

Discussion:

REP. BROOKE stated that the next amendment deals with the penalty. The sub-committee decided that there are three violations for this prohibited act. They are under section 8 starting on page 7 and continues onto page 8. The sub-committee has adopted a formula for the penalties for the violation of a, b, and c. On subsection 2 the sub-committee has the penalty for the provision of 1a. That is a fine in the amount of \$1,000 and be imprisoned in the county jail for not more than 6 months or both. The sub-committee felt this was a misdemeanor. A subsequent violation of 1a would be a fine in the amount not to exceed \$20,000 and imprisonment for not more than 5 years, or both. Subsection c is the most prohibited act and the penalty for this act would be a fine in the amount not to exceed \$50,000 and be imprisoned for not more than 20 years. The penalty for 1c is a fine in the amount not to exceed \$500 and be imprisoned for not more than 6 months or both. The subsequent section would be a fine in the amount not to exceed \$10,000 and be imprisoned for not more than 5 years.

Motion: REP. BROOKE moved to amend HB 131 with the penalty provisions discussed previously.

Discussion:

REP. TOOLE stated that sub-committee tried to follow the scheme that is generally followed in the Criminal Code. The fines are not out of line with what we already have in law.

REP. RICE stated that he agrees with the entire provisions the sub-committee set up except for sub 3 on page 8. It now allows maximum imprisonment at 20 years and the bill as originally written was 5 years. "I think that increase from 5 to 20 years is excessive. It is my suggestion that we make that 10 years instead of 20."

Motion: REP. RICE MADE A SUBSTITUTE MOTION to amend HB 131 to change the prison sentence to 10 years instead of 20 along with the entire section dealing with penalties.

Discussion:

REP. TOOLE stated that there were several people assisting in the sub-committee. This particular offense, unlike the others, permits the commercial use of remains. This is an act which the committee felt would be a clearly, knowing, and intentional violation of the existing law with serious implications. People usually only serve a moderate amount of their prison sentence,

most of the time, and 20 years is not excessive for this type of crime.

REP. BROOKE stated that some of the people that helped the sub-committee determine this balance also felt a short sentence does not prevent a person from keeping his/her contacts on the outside and continues the business of commercial use.

Vote: Motion carried 10 to 9. EXHIBIT 16

Discussion:

REP. BROOKE stated the next amendment deals with the open meeting law in section 10 on page 9. The original bill had section 2-3-203 amended to exempt this board from the regulation of the open meeting law. The sub-committee voted and approved that section of law would be deleted from being amended. The language would be included to clarify that the board by close part of their meetings when a specific cite is going to be discussed.

Motion: REP. BROOKE moved to amend HB 131 to allow the board to have closed meetings.

Discussion:

REP. MEASURE stated that the right of privacy is important and well deserved and he endorses the amendment.

Vote: Motion carried.

Discussion:

REP. BROOKE stated that the next amendment deals with the representation of the board. There was some clarification on page 3, regarding the composition. In section 4, subsection a, the amendment clarifies that the Governor will appoint, from each of the seven reservations from the list of up to 3 nominees supplied by each of the respective tribal governments.

Motion/Vote: REP. BROOKE moved to amend HB 131 to clarify how the board will be selected. Motion carried unanimously.

Discussion:

REP. BROOKE stated that the next amendment clarifies when the board will receive notification as to what they would do within 36 hours. Without the language, people were unclear as to when the 36 hours would begin.

Motion/Vote: REP. BROOKE moved to amend HB 131 with additional language "after the board receives notification" on page 5, subsection 6 at the bottom of the page. Motion carried unanimously.

Discussion: John MacMaster stated that there is language referring to cemeteries and graveyards. This language makes it clear that this bill does not apply to burials in cemeteries or graveyards. The bill is also designed to mainly cover Indian remains. He stated that there is also an amendment recognizing the need of forensic examination by a coroner and examination by other law enforcement personnel under title 46. These are most of the clean-up amendments.

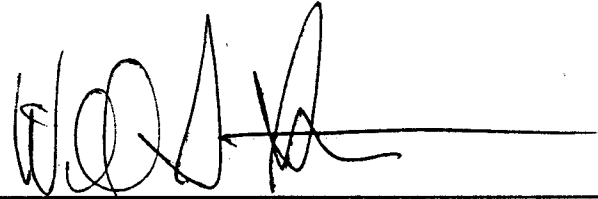
Motion/Vote: REP. BROOKE moved to amend HB 131 with the clean-up amendments. Motion carried.

Motion/Vote: REP. BROOKE MOVED HB 131 DO PASS AS AMENDED.
Motion carried unanimously.

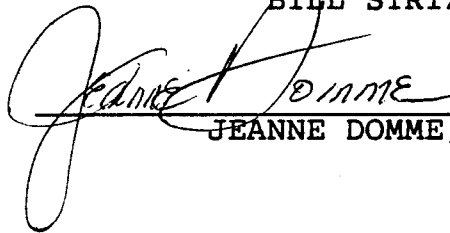
Motion/Vote: REP. DARKO moved to strike everything after the enacting clause and substitute the appropriate language from the gray bill. Motion carried unanimously.

ADJOURNMENT

Adjournment: 12:03 p.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE Feb 1, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/	XX	
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	/	aa	
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/	lma	
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/	WV	
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

2-1-91
TDB

HOUSE STANDING COMMITTEE REPORT

February 1, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 292 (first reading copy -- white) do pass.

Signed: _____

Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 379 (first reading copy -- white) do pass as amended .

Signed: 

Bill Strizich, Chairman

And, that such amendments read:

1. Page 3, line 4.

Following: "persons"

Insert: "on parole or"

Jeanne Alonzo
2-5-91 1:25 PM BOH

HOUSE STANDING COMMITTEE REPORT

February 5, 1991

Page 1 of 11

Mr. Speaker: We, the committee on Judiciary report that House Bill 131 (first reading copy -- white) do pass as amended.

Signed: *Bill Strizich*
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 4.

Following: "ENTITLED:"

Insert: "AN ACT CREATING"

2. Title, page 1, line 11.

Following: "GRANTS,"

Insert: "AND"

Following: "DONATIONS"

Strike: ", AND PENALTIES"

Following: "EXEMPTING"

Insert: "PARTS OF"

3. Title, line 12.

Following: "LAWS"

Insert: "UNDER CERTAIN CONDITIONS"

4. Title, line 13.

Following: "AUTHORITY,"

Insert: "PROVIDING FOR A 2-YEAR STATUTORY APPROPRIATION;"

5. Title, lines 14 and 15.

Strike: "CULTURAL AND AESTHETIC PROJECTS ACCOUNT"

Insert: "GENERAL FUND"

Following: "SECTIONS"

Strike: "2-3-203,"

Following: "2-6-101,"

Strike: "AND"

Following: "2-6-102,"

Insert: "AND 17-7-502,"

6. Title, line 16.

Following: "DATES"

Insert: "AND A TERMINATION DATE"

7. Page 1, line 20.

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BOH
February 5, 1991
Page 2 of 11

Strike: "protection"
Insert: "preservation"

8. Page 2, line 10 through page 17, line 13.
Strike: everything following the enacting clause
Insert:

"NEW SECTION. Section 1. Short title. [Sections 1 through 10 and 13] may be cited as the "Human Skeletal Remains and Burial Site Protection Act".

NEW SECTION. Section 2. Legislative findings and intent.

(1) The legislature of the state of Montana finds that:

(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands that are not protected as cemeteries or graveyards under existing state law;

(b) marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds not protected as cemeteries or graveyards under existing state law are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;

(c) private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.

(d) while some human skeletal remains and burial sites may be of interest to science, the needs of the scientific community to gather information and material from burial sites must be balanced with the legal, moral, and religious rights and obligations of tribal groups, next of kin, or descendants;

(e) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial material; and

(f) notwithstanding any other provision of law, [sections 1 through 10 and 13] are the exclusive laws governing the treatment of human skeletal remains, burial sites, and burial materials.

(2) It is the intent of the legislature to:

(a) ensure that all burials be accorded equal treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation;

(b) provide adequate protection for all interests related to any burial site encountered during archaeological excavation or agricultural, mining, construction, or other ground-disturbing

activity on state and private lands without causing avoidable or undue delay or hardship for any person who has an interest in using the land on which the burial site is located;

(c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or religious affiliation with the burial site and balance those interests against the interests of scientists, landowners, and developers;

(d) provide to the board an exemption from the open meeting and public records laws when public disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site; and

(e) recognize the need for forensic examination of human skeletal remains, burial sites, and burial material if the county coroner, county attorney, or state medical examiner determines an examination is necessary under state law.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 10 and 13], the following definitions apply:

(1) "Board" means the burial preservation board established in [section 4].

(2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.

(3) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(4) "Human skeletal remains" means any part of the human body in any state of decomposition taken from a burial site.

(5) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, except a cemetery or graveyard protected under existing state law, where human skeletal remains are or have been interred.

(6) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.

(7) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations.

NEW SECTION. Section 4. Board -- composition -- rights -- responsibilities. (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees

provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted the Little Shell band of Chippewa Indians;

(c) one person appointed by the Montana state historic preservation officer;

(d) one representative of the Montana archaeological association appointed by the coordinator of Indian affairs from a list of up to three nominees submitted by the Montana archaeological association;

(e) one physical anthropologist appointed by the state medical examiner;

(f) one representative of the Montana coroners' association appointed by the coordinator of Indian affairs from a list of up to three nominees submitted by the Montana coroners' association; and

(g) one representative of the public, appointed by the attorney general, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners' association.

(2) Members of the board shall serve staggered 2-year terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed \$50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by [section 6];

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of [sections 1 through 10 and 13];

(i) adopt rules necessary to administer and enforce the provisions of [sections 1 through 10 and 13]; and

(j) perform any other duties necessary to implement the provisions of [sections 1 through 10 and 13].

(4) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(5) Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

NEW SECTION. Section 5. Discovery -- reporting requirements -- field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in [section 8].

(2) Upon discovery of human skeletal remains, a burial site, or burial material, excavation or further disturbance must cease until the coroner has determined whether the remains are subject to the provisions of Title 46, chapter 4, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death or whether a forensic examination of the human skeletal remains, burial site, or burial material is necessary. The coroner shall make his determination within 2 working days from the time the person responsible for the excavation notifies him of the discovery or recognition of the remains. If the coroner cannot make the determination within 2 working days, he shall notify a member of the board of the reason for and the approximate length of the delay. The coroner shall take all reasonable steps to make his determination without removing or causing further disturbance of the remains.

(3) If a forensic examination, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death is necessary and yields evidence of criminal activity, the evidence may be seized by the coroner or law enforcement agency with jurisdiction for use in a criminal proceeding as provided by law.

(4) If the coroner determines that the remains are not subject to the provisions of Title 46, chapter 4, or any other provisions of law concerning the investigation of the circumstances, manner, and cause of death and that a forensic examination is not necessary, he shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact either the landowner and the board or the landowner and

the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

(6) Within 36 hours after the board receives notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner, an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or his representative for a reasonable time extension to complete the review. The field review must include:

(a) a determination of whether the site can be preserved;
(b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and

(c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

(7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide a resolution acceptable to the landowner and the board, control of human skeletal remains or burial materials is vested in the board and the board shall give control of the remains or materials in the following priority to:

(a) the descendants, if identifiable;
(b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials;

(c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered if, upon notification by the board, the tribe or cultural group states a claim for the remains or materials; or

(d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials.

(8) For purposes of this section, "cultural group" means a present-day group or organization that has a relationship of shared group identity which can be reasonably traced historically or prehistorically to an identifiable earlier group or organization.

NEW SECTION. Section 6. Scientific analysis -- permit required. (1) Although onsite reburial is preferred, the board may, upon petition by a person seeking permission to perform

scientific analysis, grant a permit for the scientific removal and analysis of human skeletal remains and burial material upon proof and determination by the board that the analysis is scientifically justifiable. A petition for a permit must include:

(a) payment of the nonrefundable application fee provided for in [section 4]; and

(b) a brief narrative describing the methodology to be used, the timeframe needed to complete the scientific study, and any other information specifically requested by the board relating to the proposed study.

(2) The methodology proposed must be reviewed by the state historic preservation officer or his designated representative and the physical anthropologist on the board, and a recommendation must be made to the full board. Once approved by the board, any change in methodology or in the timeframe must be approved by the board before the original timeframe expires. The timeframe for scientific study may not exceed 12 months from the date of issuance of the permit.

(3) A permit for scientific analysis issued by the board is subject to terms, conditions, and procedures prescribed by the board and must include the condition that a permittee shall pay all costs of excavation, study, and disposition.

(4) The board shall either issue or deny a permit within 30 working days from the date of the permit petition. If the board denies a permit upon a finding that scientific analysis is not justifiable, the board shall provide the applicant with a written statement outlining the grounds for its finding. The applicant may appeal the decision of the board under the provisions of Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(5) The board may suspend or revoke a permit pursuant to the Montana Administrative Procedure Act upon a finding that the permittee has violated any provision of [sections 1 through 10 and 13] or any term, condition, or procedure of a permit issued by the board.

(6) The provisions of this section do not apply to a forensic examination by the county coroner, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death.

NEW SECTION. Section 7. Nondisclosure of records. (1) The state historic preservation officer, in consultation with the board, shall maintain burial site records that are separate and distinct from those in the cultural resource registry and that are necessary to administer [sections 1 through 10 and 13].

(2) Burial site records are confidential and available only to criminal justice agencies or to federal, state, and tribal personnel or their appointed representatives legally charged with

administering laws protecting cultural resources.

(3) Statistical information compiled from burial site records must be made available to the general public. Any information concerning burial site records that is released to a criminal justice agency is confidential criminal justice information, as defined in 44-5-103, and is subject to dissemination pursuant to 44-5-303.

NEW SECTION. Section 8. Prohibited acts -- penalties. (1) After July 1, 1991, unless authorized under [sections 1 through 10 and 13] or by the descendants, tribe, cultural group, or other person, group, or entity to which the board gives control of the human skeletal remains or burial materials under [section 5], a person may not:

(a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked, unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;

(b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of [sections 1 through 10 and 13]; or

(c) purposely or knowingly disclose information knowing that it is highly probable that the disclosure will lead to pilferage, disturbance, or destruction of a burial site.

(2) A person convicted under the provisions of subsection (1)(a) may be fined an amount not to exceed \$1,000, be imprisoned in the county jail for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(a) may be fined an amount not to exceed \$20,000, be imprisoned for not more than 5 years, or both.

(3) A person convicted under the provisions of subsection (1)(b) may be fined an amount not to exceed \$50,000, be imprisoned for not more than 20 years, or both.

(4) A person convicted under the provisions of subsection (1)(c) may be fined an amount not to exceed \$500, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(c) may be fined an amount not to exceed \$10,000, be imprisoned for not more than 5 years, or both.

(4) A person who knowingly fails to give notice as required by [section 5(1)] may be fined an amount not less than \$100 or more than \$500.

(5) A person who violates a provision of this section or any term or condition of a permit issued under [section 6] is subject to a civil penalty not to exceed \$2,000 for the first violation and not to exceed \$10,000 for a subsequent violation.

NEW SECTION. Section 9. Civil penalty and damages

actions. (1) [Sections 1 through 10 and 13] do not preclude civil actions for damages.

(2) The board may bring an action under [section 8] for a civil penalty.

NEW SECTION. Section 10. Closure of board meetings. The board may close part of a meeting of the board to the public if the board finds that information that may be acquired at that part of the meeting may allow a person to identify a burial site, human skeletal remains, or burial material and pilfer, disturb, or destroy the human skeletal remains, burial site, or burial material.

Section 11. Section 2-6-101, MCA, is amended to read:

"2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings, except as provided in 22-1-1103 and [section 7].

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private."

Section 12. Section 2-6-102, MCA, is amended to read:

"2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-110 or [section 7] and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

NEW SECTION. Section 13. Disposition of fees, grants, and donations. (1) There is an account in the state special revenue fund. The board shall deposit any fee, grant, or donation received under [section 4] into the account to be used to pay

expenses for board meetings or expenses incurred in conducting field reviews.

(2) The money in the account is statutorily appropriated to the board as provided in 17-7-502.

Section 14. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) the law containing the statutory authority must be listed in subsection (3).

(b) the law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; [section 13]; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of montana. Agencies that have entered into agreements authorized by the laws of montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. (In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)"

NEW SECTION. Section 15. Appropriation. There is appropriated \$10,000 from the general fund to the board for the 2 fiscal years beginning July 1, 1991, to be used to pay expenses

February 5, 1991

Page 11 of 11

for board meetings or expenses incurred in conducting field reviews.

NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 17. Effective dates. (1) [Sections 4, 13, 14, 16, and this section] are effective on passage and approval.

(2) [Sections 1 through 3, and 5 through 12, 15, and 13] are effective July 1, 1991.

NEW SECTION. Section 13. Termination. [Sections 13(2) and 14] terminate on June 30, 1993."



EXHIBIT 1
DATE 2-1-91
HB 364

(1) "Inherent risks of equine activity" include those dangers or conditions which are an integral part of equine activity such as the fact that a horse irrespective of its training and usual past behavior and characteristics may act or react unpredictably at times based upon instinct or fright. Those dangers or conditions include, but are not limited to, changing weather conditions; variations or steepness in terrain; snow or ice conditions; conditions such as forest growth, rocks, stumps, and man-made structures; collisions with other participants; and a participants failure to ride within his ability or a participants failure to properly advise the equine professional of his/or riding ability.

We would amend the title, page 1, line 4, to read-- An act to limit liability on equine activities.

According to the legal counsel for the Worldwide Outfitters and Guides Association, extending the liability for which our people would be responsible, is opposite to protection.

Section I--we would insert the paragraph (1) on your sheet, which reads---and then renumber the paragraphs accordingly.

Existing section 1 would be amended to read, (1), line 12, after the word upon, insert the words---a vehicle pulled by -- an equine

On line 13, same paragraph, after the words, The phrase does not, delete the word mean, and insert the word include

Again on line 16, page 1, paragraph one, after the words passenger upon insert the words a vehicle pulled by an equine.

New Section, page 3, existing section 2 (1) line 10, strike the words engaged in an equine activity and insert the words resulting from any of the inherent risks of equine activity.

We would ask that you would strike from line 17, page 3 through line 5 on page 4 .

We are presenting Senator Yellowtail with these suggestions for his consideration in his Senate bill similar to Representative Gradys bill.

EXHIBIT 2
DATE 2-1-91
HB 364

WITNESS STATEMENT

NAME Sarah Hollatz BILL NO. 364
ADDRESS CIRCLE BAR Guest Ranch, Utica, MT DATE 2/1/91
WHOM DO YOU REPRESENT? Dude Ranches' Assn. 59452
SUPPORT Yes OPPOSE _____ AMEND yes.
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

- Encl. 2 pg. Statement -

I would like to thank you all for giving me the opportunity to speak out in favor of bill # 364 which deals with liability limitations on equine activities. I understand that the skiing and snowmobile industries have already passed legislation stating individual assumption of risk and I'm delighted that you are now addressing yourselves to the horse industry.

I am Sarah Hollatz - and I'm officially here as a Dude Ranchers Association (DRA) director representing the state of Montana. Unofficially I belong to the National Reining Assn. (NRA), Mt. Reining Assn., MT Stockgrowers, Montana Outfitters & Guides Assn. (MOGA), 4-H, FFA and AQHA - all of which will be effected by this bill. I'm a mother of 2 children, raise cattle & quarter horses & run a Dude Ranch. My intention in supporting this bill is not to encourage equine negligence, but quite the opposite ... to improve service to the public by making them aware of the inherent risk involved w/ equine activities.

In the LRA there are 24 "Montana Member Ranches" which offer horse activities to 5,747 guests per week. This is possibly only a third of the ranches involved in these activities in this state. I believe that bill # 364 will be useful and helpful to all of these people, as well as their providers.

I would ask, however, that two considerations be made: (1) To define the "risk" more clearly, and (2) Ask that it be posted and/or presented in written and/or verbal form to those people engaging in equine activity. Both of these additions would make this bill more informative.

The goal of people in my business is to provide a unique Western experience, in a setting which presents both a livestock-oriented way of life and a sincere concern for comfort and pleasure. I believe this bill will enhance these goals.

My Name is Leo Largrave and
I wish to speak in favor of
House Bill # 364 regarding assumption
of risk by a participant in horse
related activities —

I have been ranching for 36 yrs
and have always been concerned
about being sued by some one
riding my horses, there is an
inherent risk in this activity
due to the unpredictable nature
of a horse and it is the
responsibility of the rider to
assume this risk if they want
to participate.

My insurance rates are very
high due to the liability of the
owner of the horse and lack of
liability of the voluntary participant

This bill needs some work in
refining the language to clarify
its purpose and that is the
assumption of risk by the participant
in an horse related activity and
to put them on notice of their
responsibilities

Thank you —

Hello

MY Name is Kim Kelsey And As A Native Montanan
And Second generation Dude Rancher I would Like
to SPEAK on Behalf of House Bill 364. I believe
that each person who chooses to participate in
a Horse BACK Riding Activity needs to take some
individual Assumption of Risk concerning their Actions.

By Supporting this Bill I Am Not trying to deny
my Duty to Behave in a Reasonable & Responsible manner
As it relates to TAKing them out on TRAIL Rides. We
would Like to Effectively inform our guests of the
Risks involved in Horse Activities And of their
individual Assumption of Risk.

We would Like This Bill to include A provision
for Signing And thereby A means of Letting our
guests About the inherant Risks involved Around
Horses. Thank you For your time & Consideration

Hello - my name is Ellen Hargrave.
My husband & I have a cow/calf operation
west of Kalispell. I am a farmer's daughter
and a rancher's wife.

I ask that you support and strengthen HB 364
which encourages Individual Assumption
of Risk. Two years ago I started
taking guests on our ranch to help with
what our banker calls "cash flow." We serve
10 people - they share our kitchen table

- ① Would you please consider clarifying
the bill by including a definition of
"the inherent risks of equine activity?"
I'll leave a copy of suitable language
from other states that ^{are} already handling

Ellen Hargrave
HB 364
Pg. 2

Ex. 5
2-1-91
HB 364

some of the liability back to the
voluntary user of this recreational passtime.

Insurance is both hard to get and
expensive. Colorado guest ranches have
some relief because they already have
a law we need here - it's making their
insurance more affordable while still
protecting the user from negligence.

Because of Colorado Sen. Bill 90-84
Frontier Insurance has directed the Swales
Insurance Agency, of Colorado Springs, to
apply a commitment made in a
Chandler, Arizona, December, 1990 conference;

Ellen Hargrave
HB 364
Pg 3

Ex. 5
2-1-91
HB 364/

" a reduction in premium on all
Colorado Ranch holders that are members
of the Colorado Dude & Guest Ranch
Association ; at least equivalent
to a 10% reduction on all
Saddle animal premiums."

(Re: Swales Agency
Maureen Gray
2860 S. Circle #2108
Colorado Springs CO 80906
1-800-747-4679

January 30, 1991)

The insurance industry feels that
the Assumption of Individual Risk
Legislation :

2-1-91

HB 364

1. Puts users on notice of their responsibility
2. Will stop frivolous lawsuits.
3. Will Reduce the number of suits filed

Thus:

The company's costs of defending policies will be reduced & the cost savings can be passed onto policy holders.

They hope to double this reduction by another 10% on the next policy anniversary date.

The insurance industry feels that in the case of negligence the wronged party still will sue and will be made whole.

HB 364 is a good start. We need a

bill - ~~HB 364 is a good start. We need a~~

~~bill - HB 364 is a good start. We need a~~

Thank-you for your Attention.

How - ~~therefore~~

(1) "Inherent risks of equine activity" include those dangers or conditions which are an integral part of equine activity such as the fact that a horse irrespective of its training and usual past behavior and characteristics may act or react unpredictably at times based upon instinct or fright. Those dangers or conditions include, but are not limited to, changing weather conditions; variations or steepness in terrain; snow or ice conditions; conditions such as forest growth, rocks, stumps, and man-made structures; collisions with other participants; and a participants failure to ride within his ability or a participants failure to properly advise the equine professional of his/or riding ability.

EXHIBIT 6
DATE 2-1-91
HB 364

Testimony of Michael J. Sherwood
MTLA
OPPOSING HB 364

We oppose the bill for the following reasons:

1. It does not do what the title says it does. Article V, Section 11 of the Montana Constitution provides that each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void. This bill purports to extend the liability limits on certain equine activities, instead it reduced the liability limits on equine activities.

2. The only extension of liability that this bill creates is to the non-profit organizations designed to be protected by 27-1-733 as it is now written. With these amendments non-profit organizations would now be liable for ordinary carelessness when they provide the tack and gear, when they own or lease the land, or when they provide the stock and fail to evaluate the competence of the rider.

3. It provides immunity from suit to profit enterprises. This bill protects businesses operating for profit from suit for carelessness when dealing with their clients and customers. There is no compelling reason to do so. In fact, good public policy would dictate that these businesses do be held liable for their carelessness when taking us on horseback trips or hunts, when teaching our children to ride. The state of Montana expends considerable sums in soliciting out-of-staters to visit and vacation here. This sort of legislation sends the wrong message-- it says "Come here, but our business people will not be responsible if you are injured by their carelessness"

4. If we truly wish to clarify the protections afforded under the current law, this can be accomplished by the language set forth in the proposed amendment which is attached to this testimony.

EX 6
2-1-91
HB 364

27-1-733 Liability of nonprofit organizations and their employees for injuries suffered in sponsored rodeo and similar events.

(1) No nonprofit organization sponsoring an equine event ~~a rodeo, cowboy polo, cutting horse, O-Mok-See, trail riding, horse packing, horse show, or jackpot roping event,~~ or employee of the organization, is liable for injuries suffered by a contestant or participant as a result of his voluntary participation in the event except for injuries caused by a willful or wanton act of the sponsoring organization or its employees.

(2) For purposes of this section, a minor is considered to be in voluntary participation in an event if:

(a) he has provided written consent to participate in the event; and

(b) the consent is approved by one of the minor's parents or by his legal guardian.

(3) "Equine" means a horse, pony, mule, donkey, or hinny.

(4) "Equine activity" means:

(a) equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, 3-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, endurance trail riding and western games;

(b) equine training or teaching;

(c) boarding equines;

(d) rides, trips, or other equine activities of any type, however informal.

(5) "Contestant or participant" means a person who rides, trains, drives, or is a passenger upon an equine, whether mounted or unmounted. The phrase does not mean activity by a spectator at an

2-1-91
HB 364

1 equine activity or a person who participates in the equine activity
2 but does not ride, train, drive or ride as a passenger upon an
3 equine.

Testimony of Secretary of State Mike Cooney
In Support of House Bill 353
February 1, 1991
House Judiciary Committee

Mr. Chairman and members of the Committee, for the record my name is Mike Cooney and it is my privilege to appear before you today in support of House Bill 353.

In November of 1989, I announced publicly that I would be coming to this body with a proposal to close a loophole in our state's constitution. The loophole is simple...it is dangerous...and it's time for us to shut it down. Current constitutional interpretation as expressed just last May by the Supreme Court allows judges and justices appointed by the Governor to be exempt from the electoral process until after confirmation by the Senate.

I want to take just a moment to give you a visual example of exactly what this means. This chart was developed in 1989 and has been well used in both district court and the Supreme Court, and it does a pretty good job of helping to clarify what can be a somewhat confusing matter.

The chart illustrates the pitfalls that exist under the status quo using the election of Supreme Court Justices as an example.

The first illustration shows the standard, constitutionally mandated schedule for the election of Supreme Court Justices.

CX. 1
2-1-91
HB 353

The term of office for each Justice is eight years, and two justices are up for election at each even year general election. Under the standard schedule, using 1982 as a base year, Justice Position Number 1 would be elected, and would stand for re-election eight years later in 1990.

Example two illustrates the actual situation we found ourselves in 1989. When Justice Barz was appointed to the court in 1989, the Senate had already adjourned, so confirmation was impossible. Therefore, the term to which she was appointed was extended to 10 years, and the 1990 election for Supreme Court Justice Position Number One was canceled. The seat will be up for election in 1992, but the winner will serve a shortened term of only six years, and will be up for re-election in 1998.

Some will argue that the third illustration shown here is far fetched. I disagree. This illustration shows that through the use of scheduled appointments, both the legislative confirmation process and the electoral system can be completely circumvented. Appointments in 1989, 1991, 1993 and 1995 would effectively turn a simple eight year term on the Supreme Court into a sixteen year period during which time the voters of this state were denied their right to choose whom we wish to serve us on the Supreme Court.

Clearly, this last example is a hypothetical situation that is

CL. 1
2-1-91
HB 353

unlikely to occur. But it is possible...and right now, it is perfectly legal. But in 1990 the effect on the Montana voter was far from hypothetical.

In 1990, every voter in this state was denied the right to vote for their candidate of choice for a Supreme Court seat. In addition voters in two district court elections were given no choice because these seats were held by recent appointees. This is wrong, and it must stop.

When I became Secretary of State in 1989, I took a solemn oath to protect the Constitutional rights of every Montanan. Certainly, one of our most cherished rights here in Montana and throughout America is the right to vote. House Bill 353 will strengthen our Constitution and it will affirm the right of all Montanans to vote for those who govern our state.

In drafting this bill, I have tried to remain focused on the purpose of the measure...namely to amend the constitution to mandate the election of judges and justices at the times prescribed by law. The introduced copy of the bill you have before you would have eliminated much of the language regarding senate confirmation, the appointment process and the ballot form to be used in Judicial elections. Over the past week, through a series of discussions with members of the Supreme Court, members of the legislature, and other interested parties, it has been

Σx. 7

2-1-91

HB 353

suggested that language regarding the confirmation process and the ballot form should be retained. I agree with these changes and believe that they will further assist in clarifying the election and appointment process.

Copies of the amended language have been distributed, and I would encourage the committee review the amended language and to give favorable consideration to the amendments, and to House Bill 353.

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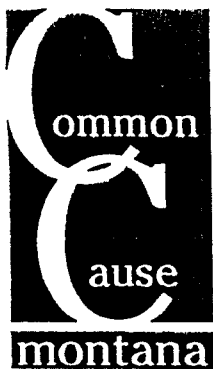


EXHIBIT 8
DATE 2-1-91
HB 353

TESTIMONY OF COMMON CAUSE/MONTANA

IN SUPPORT OF HOUSE BILL 353

1 February 1991

P.O. Box 623
Helena, MT
59624
406/442-9251

Mr. Chairman and members of House Judiciary Committee for the record my name is John McCarthy lobbyist for Common Cause in Montana. Common Cause/Montana represents Montanans who want open, accessible and democratic government in Montana.

On behalf of the members of the organization we would like to go on record in support of House Bill 353.

We support HB 353 because it closes an appointment loophole. It is important that if we as a state are going to have elected judges that they face the voters. This means an appointed judge must face the voters at the general election when the term for the appointment runs out. Such an election is the democratic thing to do. It is for this very simple reason we ask your endorsement of HB 353.

Proposed Amendments
House Bill 353

Section 1. Article VII, section 8, of The Constitution of the State of Montana is amended to read:

"Selection 8. Selection. (1) Supreme court justices and district court judges shall be elected by the qualified electors at the general election as provided by law.

(2) The For any vacancy in the office of supreme court justice or district court judge, the governor shall ~~nominate~~ appoint a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to ~~nominate~~ appoint within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the ~~nomination~~ appointment from the same nominees within thirty days of the governors failure to appoint. Appointments made under this subsection may shall be subject to confirmation by the senate as provided by law. If the appointee is not confirmed, the office shall be vacant and a replacement shall be made by the procedures in this section. The appointee shall serve until the expiration of the term of his predecessor. No appointee, whether confirmed or unconfirmed, may serve past the term of his predecessor without standing for election. Each nomination shall be confirmed by the senate, but the nomination made while the senate is not in session shall be effective as an appointment until the end of the next session, If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

~~(2)~~ (3) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. an incumbent files for election and there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made. the vacancy of the of the office for which the election was held shall be filled as provided in subsection (2).

~~(3) If an incumbent does not run, there shall be an election for the office."~~

NOTE: Sections 2 and 3 remain unchanged from HB 353 as Introduced.

Good morning. My name is Ben Darrow, I am a student from EXHIBIT 9
Whitefish High School. I am Senior Class President, DATE of 2-1-91
the Editors of our school paper. Representative Cohen HB 212 asked
me to give a general overview of the Hazelwood Case - the case
that is the basis for censorship of student publications.

On May 13th, 1983 in Hazelwood, MO the principal of the high school censored the Spectrum, the school's student newspaper. Two pages of the six page paper were removed and the paper was published in its reduced form. The students were not told of the censorship, and did not find out about it until the paper was released.

The censored articles dealt with teenage pregnancy and divorce. The principal of the Hazelwood school believed the articles were not appropriate for some of the school's younger students, and did not accurately portray the school's attitudes toward divorce and premarital sex.

The students who wrote the paper sued to have the paper published in its entirety. They won, and then lost, and then won again. Eventually the case made its way to the Supreme Court where the majority ruled, in a 6-3 vote, that school publications could be censored by the school's administration.

The majority opinion was written by Justice White. In his statement he wrote that, "1st Amendment rights of students in public school are not automatically coextensive with the rights of adults in other settings." The majority opinion also states that officials are not required to create guidelines before they censor, the only restraint placed on school administrators was that the censorship must be "reasonably related to legitimated pedagogical concerns." This ruling enabled school officials to

justify censoring school publications at their own accord.

Justice Brennan wrote the dissenting opinion. He stated that censoring the school paper "in no way furthers the curricular purposes of a student paper, unless one believes that the purpose of the school paper is to teach students that the press should never report bad news, express unpopular views, or print a thought that might upset its sponsors."

With the Hazelwood ruling behind them, school administrators have been able to censor and control what is printed in school publications.

The Hazelwood case has directly affected me as the editor of our school paper. In the last issue of the Bulldog Breeze the principal of my school refused to let us print a story. The story was about Youth Alive, a Fundamentalist Christian youth group, that met during lunch in a classroom. Youth Alive was banned from our school because it was considered disruptive by the faculty. The members of the group moved their meeting place outside of the school and petitioned the school to let them return. The article gave the history of Youth Alive, and the reason for its removal from school grounds. The principal believed that the school's policies were questioned by this story, and therefore censored it.

This is just one of many examples of censorship of our paper. I am afraid that my paper will become just a voice of the administration instead of a paper by the students for the students. I am afraid that we will be allowed to print only the truth as the administration sees it. I want to publish a student paper that is a forum for students' ideas. One that interests others, and provokes them to think. Only if, no, only when a school paper is free from censorship can this occur. Thank you.

2-1-91
HB 212

EXHIBIT 10
DATE 2-1-91
HB 212

"Freedom of Speech" Resolution

WHEREAS ASUM believes in the First Amendment and that all
American have the right to free speech.
and

WHEREAS the Hazelwood Supreme Court decision of 1987, which
states that high school principals have the right to
censor student newspapers and other forms of
expression by students, does not allow for freedom
of expression by all United States citizens.

THEREFORE let it be resolved that ASUM supports House Bill
212 which overturns the Hazelwood Supreme Court
decision at the state level.

SPONSORED BY:
LINN PARISH

I am a journalism professor at the University of Montana and the adviser to the university's student newspaper, the Montana Kaimin. The Hazelwood case does not apply to a university newspaper, so my interest in this bill isn't self-interest, but rather stems from a broad concern over free press guarantees and a more narrow concern over how journalism is taught and practiced in high schools.

A year after the Supreme Court issued its Hazelwood decision I called many of the high school newspaper advisers in the state to find out how their newspapers had been affected. In some cases the effect was slight because experience had taught the advisers that **job survival** meant making sure the journalism students didn't make waves.

One of my students at the university told me recently that he was asked by his high school English teacher to be the school newspaper editor. In the first issue he wrote an editorial critical of the administration for routinely searching students' lockers to -- they said -- look for chewing tobacco. The teacher was horrified and told him that wasn't what she had in mind. What she wanted, she said, were editorials about school spirit. To his credit, the student resigned.

No, **all news isn't bad news** and all editorials shouldn't be critical. But to censor news and opinions to **pretend** that all news is **good news** and everyone in the school agrees on every issue **is to lie**. It's as wrong as teaching students in a math class that 2 plus 2 equals 5. Schools that use their newspapers only for public relations reasons aren't teaching journalism -- they may be teaching typing, grammar and sentence structure -- but it's just not journalism.

Many of the advisers are trying very hard to teach good journalism and you've heard from some of them today. I talked to several of these advisers in doing my Hazelwood research. But many are prevented from doing their jobs the way they know they should be done because they face constant interference from other teachers, vice principals and principals, school superintendents, school board members and even members of the community. In every case these outside people with no training in journalism tried to substitute their judgment for that of the advisers. Let these people do what the state has certified them to do -- teach journalism. And let them do it without fearing for their jobs.

This bill **won't encourage discord**. It will, however, allow students to **acknowledge** that the world is a complicated place, that sometimes people disagree, but that their opinions should be heard. It will acknowledge that their lives have a larger dimension ^{than} choosing their favorite rock stars and cheering for the athletic teams.

I hope you can support this bill as amended.

CAROL VAN VANKENBURG

My name is Clemens P. Work and I am an assistant professor of journalism at the University of Montana. I am also a member of the bar and licensed to practice in California, the District of Columbia and the 9th Circuit of the U.S. Court of Appeals, which includes Montana. My purpose this morning is to testify in favor of HB212, sponsored by Rep. Cohen, that would fortify press freedoms of students in public schools in Montana.

As a school of journalism, we teach more than techniques of reporting. We constantly teach and reinforce ethics and values. As educators, we support all learning that teaches young people to be responsible members of a democratic society. A key tenet of American citizenship is the ability to freely comment on and write about matters of concern to the public without fear of official censorship or prior restraint.

The reason that prior restraint is so repugnant to our values lies both in our history, in our collective memory of repressive measures in colonial times in which a heavy-handed government throttled free expression, and in the common-sense notion that a press as free as possible best serves our citizens' rights to a responsive and democratic government. A press afraid to criticize, to probe, to expose, is no press at all, but merely a propaganda tool.

Of course the principle of free speech, embodied in the First Amendment to the Constitution, has well-recognized limits. Shouting fire in a crowded theater, publishing obscene material that goes beyond community standards of decency; language that defames a person or violates their privacy--all are types of speech that have

CH 12 212
2-1-91
HB 212

been found to be harmful enough to warrant sanctions, after they have been printed or published.

Now in the high school setting, the question is whether we should toss these principles aside and in effect tell students that they are too immature to play by the same rules. Unfortunately, under the U.S. Supreme Court decision in the *Hazelwood* case, now three years old, some principals and school administrators, both in Montana and elsewhere in the country, have gotten the impression that they can now censor anything they don't like, that is perhaps embarrassing to their administration, or even presents a viewpoint with which they disagree, as long as their action is reasonably related to a legitimate pedagogical or educational purpose.

Leaving aside the circularity of that very broad standard, for any principal can justify his or her action as teaching kids a lesson, high school principals justify their actions by saying that they are dealing with unformed, adolescent personalities who need more mature guidance. In itself, this statement has some truth to it (and as the father of a high school student, I can identify with it). But it is equally true that we owe to our students, our future adults and leaders of this country, an even greater responsibility--that of instilling in them our values of a free and democratic society. In his opinion in *Hazelwood*, Justice Brennan states it succinctly: "Public educators must accommodate some student expression even if it offends them or offers views or values that contradict those the school wishes to inculcate." In a democracy, we must take risks. Democracy, I believe, is best served by a thorough and challenging educational system which teaches students to think critically, to analyze, and to make

Ex 1a 213
2-1-91
HB 212

sound decisions. Democracy is **not** best served by making all the tough decisions for our students, or by creating an atmosphere in which timidity replaces curiosity, in which reluctance or diffidence replaces commitment. Teachers everywhere know that students learn best by doing; we cannot expect our students to learn about the First Amendment without being allowed to practice it.

Will high school student journalists run amok if specific legislation fortifying their freedom of expression is enacted in Montana? I hope you have observed and listened carefully to the students who have testified before you today. These are young people who are eager to be good citizens, who are committed to our ideals, and who are responsible and mature. We live in a complicated, frightening and confusing world. It's not hard to understand why we want to control as much as possible, either as parents or through our schools. But these young people are eager to learn and to apply their knowledge. Yes, they need a steadying hand. In this context, a competent and committed advisor--backed up by clear publications policies and in a framework of trust and cooperation with school administrators--can help steer students in the right direction. Would a chemistry teacher let his students blow up themselves or others in the lab? Neither would a journalism advisor condone a dangerous or foolish act. Instead, he or she would ensure that students reported their stories fairly and accurately. Whether it's in the school newspaper, in positions of student government or in the classroom, students do need to experiment in the laboratory of democracy, and their positive results will teach them--and us--volumes about democracy.

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

EXHIBIT 13
DATE 2-1-91
HB 212

P. O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086

State Office
335 Stapleton Building
Billings, Montana 59101

BOB ROWE
President

SCOTT CRICHTON
Executive Director

JEFFREY T. RENZ
Litigation Director

February 1, 1991

Mr. Chairman, Members of the Committee:

For the record my name is Scott Crichton, Director of the American Civil Liberties Union of Montana. I am here today to speak in favor of House Bill 212, on behalf of the more than 800 families who are dues paying members of the ACLU here in Montana.

This bill gets to the root of what is most fundamental to our system of government. There is good reason why the first amendment of our Bill of Rights protects the central and fundamental principle of free expression. It is altogether fitting and appropriate that of all places it most certainly needs to be addressed in our schools. What better place and what better way to establish the necessary basic understanding of tolerance for difference of opinions than in our learning institutions.

We urge support for HB 212. Thank you.

Respectfully submitted,

Scott Crichton
Executive Director

"Eternal vigilance is the price of liberty"

EXHIBIT

14

DATE 2-1-91

HB 131

THIS IS A "GRAY BILL". IT WAS DRAFTED ON JANUARY 29 FOR THE SUBCOMMITTEE ON THE BILL AND FOR PURPOSES OF HOUSE JUDICIARY COMMITTEE ACTION ON HB 131. IT SUPERCEDES THE ORIGINAL GRAYBILL THAT WAS DRAFTED ON JANUARY 22 AND PRINTED ON WHITE PAPER. IT IS NOT A FIRST, SECOND, OR THIRD READING COPY OF A BILL, NOR IS IT AN LC DRAFT. THIS GRAYBILL CONTAINS, IN AMENDMENT FORM AND FORMAT, THE SUBCOMMITTEE'S PROPOSED AMENDMENTS, EXCEPT THAT THE AMENDMENTS TO 2-6-101 AND 2-6-102, MCA, WERE IN THE INTRODUCED FIRST READING COPY OF THE BILL. INSERTED SUBCOMMITTEE AMENDMENT MATERIAL IS TYPED IN ALL CAPITAL LETTERS AND UNDERLINED AND MATERIAL THE SUBCOMMITTEE AMENDMENTS DELETE IS STRUCK THROUGH.

HOUSE BILL NO. 131 INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "THE HUMAN SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT; CREATING A BURIAL PRESERVATION BOARD; ESTABLISHING REPORTING AND NOTIFICATION PROCEDURES REGARDING DISTURBANCE OF A BURIAL SITE; PROVIDING FOR FIELD REVIEW AND SCIENTIFIC ANALYSIS; PROVIDING DISINTERMENT AND REINTERMENT PROCEDURES; PROVIDING FOR FEES AND CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR DISPOSITION OF FEES, GRANTS, AND DONATIONS, AND PENALTIES; EXEMPTING MEETINGS FROM THE OPEN MEETING LAWS UNDER CERTAIN CONDITIONS; PROVIDING FOR CONFIDENTIALITY OF RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY; PROVIDING FOR A TWO-YEAR STATUTORY APPROPRIATION; APPROPRIATING MONEY FROM THE CULTURAL AND AESTHETIC PROJECTS ACCOUNT GENERAL FUND; AMENDING SECTIONS 2-3-203, 2-6-101, AND 2-6-102, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants to the burial protection board rulemaking authority to implement the provisions of this bill. At a minimum, it is the intent of the legislature that the board adopt rules:

- (1) governing the conduct of board business;
- (2) establishing and maintaining a registry of burial sites located in the state;
- (3) establishing criteria for conducting field reviews upon notification of a discovery of human skeletal remains, burial sites, or burial materials; and
- (4) establishing guidelines and forms for the issuance of a

permit for scientific analysis of human remains or burial materials.

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

NEW SECTION. Section 1. **Short title.** [Sections 1 through 9 10 AND 13] may be cited as the "Human Skeletal Remains and Burial Site Protection Act".

NEW SECTION. Section 2. **Legislative findings and intent.**

(1) The legislature of the state of Montana finds that:

(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands THAT ARE NOT PROTECTED AS CEMETERIES OR GRAVEYARDS UNDER EXISTING STATE LAW;

(b) marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds NOT PROTECTED AS CEMETERIES OR GRAVEYARDS UNDER EXISTING STATE LAW are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;

(c) private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.

(d) while some human skeletal remains and burial sites may be of interest to science, the needs of the scientific community to gather information and material from burial sites must be balanced with the legal, moral, and religious rights and obligations of tribal groups, next of kin, or descendants;

(e) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial material; and

(f) notwithstanding any other provision of law, [sections 1 through 9 10 AND 13] are the exclusive laws governing the treatment of human skeletal remains, burial sites, and burial materials.

(2) It is the intent of the legislature to:

(a) ensure that all burials be accorded equal treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation;

(b) provide adequate protection for all interests related to any burial site encountered during archaeological excavation or agricultural, mining, construction, or other ground-disturbing activity on state and private lands without causing avoidable or undue delay or hardship for any person who has an interest in using the land on which the burial site is located;

(c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or religious affiliation with the burial site and balance those interests

against the interests of scientists, landowners, and developers;
and

(d) provide to the board an exemption from the open meeting and public records laws when public disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site; AND

(E) RECOGNIZE THE NEED FOR FORENSIC EXAMINATION OF HUMAN SKELETAL REMAINS, BURIAL SITES, AND BURIAL MATERIAL IF THE COUNTY CORONER, COUNTY ATTORNEY, OR STATE MEDICAL EXAMINER DETERMINES AN EXAMINATION IS NECESSARY UNDER STATE LAW.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 9 10 AND 13], the following definitions apply:

(1) "Board" means the burial preservation board established in [section 4].

(2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.

(3) "Burial site" means, EXCEPT FOR CEMETERIES AND GRAVEYARDS PROTECTED UNDER EXISTING STATE LAW, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(4) "Human skeletal remains" means any part of the human body in any state of decomposition TAKEN FROM A BURIAL SITE.

(5) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, including EXCEPT a cemetery OR GRAVEYARD PROTECTED UNDER EXISTING STATE LAW, where human skeletal remains are or have been interred.

(6) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.

(7) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations.

NEW SECTION. Section 4. Board -- composition -- rights -- responsibilities. (1) There is a burial preservation board. The board is composed of:

(a) ~~one person~~ REPRESENTATIVE appointed by the ~~tribal governmental body of each of the seven Indian reservations in Montana~~ GOVERNOR FROM EACH OF THE SEVEN RESERVATIONS FROM A LIST OF UP TO THREE NOMINEES PROVIDED BY EACH OF THE RESPECTIVE TRIBAL GOVERNMENTS;

(b) one person appointed by THE GOVERNOR FROM A LIST OF UP TO THREE NOMINEES SUBMITTED the Little Shell band of Chippewa Indians;

(c) one person appointed by the Montana state historic preservation officer;

(d) a representative of the Montana archaeological association appointed by the coordinator of Indian affairs FROM A LIST OF UP TO THREE NOMINEES SUBMITTED BY THE MONTANA

ARCHAEOLOGICAL ASSOCIATION;

(e) one physical anthropologist appointed by the state medical examiner; and

(f) a representative of the Montana ~~coroner's~~ CORONERS' association appointed by the coordinator of Indian affairs FROM A LIST OF UP TO THREE NOMINEES SUBMITTED BY THE MONTANA CORONERS' ASSOCIATION; AND

(G) ONE REPRESENTATIVE OF THE PUBLIC, APPOINTED BY THE ATTORNEY GENERAL, WHO IS NOT ASSOCIATED WITH TRIBAL GOVERNMENTS; STATE GOVERNMENT; THE FIELDS OF HISTORIC PRESERVATION, ARCHAEOLOGY, OR ANTHROPOLOGY; OR THE MONTANA CORONERS' ASSOCIATION.

(2) MEMBERS OF THE BOARD SHALL SERVE STAGGERED 2-YEAR TERMS. A VACANCY ON THE BOARD MUST BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT AND ONLY FOR THE UNEXPIRED PORTION OF THE TERM.

~~(2)~~ (3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board, or a representative or representatives of the board, to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed \$50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by [section 6];

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of [sections 1 through 9 10 AND 13];

(i) adopt rules necessary to administer and enforce the provisions of [sections 1 through 9 10 AND 13]; and

(j) perform any other duties necessary to implement the provisions of [sections 1 through 9 10 AND 13].

~~(3)~~ (4) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

~~(4)~~ (5) Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

NEW SECTION. Section 5. ~~Inadvertent disturbance~~
DISCOVERY -- reporting requirements -- field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity ~~inadvertently disturbs or~~ discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in [section 8].

(2) Upon discovery of HUMAN SKELETAL REMAINS, a burial site ~~that is reasonably suspected to overlie adjacent remains, OR BURIAL MATERIAL~~, excavation or further disturbance must cease until the coroner has determined ~~that~~ WHETHER the remains are ~~not~~ subject to the provisions of Title 46, chapter 4, ~~part 1 or 2~~, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death OR WHETHER A FORENSIC EXAMINATION OF THE HUMAN SKELETAL REMAINS, BURIAL SITE, OR BURIAL MATERIAL IS NECESSARY. The coroner shall make his determination within 2 working days from the time the person responsible for the excavation notifies him of the discovery or recognition of the remains. ~~If possible, the~~ IF THE CORONER CANNOT MAKE THE DETERMINATION WITHIN 2 WORKING DAYS, HE SHALL NOTIFY A MEMBER OF THE BOARD OF THE REASON FOR AND THE APPROXIMATE LENGTH OF THE DELAY. THE coroner shall TAKE ALL REASONABLE STEPS TO make his determination without removing or causing further disturbance of the remains.

(3) IF A FORENSIC EXAMINATION; ACTION UNDER TITLE 46, CHAPTER 4; OR ACTION UNDER ANY OTHER RELATED PROVISIONS OF LAW CONCERNING THE INVESTIGATION OF THE CIRCUMSTANCES, MANNER, AND CAUSE OF DEATH; IS NECESSARY AND YIELDS EVIDENCE OF CRIMINAL ACTIVITY, THE EVIDENCE MAY BE SEIZED BY THE CORONER OR LAW ENFORCEMENT AGENCY WITH JURISDICTION FOR USE IN A CRIMINAL PROCEEDING AS PROVIDED BY LAW.

~~(3)~~ (4) If the coroner determines that the remains are not subject to ~~his authority~~ THE PROVISIONS OF TITLE 46, CHAPTER 4, OR ANY OTHER PROVISIONS OF LAW CONCERNING THE INVESTIGATION OF THE CIRCUMSTANCES, MANNER, AND CAUSE OF DEATH, AND THAT A FORENSIC EXAMINATION IS NOT NECESSARY, he shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact the landowner and the board or landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

~~(4)~~ (5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

~~(5)~~ (6) Within 36 hours ~~of~~ AFTER THE BOARD RECEIVES notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner,

an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or his representative for a reasonable time extension to complete the review. The field review must include:

- (a) a determination of whether the site can be preserved;
- (b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and
- (c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

~~(6) (7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide a resolution acceptable to the landowner and the board, the board shall oversee the reinterment of the human skeletal remains and burial material with appropriate dignity in an alternate location not subject to further subsurface disturbance.~~ CONTROL OF HUMAN SKELETAL REMAINS OR BURIAL MATERIALS IS VESTED IN THE BOARD AND THE BOARD MUST GIVE CONTROL OF THE REMAINS OR MATERIALS IN THE FOLLOWING PRIORITY TO:

- (A) THE DESCENDANTS, IF IDENTIFIABLE;
 - (B) THE TRIBE OR OTHER CULTURAL GROUP THAT HAS THE CLOSEST CULTURAL AFFILIATION WITH THE HUMAN SKELETAL REMAINS OR BURIAL MATERIALS;
 - (C) THE TRIBE OR OTHER CULTURAL GROUP RECOGNIZED AS HAVING ABORIGINALLY OR HISTORICALLY OCCUPIED THE AREA WHERE THE REMAINS OR MATERIALS WERE DISCOVERED IF, UPON NOTIFICATION BY THE BOARD, THE TRIBE OR CULTURAL GROUP STATES A CLAIM FOR THE REMAINS OR MATERIALS; OR
 - (D) IF UNCLAIMED BY ANY TRIBE OR CULTURAL GROUP, TO THE BOARD, WHICH SHALL DETERMINE THE APPROPRIATE DISPOSITION AND OVERSEE THE REINTERMENT OF THE REMAINS AND MATERIALS.
- (8) FOR PURPOSES OF THIS SECTION, "CULTURAL GROUP" MEANS A PRESENT DAY GROUP OR ORGANIZATION THAT HAS A RELATIONSHIP OF SHARED GROUP IDENTITY, WHICH CAN BE REASONABLY TRACED HISTORICALLY OR PREHISTORICALLY, WITH AN IDENTIFIABLE EARLIER GROUP OR ORGANIZATION.

NEW SECTION. Section 6. Scientific analysis -- permit required. (1) Although onsite reburial is preferred, the board may, upon petition by a person seeking permission to perform scientific analysis, grant a permit for the scientific removal and analysis of human skeletal remains and burial material upon proof and determination by the board that the analysis is scientifically justifiable. A petition for a permit must include:

- (a) payment of the nonrefundable application fee provided for in [section 4]; and
- (b) a brief narrative describing the methodology to be used, the timeframe needed to complete the scientific study, and any other information specifically requested by the board relating to the proposed study.

- (2) The methodology proposed must be reviewed by the state

historic preservation officer or his designated representative and the physical anthropologist on the board, and a recommendation must be made to the full board. Once approved by the board, any change in methodology or in the timeframe must be approved by the board before the original timeframe expires. THE TIMEFRAME FOR SCIENTIFIC STUDY MAY NOT EXCEED 12 MONTHS FROM THE DATE OF ISSUANCE OF THE PERMIT.

(3) A permit for scientific analysis issued by the board is subject to terms, conditions, and procedures prescribed by the board and must include the condition that a permittee shall pay all costs of excavation, study, and disposition.

(4) THE BOARD SHALL EITHER ISSUE OR DENY A PERMIT WITHIN 30 WORKING DAYS FROM THE DATE OF PERMIT PETITION. If the board denies a permit upon a finding that scientific analysis is not justifiable, the board must provide the applicant with a written statement outlining the grounds for its finding. The applicant may appeal the decision of the board under the provisions of Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(5) The board may suspend or revoke a permit pursuant to the Montana Administrative Procedure Act upon a finding that the permittee has violated any provision of [sections 1 through 9 10 AND 13] or any term, condition, or procedure of a permit issued by the board.

(6) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO ACTION UNDER TITLE 46, CHAPTER 4; ACTION UNDER ANY OTHER RELATED PROVISIONS OF LAW CONCERNING THE INVESTIGATION OF THE CIRCUMSTANCES, MANNER, AND CAUSE OF DEATH; OR A FORENSIC EXAMINATION BY THE COUNTY CORONER.

NEW SECTION. Section 7. **Nondisclosure of records.** (1) The state historic preservation officer, in consultation with the board, shall maintain burial site records that are separate and distinct from those in the cultural resource registry and that are necessary to administer [sections 1 through 9 10 AND 13].

(2) Burial site records are confidential and available only to federal ~~and~~ state, AND TRIBAL personnel, or their appointed representatives, who are legally charged with administering laws protecting cultural resources AND CRIMINAL JUSTICE AGENCIES.

(3) ~~However, statistical~~ STATISTICAL information compiled from burial site records must be made available to the general public. ANY INFORMATION CONCERNING BURIAL SITE RECORDS THAT IS RELEASED TO A CRIMINAL JUSTICE AGENCY IS CONFIDENTIAL CRIMINAL JUSTICE INFORMATION, AS DEFINED IN 44-5-103, AND IS SUBJECT TO DISSEMINATION PURSUANT TO 44-5-303.

NEW SECTION. Section 8. **Prohibited acts -- penalties.** (1) After July 1, 1991, a person may not, UNLESS AUTHORIZED UNDER [SECTIONS 1 THROUGH 10 AND 13] OR BY THE DESCENDANTS; TRIBE; CULTURAL GROUP; OR OTHER PERSON, GROUP, OR ENTITY TO WHICH THE BOARD GIVES THE HUMAN SKELETAL REMAINS OR BURIAL MATERIALS UNDER [SECTION 5 (7)]:

(a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked,

unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;

(b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of [sections 1 through 9 10 AND 13]; or

(c) ~~without consent of the board,~~ purposely or knowingly disclose information KNOWING that IT is ~~designated as confidential by the board and that may~~ HIGHLY PROBABLE THAT THE DISCLOSURE WILL lead to pilferage, disturbance, or destruction of a burial site.

Note to committee: The subcommittee wishes the full committee to choose either the subsection (c) above or the subsection (c) below. These are two separate versions, one of which the full committee should choose. The one above is the subcommittee's choice and the one below was put in the bill by a Rep. Boharski amendment adopted by the full committee.

(c) ~~without consent of the board,~~ purposely or knowingly disclose information ~~that is designated as confidential by the board and that may~~ with the intent that such disclosure will lead to pilferage, disturbance, or destruction of a burial site.

(2) A person convicted under the provisions of subsection (1)(a) ~~or (1)(b) is guilty of a felony and~~ may be fined an amount not to exceed ~~\$10,000~~ \$1,000, be imprisoned IN THE COUNTY JAIL for not more than ~~1 year~~ 6 MONTHS, or both. A person convicted of a subsequent violation of subsection (1)(a) ~~or (1)(b) is guilty of a felony and~~ may be fined an amount not to exceed ~~\$100,000~~ \$20,000, be imprisoned for not more than 5 years, or both.

(3) A PERSON CONVICTED UNDER THE PROVISIONS OF SUBSECTION (1)(B) MAY BE FINED AN AMOUNT NOT TO EXCEED \$50,000, BE IMPRISONED FOR NOT MORE THAN 20 YEARS, OR BOTH.

~~(3)~~ (4) A person convicted under the provisions of subsection (1)(c) ~~is guilty of a misdemeanor and~~ may be fined an amount not to exceed ~~\$5,000~~ \$500, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(c) ~~is guilty of a felony and~~ may be fined an amount not to exceed \$10,000, be imprisoned for not more than ~~1 year~~ 5 YEARS, or both.

(4) A person who KNOWINGLY fails to give notice as required by [section 5(1)] ~~is guilty of a misdemeanor and~~ may be fined an amount not less than \$100 or more than \$500.

(5) ~~In addition to or in lieu of any penalty imposed by this section, the board, upon a finding that a person has violated any~~ A PERSON WHO VIOLATES A provision of this section or any term or condition of a permit issued under [section 6], ~~may~~

~~impose a fine IS SUBJECT TO A CIVIL PENALTY not to exceed \$2,000 for each THE FIRST violation AND NOT TO EXCEED \$10,000 FOR A SUBSEQUENT VIOLATION. A fine may be imposed only upon notice and following a hearing conducted pursuant to the Montana Administrative Procedure Act.~~

NEW SECTION. Section 9. Criminal enforcement and civil CIVIL PENALTY AND DAMAGES actions -- costs. (1) ~~The state and its political subdivisions are responsible for enforcement of [sections 1 through 9]. A criminal action may be initiated by a county attorney for violation of [sections 1 through 9] upon request of the board. Civil [SECTIONS 1 THROUGH 10 AND 13] DO NOT PRECLUDE CIVIL actions for damages resulting from violations of [sections 1 through 9] may be initiated by the board.~~

(2) ~~Costs of a civil action to enforce the provisions of [sections 1 through 9] must be awarded to the successful complainant THE BOARD MAY BRING AN ACTION UNDER [SECTION 8] FOR A CIVIL PENALTY.~~

NEW SECTION. Section 10. Section 2-3-203, MCA, is amended to read:--

"2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) ~~All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.--~~

(2) ~~All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.--~~

(3) ~~Provided, however, the presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting shall be open.--~~

(4) ~~However, a meeting may be closed to discuss a strategy to be followed with respect to collective bargaining or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public agency or when information acquired from an open meeting could result in pilferage, disturbance, or destruction of a burial site.--~~

(5) ~~Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business which is within the jurisdiction of that agency shall be subject to the requirements of this section."~~ CLOSURE OF BOARD MEETINGS. THE BOARD MAY CLOSE PART OF A MEETING OF THE BOARD TO THE PUBLIC IF THE BOARD FINDS THAT INFORMATION THAT MAY BE ACQUIRED AT THAT PART OF THE MEETING MAY ALLOW A PERSON TO IDENTIFY A BURIAL SITE, HUMAN SKELETAL REMAINS,

OR BURIAL MATERIAL AND PILFER, DISTURB, OR DESTROY THE BURIAL SITE, HUMAN SKELETAL REMAINS, OR BURIAL MATERIAL.

Section 11. Section 2-6-101, MCA, is amended to read:

"2-6-101. **Definitions.** (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings, except as provided in 22-1-1103 and [section 7].

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private."

Section 12. Section 2-6-102, MCA, is amended to read:

"2-6-102. **Citizens entitled to inspect and copy public writings.** (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, in [section 7], and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

NEW SECTION. Section 13. **Disposition of fees, grants, AND donations, and penalties.** (1) THERE IS AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND. The board shall deposit any fee, grant, or donation received under [section 4] ~~or any penalty amount imposed under [section 8]~~ into the ~~cultural and aesthetic projects~~ account ~~provided for in 15-35-108,~~ to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

(2) THE MONEY IN THE ACCOUNT IS STATUTORILY APPROPRIATED TO THE BOARD, AS PROVIDED IN 17-7-502.

SECTION 14. SECTION 17-7-502, MCA, IS AMENDED TO READ:

"17-7-502. **STATUTORY APPROPRIATIONS -- DEFINITION -- REQUISITES FOR VALIDITY.** (1) A STATUTORY APPROPRIATION IS AN APPROPRIATION MADE BY PERMANENT LAW THAT AUTHORIZES SPENDING BY A STATE AGENCY WITHOUT THE NEED FOR A BIENNIAL LEGISLATIVE APPROPRIATION OR BUDGET AMENDMENT.

(2) EXCEPT AS PROVIDED IN SUBSECTION (4), TO BE EFFECTIVE, A STATUTORY APPROPRIATION MUST COMPLY WITH BOTH OF THE FOLLOWING PROVISIONS:

(A) THE LAW CONTAINING THE STATUTORY AUTHORITY MUST BE LISTED IN SUBSECTION (3).

(B) THE LAW OR PORTION OF THE LAW MAKING A STATUTORY APPROPRIATION MUST SPECIFICALLY STATE THAT A STATUTORY APPROPRIATION IS MADE AS PROVIDED IN THIS SECTION.

(3) THE FOLLOWING LAWS ARE THE ONLY LAWS CONTAINING STATUTORY APPROPRIATIONS: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; [SECTION 13]; AND SECTION 13, HOUSE BILL NO. 861, LAWS OF 1985.

(4) THERE IS A STATUTORY APPROPRIATION TO PAY THE PRINCIPAL, INTEREST, PREMIUMS, AND COSTS OF ISSUING, PAYING, AND SECURING ALL BONDS, NOTES, OR OTHER OBLIGATIONS, AS DUE, THAT HAVE BEEN AUTHORIZED AND ISSUED PURSUANT TO THE LAWS OF MONTANA. AGENCIES THAT HAVE ENTERED INTO AGREEMENTS AUTHORIZED BY THE LAWS OF MONTANA TO PAY THE STATE TREASURER, FOR DEPOSIT IN ACCORDANCE WITH 17-2-101 THROUGH 17-2-107, AS DETERMINED BY THE STATE TREASURER, AN AMOUNT SUFFICIENT TO PAY THE PRINCIPAL AND INTEREST AS DUE ON THE BONDS OR NOTES HAVE STATUTORY APPROPRIATION AUTHORITY FOR SUCH PAYMENTS. (IN SUBSECTION (3), PURSUANT TO SEC. 10, CH. 664, L. 1987, THE INCLUSION OF 39-71-2504 TERMINATES JUNE 30, 1991.)"

NEW SECTION. Section 15. Appropriation. There is appropriated ~~\$5,000~~ \$10,000 from the ~~cultural and aesthetic projects account provided for in 15-35-108~~ GENERAL FUND to the board for THE TWO fiscal year ~~1992~~ YEARS BEGINNING JULY 1, 1991, to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 17. Effective dates. (1) [Section 4 and this section] are effective on passage and approval.

(2) [Sections 1 through 3 ~~and~~, 5 through ~~15~~ 16, AND 18] are effective July 1, 1991.

NEW SECTION. SECTION 18. TERMINATION. [SECTION 13, SUBSECTION (2), AND SECTION 14] TERMINATE ON JUNE 30, 1993.

-End-

EXHIBIT

DATE

HB

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-1-91 BILL NO. 131 NUMBER MOTION: Rep. Measure moved the amendment
suggested by Rep. Boharski.

NAME AYE NO

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		
REP. BRUCE MEASURE	—	
REP. CHARLOTTE MESSMORE	—	
REP. LINDA NELSON	—	
REP. JIM RICE	—	
REP. ANGELA RUSSELL		—
REP. JESSICA STICKNEY		—
REP. HOWARD TOOLE		—
REP. TIM WHALEN		—
REP. DIANA WYATT		—
REP. BILL STRIZICH, CHAIRMAN		—
TOTAL	9	10

EXHIBIT 15
DATE 2-1-91
HB 131

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-1-91 BILL NO. 131 NUMBER

MOTION: Rep. Rice to amend the entire penalty section
w/ exception of changing sect. of 20 yrs. to 10 yrs.

NAME AYE NO

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		
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE	/	
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE		/
REP. TIM WHALEN	/	
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	10	9

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB#364
DATE 2-12-91 SPONSOR(S) Rep. Grady
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ken Kelsey	Dude Ranching	X	
Sarah Hottatz	DRA	X	
Ellen Hargrave	Dude Ranching	X	
LEO HARGRAVE	RANCHER	X	
CAROL MOSHER	MT. CATTLEWOMEN	X	
Michael Sherwood	MTLA		X
Kim Enkerud	MT Stockgrowers	X	
SHIRLEE WIRTH	MONTANA HORSE COUNCIL	X	
Charleen Spalding	Mont. Horse Council	X	
Tom Harwood	Self Farmer		
Gaylyn Wagner	MT Horse Council	X	
Gas Graham	Dist of Livestock	✓	
Ann Williams	MSEA	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

House Judiciary COMMITTEE DATE 2-1-91
DEPARTMENT(S) DIVISION

DIVISION _____

PLEASE PRINT

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB # 353
DATE 2-1-91 SPONSOR(S) Rep. Skirach

PLEASE PRINT

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jerry O'Neil Kalispell, MT	VOCAL of Montana	✓	✓
Gerald Skiffner Polson, MT	Vocal of Montana	✓	✓
Garth Jacobson	Sec of State	✓	
MIKE COONEY	Sec of STATE	✓	
John McCortley	Common Cause / Montana	✓	
Charles Ramsey	M S C A	✓	
Hallie Bornstein	Hellgate High School	✓	
Kort Duce	Hellgate High School	✓	
Ryan Whiting	Polson High School	✓	
Shannon Rattray	Senior High School	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

1 of 3

House Judiciary COMMITTEE BILL NO. 48#212
DATE 2-1-91 SPONSOR(S) Rep. Cohen

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Chuck Bell	MNA		
Christine M. Vallie	Blgs. West High student newspaper	✓	
Miki Hazard	West High Student newspaper	✓	
JENNA PIKE	WEST HIGH STUDENT PAPER	✓	
Carey Ruble	West High Student Paper	✓	
Stephanie Martin	West High student Ppr.	✓	
Eileen Sheehy	West High Student Newspaper	✓	
Joyce Dugan	Montana School Boards Assoc		✓
Gregory J. Fine	Missoula County High Schools		✓
MARY RICE JOHN RICE	MATELA ASBMA	✓	
Loren Frasier	S. A. M		✓
RITA SHEEHY Rita Sheehy	Self	✓	
Ch. Kury	M S C A	✓	
Tom Harwood	Self	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Scott Erickson
Kirk Erickson
Melanie Kovner

ACLU (MT)
Billings Senior High
Polson High School
Salmon

✓
✓
✓

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

HB. #212

House Judiciary

COMMITTEE

DATE 2/11/91

DEPARTMENT(S)

DIVISION

PLEASE PRINT

PLEASE PRINT

NAME	REPRESENTING	Support
Anita Aden	Polson H.S. = Salishian	✓
Mike Gold	Billings Senior H.S.	✓
Deb BERT	EASTERN MT. College	✓
Larissa Berry	Helena High	✓
Don Chareunsky	Helena High	✓
Erin Meeks	Polson High School	✓
Miranda Perirod	Polson High School	✓
Gemee Chester	" "	✓
Benjamin Danow	Whitefish High School	✓
David Severson	Sentinel High School (MS/4)	✓
Kelly Halvorson	Sentinel High (MS/4)	✓
JOHN NYGARD	Polson High	✓
Dave Speer	Sentinel High	✓
Rebecca Palmer	Sentinel High	✓
Shane Graff	Sentinel High	✓
Kristin Page	Mont PIRG	✓
CAROL VAN VALKENBURG	UNIV. of MONTANA	✓
CLEMENS P. WORK	UNIV. of MONTANA	✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT
FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.Linn M. Parish
Josh HendersonUniv of Montana
Halladay H.S.✓
✓

HB #212

VISITOR'S REGISTER

AGENCY (S)

House Judiciary

COMMITTEE

DATE 2/1/91

DEPARTMENT

NAME	REPRESENTING	SUP- PORT	OP- POSE
Linda M. Ballen	Journalism Education Assoc.	X	
Daniel W. Andrzejek	Great Falls High Roundup	X	
HEIDI GIBSON	GFHS INIWA	X	
Eric Anglin	Skinner Talon	X	
Erin Deane	M 9 A	⊗	
Matt Jones	Polson High	✓	
Judie Woodhouse	Polson High School	✓	
Elaine Gray	Polson High School	✓	
Ch. Dicks	Polson High School	✓	
Rosell L. Harbine	Hellgate High	✓	
Suzn Henderson	"	✓	
Beth Graham	"	✓	
Kort Delle	"	✓	
Aaron Grossman	"	✓	
Delia Hagen	"	✓	
Greg Fine	School Board	✓	
Haute Bornstein	Hellgate High	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT.
IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.