MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 20, 1991, at 7:12 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 747

Motion: **REP. LEE MOVED HB 747 DO PASS.**

Motion/Vote: **REP. LEE** moved to amend HB 747 with amendments #1, #3 and #4 from the amendments proposed by the Division of Corrections. **EXHIBIT 1.** Motion carried 19 to 1 with Rep. Gould voting no.

Motion: **REP. STICKNEY** moved to amend HB 747 with amendment #2 from the amendments proposed by the Division of Corrections. **EXHIBIT 1.**

Discussion:

Dan Russell stated that he felt Rep. Lee's concern about the bill was the same as his. He stated that his concern was people who receive deferred sentences and who are then on probation. What amendment #2 offers the courts is another option that they do not have available to them now. Mr. Russell stated that if amendment #2 is put into the bill, he would ask Rep. Lee to consider including the language that it be done with the approval of the facility or program.

Motion/Vote: **REP. LEE MADE A SUBSTITUTE MOTION** to amend HB 747 by not adopting amendment #2, but to substitute #4 in its place. **EXHIBIT 1.** Motion carried 16 to 4 with Rep's: Gould, Clark, Stickney, and Nelson voting no.

Motion/Vote: **REP. STICKNEY** moved to amend HB 747 with the amendments proposed by Rep. Brooke. **EXHIBIT 2.** Motion carried unanimously.

Motion/Vote: **REP. LEE MOVED HB 747 DO PASS AS AMENDED.** Motion carried 18 to 2 with Rep's: Gould and Wyatt voting no.

EXECUTIVE ACTION ON HB 668

Motion: **REP. DARKO MOVED HB 668 DO PASS.**

Motion/Vote: **REP. DARKO** moved to amend HB 668. **EXHIBIT 3.** Motion carried unanimously.

Motion/Vote: **REP. DARKO** moved to amend HB 668 on line 12 strike "revoke" and insert "suspended"; on line 13 strike "multi" and insert "second or subsequent". Motion carried unanimously.

Motion/Vote: **REP. DARKO MOVED DO PASS AS AMENDED.** Motion carried 12 to 6. **EXHIBIT 4**

EXECUTIVE ACTION ON HB 825

Motion: **REP. BROWN MOVED HB 825 DO PASS.**

Motion: **REP. BROWN** moved to amend HB 825. **(Refer to Standing Committee Report)** Motion carried unanimously.

Discussion: **REP. WHALEN** stated that he felt HB 825 was a good bill, but he didn't like the section dealing with immunity from liability.

REP. BROWN stated that he understood Rep. Whalen's concern but the bill is not effective if it goes to the Governor with less than two-thirds vote, it means the liability provision doesn't apply in the strength that it is in the bill. Rep. Brown stated that he would have to risk losing Rep. Whalen's vote and hope to get the other 67 because the Sheriffs' want the bill iron clad and he has to go with the bill as amended.

REP. CLARK stated that if a Sheriff found something in a person's background that would prohibit that person from gaining a concealed weapon permit and issued one anyway, the liability doesn't exempt the Sheriff from that situation.

REP. WHALEN stated that the new section of the bill states that no matter what, local law enforcement people will not be held liable. He stated that he was fed up with local governments not wanting to do their job, unless they are immune from suit.

REP. TOOLE stated that there is a provision that states the modern way to do business is grant immunity to people for the things they were always responsible for. He felt that granting immunity from liability is unnecessary and bad policy. He stated that it is a good bill that has a stupid provision.

Motion/Vote: **REP. TOOLE** moved to amend HB 825 to delete section 6. Motion failed.

Motion: **REP. BROWN MOVED HB 825 DO PASS AS AMENDED.**

Discussion

REP. BROOKE asked if any of the training courses require an eye test?

REP. BROWN stated that he didn't think so.

REP. BROOKE asked if Rep. Brown would be agreeable to an amendment making an eye test mandatory?

REP. BROWN stated that he would have no objection to that amendment.

Motion/Vote: **REP. BROOKE** moved to amend HB 825 on page 1, line 19, insert "an applicant must pass an eye test administered by the Sheriff that is no more stringent than a test for a driver's license and if the applicant fails the test he/she must wear corrective lens". Motion failed.

Discussion:

REP. WHALEN reminded the committee that the bill is not about telephones but dangerous guns and knives. When someone pulls out their concealed weapon, in any situation, and an innocent person

gets hurt, you may find that the person carrying the concealed weapon should not of been granted a permit because their background check revealed something that would not allow them to have their application accepted. He stated that there will be no one to file charges against because of the immunity from liability in HB 825.

REP. MEASURE stated that the committee is dealing with an element that basically wants permits so they can carry concealed handgun hunting deer and he felt that these people are in the lunatic fringe. He stated that the committee has no right to pass HB 825.

Motion/Vote: **REP. CLARK** moved to amend HB 825 by striking the word "consent" on page 2, subsection c, line 8 and striking everything beyond that up to line 11. Motion carried.

Motion/Vote: **REP. CLARK** moved to amend HB 825 by deleting line 9, on page 9, which deals with the applicant having to pay for the background check. Motion failed.

Motion/Vote: **REP. MEASURE** moved to amend HB 825 by striking section 6. Motion failed.

Motion/Vote: **REP. BROWN MOVED HB 825 DO PASS AS AMENDED.** Motion carried 17 to 3 with Rep's: Whalen, Toole, and Measure voting no.

HEARING ON HB 618
REVISE CRIMINAL APPEAL TO DISTRICT COURT

Presentation and Opening Statement by Sponsor:

REP. BERGSAGEL, HOUSE DISTRICT 17, stated that HB 618 is an act conforming the procedure for an appeal of a criminal decision from a Justice's or City Court to the appeal of a civil decision and transmit all the appeal documents to the court of decision. He stated that the bill changes the time period for which documents are to be transferred to the District Court.

Proponents' Testimony: NONE

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor: NONE

EXECUTIVE ACTION ON HB 618

Motion/Vote: **REP. JOHNSON MOVED HB 618 DO PASS.** Motion carried unanimously.

HEARING ON HB 821
REMOVE MINES, MILLS, AND SMELTERS FROM EMINENT DOMAIN

Presentation and Opening Statement by Sponsor:

REP. TOOLE, HOUSE DISTRICT 60, stated that HB 821 is an act to remove mines, mills and smelters from the eminent domain or condemnation laws and the definition of public uses. He stated that the bill takes a historic relic and removes it from Montana Laws. Rep. Toole stated that since the 1870's there has been a reference in Montana's Condemnation Statutes to the mining industries mines, mills and smelters of Montana that gives them the power of eminent domain. The state of Montana has always had an important role in the mining industry. Montana laws embodied condemnation for mines and timber industries that grew up with the mining industry. Rep. Toole said that statute has rarely been used and there has been a significant reduction in the need for that type of legislation. The mining industry has changed dramatically over the years.

Proponents' Testimony:

SEN. DOHERTY, SENATE DISTRICT 20, stated that he has had a special interest in the eminent domain issue for a long time. Sen. Doherty stated that he didn't think it was right that private corporations are able to condemn private property for profit. The power of eminent domain, the power to take citizens property, is an awesome power that should be relegated to public uses or used by public utilities for clearly defined public purposes. He stated that the old law is a relic and it is time to get it out of Montana's law codes.

Bill McKay, Rancher - Roscoe, Montana, stated that his ranch borders the national forrest and there are mining claims above his property. He stated that in his area there are willing buyers but no willing sellers. He felt that it was the role of the Government to insure a level playing field and not its role to give one private sector interest an advantage over another private sector interest. Mr. McKay stated that HB 821 will correct that disadvantage and he asked the committee for their favorable consideration.

Richard Parks, Vice Chair - Northern Plains Resource Council, gave written testimony in favor of HB 821. **EXHIBIT 5**

Jim Jenson, Montana Environmental Information Center, stated that the relationship between the unwilling seller and the willing buyer, because of current law, is not good because there is no good faith available once the willing buyer makes it known that

if they do not sell they will use eminent domain. He stated that HB 821 insures a fair relationship between the buyer and the seller. He asked the committee for their do pass recommendation.

Opponents' Testimony:

Gary Langley, Executive Director - Montana Mining Association, stated that in the past number of years the mining industry has accepted the comment of public concerns which have been directed toward the law of eminent domain. He stated that eminent domain is a necessary tool of the mining industry. He felt that if eminent domain was taken away from the mining industry it would create another wall for them to cross for responsible mining development. Mr. Langley stated that he didn't think the committee wanted to set public policy in such an irresponsible manner as by passing HB 821.

Ward Shanahan, Attorney - Stillwater Mining Company, gave written testimony opposing HB 821. **EXHIBIT 6**

John Fitzpatrick, Pegasus Gold Corporation, stated that mining is disadvantaged relative to other businesses. Minerals can only be mined where they are found and there is a very important role for minerals in society. He stated that minerals are essential for Montana's continual well being which is why Governmental policy, in virtually every state, has a law in some form of eminent domain for mineral projects. He stated that the problem a miner faces on developed property is that if people are not willing to sell their property, their property may be taken because the miner does not have access to the minerals. The eminent domain statute allows mining companies a tool to bring people to the bargaining table and resolve things without force. He stated that eminent domain is not a relic but a tool that isn't used very often. Mr. Fitzpatrick stated that even though the tool is not used very often it is an extremely important tool to the mining industry. He asked the committee to oppose HB 821.

Ken Williams, Montana Power Company, gave written testimony opposing HB 821. **EXHIBIT 7**

Questions From Committee Members:

REP. CLARK asked **Dennis Casay** if the passage of HB 821 will have any effect on mining permitting? **Mr. Casay** stated that he does have concern with the bill because, if it becomes law there is a possibility that alternatives used in the mining process would no longer be available.

Closing by Sponsor:

REP. TOOLE asked the committee to give the bill a do pass recommendation.

HEARING ON HB 675
ALLOW TRO TO ISSUE UPON THREAT OF PHYSICAL ABUSE, HARM, OR BODILY INJURY

Presentation and Opening Statement by Sponsor:

REP. SQUIRES, HOUSE DISTRICT 58, stated that the bill deals with issuing temporary restraining orders. She stated that HB 310 also deals with temporary restraining orders, but there was a question about the bill and some of the local Justices asked for more clarification about being able to issue a temporary restraining order in the area of abuse. At that time, the Attorney General indicated that there was no specific indication that this area was covered. She stated that HB 675 covers the area of abuse on page 2, line 21 - 24. Rep. Squires stated that if an individual is in jeopardy and verbally abused, a temporary restraining order can be issued.

Proponents' Testimony:

Pat Bradly, Montana Magistrates Association, gave written testimony in favor of HB 675. **EXHIBIT 8**

John Ortwein, Montana Catholic Conference, gave written testimony in favor of HB 675. **EXHIBIT 9**

SEN. HALLIGAN, SENATE DISTRICT 29, stated that judges are having trouble issuing a TRO (temporary restraining order) in situations that do not involve an injury. He felt that wasn't good public policy and the bill deals with those situations that do not involve an injury.

Michael Sherwood, Montana Trial Lawyers Association, stated that his Association supports HB 675.

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor:

REP. SQUIRES encouraged the committee for a do pass recommendation. She felt that the bill was a good bill that protects the citizens of Montana.

HEARING ON HB 773
REVISE INVOL. COMMITMENT STATUTE LAW ENFORCEMENT TO READ RIGHTS

Presentation and Opening Statement by Sponsor:

REP. STICKNEY, HOUSE DISTRICT 26, stated that HB 773 was at the request of mental health personnel. She stated that there have been a lot of legislation during the session dealing with the treatment of mentally ill individuals when they are apprehended

and cannot be held in jail. She felt that these individuals need to have their rights explained to them, as anyone does when they are apprehended. The law isn't clear as to who informs these individuals of their rights. Rep. Stickney stated that HB 773 makes it clear that the person who evaluates the individual does not have to read them their rights but that it has to be a law enforcement officers who will read them their rights.

Proponents' Testimony:

Frank Lane, Eastern Montana Mental Health Center, stated that HB 773 does not intend to abrogate the rights members of society by not reading a person their rights. He stated that the intent is to clarify the responsibility. Most Judicial Districts in the state of Montana take the position that it is the responsibility of the law enforcement officer to inform the apprehended person of their rights. He stated that a small minority make a big issue as to whether or not the examining professional must inform the person of his or her constitutional and procedural rights prior to examination. Mr. Lane expressed that it is the intent of HB 773 to clarify that it is not the responsibility of the examining professional to inform an apprehended person of their rights.

Dr. Kay Dole - Glasgow, stated that this issue has been a matter of concern in her district for quite some time. She stated that reading of rights is associated with having committed a crime as opposed to a mental health practice. The roles are incompatible. She stated that mental health professionals are only required to tell the person who they are, what they are here for, and how the information from the examination will be used, not to read the person their rights.

John Shontz, Mental Health Association, stated that his Association is in support of HB 773.

Opponents' Testimony:

Bill Fleiner, Montana Sheriff's & Peace Officers Association, stated that the bill does not make any sense to him. A person who has been involuntarily detained by a law enforcement agency are often involved with mental health. He stated that law enforcement agencies inform the apprehended person of the "Miranda rule" not their constitutional rights. Law enforcement officers would have to carry a copy of the constituion with them if required to do this. He felt that it would be very difficult for a Law Enforcement Officer to inform each person of their constitutional rights and all things involved in a professional mental health examination.

Questions From Committee Members:

REP. CLARK asked **Dr. Dole** if the people she referred to in her testimony were not under arrest? **Dr. Dole** stated that they come in various ways.

REP. CLARK asked **Dr. Dole** if it is the case that those people had committed crimes and that is what brought the law enforcement into the picture; are you saying, the officers are not informing those people of their "Miranda" rights? **Dr. Dole** stated that these people are apprehended by police officers and she didn't know if they were read their "Miranda" rights or not.

Closing by Sponsor:

REP. STICKNEY stated that it shouldn't be the mental health care professional that has to read the involuntarily detained person their rights. She urged the committee for a do pass recommendation.

HEARING ON HB 864

Presentation and Opening Statement by Sponsor:

REP. GOULD, HOUSE DISTRICT 61, stated that HB 864 corrects an inequity in the way the bills are paid by the court system. He stated there are two proponents that will explain the bill to the committee.

Proponents' Testimony:

Chuck Brooke, Director - Department of Commerce, stated that HB 864 moves the function of managing the fiscal reimbursement program of District Courts from the executive branch to the judicial branch. HB 864 has no fiscal impact. The budget for the program has already been approved by the Appropriations sub-committee and would require the movement of one operating authority to the judicial branch.

Jim Oppendahl, Administrator - Montana Supreme Court, stated that the Supreme Court is in support of HB 864 and believes that it is an appropriate function for the court. He stated that the bill will allow for cross-training which will help when one individual is out sick or on leave. HB 864 will clearly place the responsibility on the court for monitoring and developing the training budgetary needs for district courts.

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor: NONE

HEARING ON HB 872

Presentation and Opening Statement by Sponsor:

REP. COBB, HOUSE DISTRICT 42, stated that HB 872 is an act clarifying that the waiver of state immunity in contract actions is limited to those based on express contracts. He said the bill states that the state of Montana is liable for any express contract entered into the same as a private individual, except that the state is not liable for interest prior to, or after judgment or for punitive damages. The costs are allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant, except for attorney fees.

Proponents' Testimony: NONE

Opponents' Testimony:

Michael Sherwood, Montana Trial Lawyers Association, gave written testimony opposing HB 872. **EXHIBIT 10**

Questions From Committee Members: NONE

Closing by Sponsor: NONE

EXECUTIVE ACTION ON HB 864

Motion/Vote: REP. JOHNSON MOVED HB 864 DO PASS. Motion carried unanimously.

Motion/Vote: REP. DARKO MOVED THAT HB 864 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously.

HEARING ON HB 797

Presentation and Opening Statement by Sponsor:

REP. RUSSELL, HOUSE DISTRICT 99, stated HB 797 is an act authorizing Confederated Salish and Kootenai Indian Tribes to adopt a resolution withdrawing their consent to be subject to state jurisdiction. She stated that one of her colleges said that this is one of the most important pieces of legislation that is before the committee this session. She felt that at the end of the hearing, many of the committee members will concur with the need for this legislation. Rep. Russell said the bill talks

about Indian tribes and jurisdiction, which isn't clear for all Montanans.

Rep. Russell said that when talking about Indian people, it is important to know what their legal history and policy is. It is only in knowing what their background is that the committee will know where Indian people are today and will give direction as to where Indian people need to be in the future.

Rep. Russell said that during the colonization of America, the British crown dealt with the Indian Tribes formally as foreign sovereign commissions. The Crown increasingly assumed the position of protector of the tribes from the colonists. She stated that the nation found itself with the same problems with non-indian integration and threatened Indian aggression. It was believed that if stability were to be achieved, Indian affairs would have to be placed in the hands of the central government and the Constitution did that. Congress regulated the power to regulate commerce with the Indian tribes, while the President was empowered to make treaties with the consent of the Senate. Congress set the basic pattern of Federal Indian Law in a series of trade and intercourse acts between 1790 and 1834. She stated that the central policy in the act was one of separating Indians and non-indians and subjecting nearly all interaction between the two groups. The acts made no attempt to regulate the Indians among themselves, it was left to the tribes. Rep. Russell said that despite of the trade and intercourse acts, Indians now have what is known as the "Removal Era" of their history.

Rep. Russell stated that the finding period of 1850 to 1887 was the Indian's movement to the reservations. As non-indian people moved westward there was an important policy of confining Indian people to reservations. In 1871, Congress passed a statute providing that no tribe could be recognized as an independent nation with which the U.S. would make treaties and existing treaties were rendered ineffective. In 1883, Congress passed the major crimes act which held that the murder of one Indian by another Indian was within the sole jurisdiction of the tribe. She stated that 1934 to 1953 was a period of Indian reorganization and preservation of the tribes. The Indian Reorganization Act fought to protect the land of the tribes and to permit the tribes to set up legal structures devised toward self-government. She went on to say that 1953 to 1968 was a period of termination and relocation. At that time, numerous Indian tribes were terminated in the trust relationship they had with the Federal Government. Indian persons were encouraged to move from reservations and relocate for employment and training purposes in major urban areas around the country.

Rep. Russell said that the major piece of legislation of the 1950's between the Federal Government and the Tribes was Public Law 280, which is the subject of discussion today. She said that statute extended state, civil, and criminal jurisdictions to Indian country in certain states. In addition, Public Law 280

provided that any state could assume this jurisdiction by statute or state constitutional amendment and the consent of the concerned tribes was not required. The result of PL280 was to drastically change the traditionally division of jurisdiction among the federal government, the state and the tribes in those states. Public Law 280 authorized the transfer of limited civil jurisdiction and brought federal jurisdictional authority over certain reservations. In 1963, the Montana Legislature enacted legislation which authorized the state to assume "280" jurisdiction over tribal members of Montana Indian reservations. The Salish Kootenai tribes are the only Montana tribes to request and receive 280 jurisdiction.

Rep. Russell stated that HB 797 gives back the jurisdiction to the federal government which is called "retrocession". Since 1968, approximately 30 Indian tribes have retroceded from PL280.

Proponents' Testimony:

Mickey Pablo, Tribal Chairman of the Confederated Salish & Kootenai Tribes of the Flathead Nation, gave written testimony in favor of HB 797. **EXHIBIT 11**

Joe Dupuis, Executive Secretary - Confederated Salish & Kootenai Tribes, stated that it is a sad event in 1991 that his tribe must provide evidence of their capability to govern themselves. He stated that on the other hand, they are very proud of their accomplishments. In 1965 tribal operations consisted of 11 employees and a budget of less than $250,000.00. He stated that today they have over 1200 employees and a budget in excess of $70,000,000.00. Their Justice System is staffed with some of the most qualified, best trained, and well equipped officers in the state of Montana. The total caseload in Tribal Court in 1989, 1,912. The number of Indian arrests in Lake County for the same period was 203. He stated that the tribe is prepared to integrate their extensive numbers of social, health, education, and other rehabilitative service programs with the Criminal Justice System. Mr. Dupuis stated that it is the Tribes' firm belief that HB 797 presents an opportunity for the Tribes and the State. The tribe has studied this move for 20 years and feel that the time is now.

Margery H. Brown, University of Montana - Indian Law School, gave written testimony in favor of HB 797. **EXHIBIT 12**

John S. Bushman, Office of the Assistant Secretary - Indian Affairs, gave written testimony in favor of HB 797. **EXHIBIT 13**

Jim Wheelis, District Judge - Missoula District, Attorney - Fort Peck Reservation, stated that HB 797 is a good idea and he supports it strongly.

Eddie Brown, Assistant Secretary - Indian Affairs, gave written testimony in favor of HB 797. **EXHIBIT 14**

Members of the Montana - Wyoming Tribal Chairman's Association gave written testimony in favor of HB 797. **EXHIBIT 15**

Michael Pablo, Chairman - The Confederated Salish and Kootenai Tribes of The Flathead Nation, submitted a letter to be entered into the minutes regarding the hearing on HB 797. **EXHIBIT 16**

Opponents' Testimony:

Ray Harbin, Lake County Commissioner, stated that Lake County is almost entirely within the boundaries of the Flathead Reservation and it is very unique in that the vast majority of the residents of Lake County are not members of the tribes. He felt the concept of HB 797 is admirable and he didn't know of anyone who objects to that concept. He stated that his concern is how the bill will impact the non-Indian residents in Lake County. He felt that Lake County has worked toward improving relations with the tribe and have supported a joint hunting and fishing agreement and he felt that it is working out well. He stated that local government's function is not to save money, it is to provide essential services to the public. He stated that the biggest problem the county has is that there has not been adequate time for public input. There has not been one public hearing or meeting where the public has had the opportunity to ask questions and understand the ramifications of this action. He felt there should be more time for study of this idea.

Larry Nistler, Lake County Attorney, stated that he learned about the bill 7 days ago. He felt there needs to be more time to involve the public and answer questions regarding the outcome of passage of HB 797. Mr. Nistler submitted 4 letters in opposition of HB 797 for the record. **EXHIBIT 17**

Joe Geldrich, Lake County Sheriff, stated the system they have in their county now is working well. He said they are working together with the tribes and felt that things were going along fine. He felt that if HB 797 were to pass, it would only make it more difficult for law enforcement services.

REP. JOHN MERCER, HOUSE DISTRICT 50, stated that he resides on the Flathead Reservation. He said that he has no pleasure in opposing HB 797 and it is one of the most difficult issues that was presented to the legislative delegates from the Flathead area. He stated that there are numerous questions being raised about HB 797 that trouble him. One has to do with the involvement of Federal Court if crimes are perpetrated against tribal members. He wondered if someone would have to rely on a federal judge or federal prosecutor to protect them. He was also concerned about the availability of law enforcement in all the areas and felt his questions have not been answered. Rep. Mercer stated that HB 797 was introduced 7 days ago and pushing the bill

through the Legislature at this time, would not be a responsible action nor in the best interest of the state or reservation.

Rep. Mercer stated that the best way to resolve this matter is with a great deal more study. He felt that it was impossible for the committee to understand the major complexities of Indian jurisdiction and non-Indian jurisdiction. He said there are people who live on the reservation who are tribal and non-tribal and this will impact them. He felt they have a right to discuss and debate those impacts so they can present their view points at a hearing at the appropriate time. Rep. Mercer felt that a great deal could be accomplished if tribal and non-tribal members would sit down on the reservation and try to resolve these issues.

REP. DAVIS, HOUSE DISTRICT 53, stated that he opposes HB 797 because the people of his district have not had any time to properly look at this issue. He urged the committee to allow HB 797 to remain in the committee at this time.

Marc Racicot, Attorney General, stated that after learning about the Confederated Salish and Kootenai Tribes intention to present a bill to seek retrocession, he questioned whether he should or would be involved in this debate. He stated that to be honest, he did not want to be. Mr. Racicot stated that he couldn't agree more with the comments made by Rep. Russell, that this is an extraordinary important decision and one that has caused him a great deal of anxiety. He stated that in his discussions with the many people involved in this matter, all the discussions were instigated by the persons or person involved with this issue. He stated that at the conclusion of those discussions and with a great deal of thought, he realized that he wouldn't be allowed to hover on this issue. He stated that he ultimately came here with what he believed was the right thing to do.

Mr. Racicot stated that he was born and raised not far from the Flathead Indian Reservation and grew up knowing nothing about the fact that the tribes and government were arranging for the extension of state criminal and civil jurisdiction upon the reservation in the fall of 1965, nor did he have any idea that it would be such a difficult matter to deal with two and a half generations later. He stated that he has had numerous occasions to be involved in the relations between state and tribal governments.

Mr. Racicot stated that only way these difficulties are able to be addresed is through an open and careful process that simultaneously educates and seeks to produce the facts upon which a good decision is made. He stated that when that is done by the parties proceeding in good faith, the right conclusion will be drawn. Failure to do this, would result in inaffectivness and bitterness. Mr. Racicot stated that he is not worried about the capabilities of Montana's Indian Tribes governing themselves. He said his only concern is being assured that the safety and security of every resident of the Flathead Indian Reservation,

Indians and non-Indians, will remain, at least, as secure as they are now.

SEN. PINSONEAULT, SENATE DISTRICT 27, stated he reminds his Tribal and non-Tribal friends of SB 446. He received a lot of pressure on SB 446 having to do with the current compact on the reservations at this time. Sen. Pinsoneault said that the Tribes can take care of many things because they do not have to deal with the jungle of criminal jurisdiction. He stated that it is a jungle on other reservations that do not have PL280 in place.

Board of Lake County Commissioners, submitted a letter opposing HB 797 to be entered into the minutes. **EXHIBIT 18**

John and Diane Monteith III, Residents - Big Arm, gave written testimony opposing HB 797. **EXHIBIT 19**

Questions From Committee Members:

REP. TOOLE asked **Ms. Brown** if there is any way to determine what the effect of the bill would be if there was a delay? **Ms. Brown** said that if the committee was to amend the section of state law, it simply removes the deadline of Tribal consent. Tribal representatives have expressed that they expect to undertake the kind of consideration that has been urged by the opponents to view the advocacy of law enforcement.

REP. WHALEN asked **REP. GERVAIS** what his feelings are about HB 797? **REP. GERVAIS** stated that since he used to represent the Native American Veterans, he would like to refer to that and self determination. He said the reservations don't have a monopoly on self-determination. Native Americans have been in world war I, II, Korean War, Vietnam and many of them are in Kuwait at this time, all fighting for self-determination for these countries. There is self-determination all over but not in Lake County, Montana. He stated that he has a newsletter that goes to the troops in Kuwait and the history of this bill will be written into the letter and be read by those troops. When the Legislature says that there is no self-determination in Lake County, Montana, he wonders what the morale of those troops are going to be.

REP. RICE stated that his concern is on the time and approach of HB 797. He stated that there seemed to be a sense of urgency by the local officials about the bill and he asked if there was any thought given to the local officials to form a committee to jointly bring the bill before the session?

Daniel Decker, Tribal Attorney, stated that there has been much study and consideration of this issue. The principle of self-determination in the view of the tribal government, is that this is a government to government issue. He stated that it is an

issue from the tribal government to the state government that it is time to reconsider the arrangement that has been entered into with the state of Montana. He stated that it is viewed by the tribal members as a state tribal issue and they wanted to keep it at that level.

REP. TOOLE asked **Mr. Racicot** if the Federal Resources remain the same, would you ultimately oppose HB 797 or if in view of some changes would you be willing to go forward on HB 797? **Mr. Racicot** stated that he doesn't claim to have a keen understanding of every aspect that would be developed from HB 797. He stated that the last thing he wanted to do was come to the hearing and disappoint one side of this issue or the other side or get involved in a debate that does not focus itself on precisely on factual inquiries. Mr. Racicot stated he had no idea whether the Federal Government would make the kind of commitment to every reservation. He stated that he is fully supportive of the concept of self-determination and he doesn't have any fear of it. Transcending fear, what he felt he had a right to talk about above all considerations, was the safety of people.

Closing by Sponsor:

REP. RUSSELL stated that Larry Nistler talked about Federal Court and the U.S. Attorney saying there are no resources but there is a "black hole". She responded by saying if there is a problem why hasn't the Federal Government addressed some of these problems.

Rep. Russell stated that she cannot help but over-emphasize the need for self government. Tribes will do retrocession properly and have proven they can make just decisions in their court system. She stated that the Salish and Kootenai Tribes sent a letter to Gov. Stevens in 1989 regarding 280 retrocession. She asked the committee to support HB 797.

EXECUTIVE ACTION ON HB 797

Motion: **REP. BROWN MOVED HB 797 DO PASS.**

Discussion:

REP. BROOKE stated that if all things go as planned she will enjoy a decrease in the taxes on her property in Lake County because of the expenses that will be deleted from the Lake County court system and law enforcement budgets.

Motion/Vote: **REP. CLARK MOVED TO TABLE HB 797.** Motion failed.

Vote: Motion carried 11 to 9. **EXHIBIT 20**

EXECUTIVE ACTION ON 872

Motion: REP. BOHARSKI MOVED HB 872 DO PASS.

Discussion:

REP. WHALEN stated that he is against the bill. He felt that there are too many immunity bills, they should be looked at from a Legislative perspective and Supreme Court decisions that have created these immunities should be eliminated.

Motion/Vote: REP. WHALEN MOVED HB 872 BE TABLED. Motion carried 15 to 5. **EXHIBIT 21**

ADJOURNMENT

Adjournment: 12:29 p.m.

BILL STRIZICH, Chair

JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL "Hearings" **DATE** 2-20-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
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	✓		

HOUSE STANDING COMMITTEE REPORT

February 20, 1991
Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 747 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Title, lines 5 and 10.
Following: "PRISON"
Insert: "OR A WOMEN'S CORRECTIONAL FACILITY"

2. Page 2, line 1.
Following: "prison"
Insert: ", a women's correctional facility, a state prerelease center, a private prerelease center or that part of a private prerelease center under contract to the state,"

3. Page 2, line 2.
Following: "or"
Insert: "a"

4. Page 3, line 18.
Page 8, line 7.
Following: "prison"
Insert: "or a women's correctional facility"

5. Page 5, line 10.
Following: "(ix)"
Insert: "with the approval of the facility or program,"

6. Page 6, line 5.
Following: "(f)"
Insert: "with the approval of the facility or program,"

7. Page 8, lines 14, 17, and 20.
Following: "prison"
Insert: "or a women's correctional facility"

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 668 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Page 2, line 11.
Strike: "or"
Insert: "and"

2. Page 2, line 12.
Following: "(ii)"
Insert: "may"
Strike: "revoked"
Insert: "suspended"

3. Page 2, line 13.
Strike: "multiple offenses"
Insert: "a second or subsequent offense"

3.50
2-21-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 21, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 825 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Page 2, lines 8 through 11.
Strike: ", unless" on line 8 through "crime" on line 11

2. Page 3, line 3.
Strike: "probable"
Insert: "reasonable"

3. Page 5, lines 8 through 13
Strike: lines 8 through 13 in their entirety

4. Page 5, line 17.
Strike: "Number of years"
Insert: "Dates of employment"

5. Page 5, line 24.
Strike: "15"
Insert: "5"

6. Page 6, line 1.
Strike: "Number of years"
Insert: "Dates of residence"

7. Page 6, line 10.
Following: "ARRESTED"
Insert: "FOR"
Strike: "COURT-MARTIALED"
Insert: "CONVICTED OF A CRIME OR FOUND GUILTY IN A COURT-MARTIAL PROCEEDING"

8. Page 6, line 21.
Strike: "FIVE"
Insert: "THREE"

9. Page 7, lines 4 and 5
Strike: lines four and five in their entirety

3:50
2-21-91
7 DR

10. Page 8.
Following: line 1
Insert: ".....
Date of application
This application must be signed in the presence of the sheriff or his designee."

11. Page 9, line 5.
Following: "permits."
Insert: "Replacement of a lost permit must be treated as a renewal under this subsection."

12. Page 9, line 21.
Strike: "it was issued"
Insert: "the permittee resides"

13. Page 11, line 25.
Following: "weapon"
Insert: ", except that for purposes of [sections 1 through 8] concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon"

14. Page 12, line 2.
Strike: "does"
Insert: "and [section 8] do"

15. Page 12, line 17.
Following: "(8)"
Insert: "an agent of the department of justice or"

16. Page 12, lines 17 and 18.
Strike: "the office of the attorney general or in"

100
2-20-91
TDB

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 618 (first reading copy -- white) do pass .

Signed: _____
Bill Strizich, Chairman

1:00
2-20-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 864 (first reading copy -- white) do pass and be placed on consent calendar .

Signed: _____
Bill Strizich, Chairman

1:00
2-20-91
JDR

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker: We, the committee on Judiciary report that House Bill 797 (first reading copy -- white) do pass .

Signed: _____
Bill Strizich, Chairman

EX 1

EXHIBIT 1
DATE 2-20-91
HB 747

Amendments to House Bill No. 747
First Reading Copy
Prepared for Rep. Lee
For the Committee on the Judiciary

Prepared by John MacMaster
February 19, 1991

1. Page 2, line 1.
Following: "prison"
Insert: ", a state prerelease center, a private prerelease center or that part of a private prerelease center under contract to the state,"

2. Page 5, lines 10 and 11.
Strike: "subsection (ix) in its entirety"
Renumber: subsequent subsections

3. Page 5, line 23.
Strike: "(1)(a)(xii)"
Insert: "(1)(a)(xi) or, with the approval of the facility or program, placement in a community corrections facility or program"

4. Page 6, line 5.
Following: "(f)"
Insert: "with the approval of the facility or program,"

(Exh.)

EXHIBIT 2
DATE 2-20-91
HB 747

Amendments to House Bill No. 747
First Reading Copy

Requested by Rep. Brooke
For the Committee on the Judiciary

Prepared by John MacMaster
February 20, 1991

1. Title, lines 5 and 10.
Following: "PRISON"
Insert: "OR A WOMEN'S CORRECTIONAL FACILITY"

2. Page 2, line 1.
Following: "prison"
Insert: ", a women's correctional facility,"

3. Page 3, line 18.
Page 8, line 7.
Following: "prison"
Insert: "or a women's correctional facility"

4. Page 8, lines 14, 17, and 20.
Following: "prison"
Insert: "or a women's correctional facility"

EXHIBIT 3
DATE 2-20-91
HB 668

Amendments to House Bill No. 668
First Reading Copy

Requested by Rep. Darko
For the Committee on the Judiciary

Prepared by John MacMaster
February 18, 1991

1. Page 2, line 11.
Strike: "or"
Insert: "and, in addition,"

2. Page 2, line 12.
Following: "(ii)"
Strike: "may"

EXHIBIT 4
DATE 2-20-91
HB 668

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-20-91 **BILL NO.** HB#668 **NUMBER**

MOTION: Darko: 3 Dpas Amend

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	12	6

Northern Plains Resource Council

EXHIBIT 5
DATE 2-20-91
HB 821

TESTIMONY OF THE NORTHERN PLAINS RESOURCE COUNCIL BEFORE THE HOUSE JUDICIARY COMMITTEE ON HOUSE BILL 821: REPEAL OF EMINENT DOMAIN FOR HARD ROCK MINING COMPANIES
Wednesday, February 20, 1991

Mr. Chairman, members of the Committee, my name is Richard Parks, and I am Vice Chair of the Northern Plains Resource Council (NPRC), a grassroots citizens' organization which addresses natural resource development and agricultural issues. I am testifying today is support of HB 821 on behalf of NPRC.

NPRC has members in four affiliated community groups who are directly affected by major hard rock mining projects. These include the Beartooth Alliance in the Cooke City/Silver Gate area; the Bear Creek Council in Gardiner area; the Cottonwood Resource Council in the Big Timber area; and the Stillwater Protective Association near Nye, MT. Many of our members in these areas are property owners who live under the potential threat of condemnation by multinational mining companies. NPRC has historically opposed the use of eminent domain by corporations to condemn private property rights for non-public uses. The following position statement on eminent domain comes from resolutions passed at NPRC's annual membership meetings over the last two decades:

WHEREAS, the power of eminent domain is vested in the State of Montana to be used for public purposes; and,

WHEREAS, large private corporations enjoy the same right of eminent domain in Montana as do governmental entities; and,

WHEREAS, the use of eminent domain is being abused in Montana;

NOW THEREFORE BE IT RESOLVED, that NPRC supports reform that will enhance the rights of owners of private property facing condemnation through claims of eminent domain; and,

BE IT FURTHER RESOLVED, that NPRC will support legislation that will:

419 Stapleton Building Billings, MT 59101 (406) 248-1154

Ex. 5
2-20-91
HB 821

1) limit the use of eminent domain to those uses that are truly public and not private, such as those by the state and it its political subdivisions, publicly regulated utilities, rural electric and telephone cooperatives;

2) establish a procedure whereby a periodically adjustable lease arrangement is made for land taken for public uses, instead of permanent taking of land with a one time payment;

3) require that those entities that use eminent domain have in hand those permits required by state and federal law for the use for which condemnation is sought before any legal proceedings are begun;

4) require a condemnor to have completed all condemnation proceedings, administrative and judicial, prior to the taking control of the property;

5) make at least a 90-day negotiation period prior to condemnation mandatory;

6) give landowners the same rights they receive in other civil actions as governed by the Montana Rules of Civil Procedure;

7) provide that a jury shall sit on all condemnation suits where the right of eminent domain is claimed; and,

8) provide that such juries must determine that condemnation shall assure that the land involved is being put to the highest and best use; and finally,

9) provide that the taking of private property shall be solely reserved for the public as opposed to private necessity.

Thank you for your consideration.

EXHIBIT 6
DATE 2-20-91
HB 821

Stillwater Mining Company
Statement in Opposition to HB 821

February 19, 1991

Mr. Chairman and Members of the Committee:

For the record, my name is Ward Shanahan, I represent Stillwater Mining Company, and I appear here today in opposition to House Bill 821.

House Bill 821 is intended to reverse a public policy of the State of Montana which predates statehood. For your information, I have attached a copy of the 1874 Mining Eminent Domain Law which is marked Exhibit A.

Mr. Justice Sheehy of the Montana Supreme Court reviewed this policy most recently in case of Montana Talc Company v. Cyprus Mines Corporation (Decided December 28, 1987) considered the same law which HB 821 is now attempting to amend (70-30-102[5][15]). Mr. Justice Sheehy said:

> We find in subsection (15) above, and related statutes the intention of the Montana legislature to encourage the development of the mining industry. Understandably so, because the mineral wealth of this Treasure State, so named for its huge store of minerals taken and yet to be taken, is a prime springhead of past and future economic increase for Montanans. In keeping with this outlook, the legislature has given to mining concerns the awesome power to

> condemn private property for public use in return for just compensation where the ownership of the minerals and of the surface do not coincide. So it is that in addition to the power of the condemnation for the mine itself under subsection (15), there is further power for the construction of roads, tunnels, ditches and other appurtenances necessary to the mining effort in subsection (5). Expansion, and not restriction, appears to be the legislative watchword. This approach is historic as witness the statement of this Court in Butte Anaconda and Pacific Railway Company v. Montana Union Railway Company (1895), 16 Mont. 504, 536-37, 41 P. 232, 243: . . . .

Mr. Justice Sheehy speaking for the Supreme Court also said:

> Eminent domain, however, derives from the power of sovereignty. Eminent domain is the right of the state to take private property for public use. Section 70-30-101, MCA. It is a power constitutionally grounded. Art. II, § 29, 1972 Mont. Const. When a private person or a corporation exercises eminent domain for the purpose of taking private property for public use, that person or corporation does so through the power of the state for the perceived common good of the public as a whole. The due process rights of the party whose property is taken for public use are protected by the statutes providing the procedures for eminent domain and by the constitutional provision for just compensation.

The Montana Legislature has not been inactive in insuring that the common good of the public as a whole would be properly considered by the mining industry. In 1971 this legislature enacted the Hard Rock Reclamation Act which provides that a person may not engage in mining

without a state operating permit. I have attached the operating permit section of the Hard Rock Reclamation Act as Exhibit B to my statement.

The Hard Rock Reclamation Act was accompanied during the very same session in 1971 by the enactment of the Montana Environmental Policy Act. I have attached the Environmental Impact Statement Section (75-1-201, MCA) to my statement. I direct your attention to subparagraph 1(c) which requires the agency dealing with a problem under that Act to consider alternatives to the proposed action. What I mean to have you do is to consider the fact that the location of mills, smelters, pipelines, ditches, flumes, roads, etc., associated with a mine or all elements subject to the discretion of the Montana Department of State Lands which administers the Hard Rock Reclamation Act, under the general purview of the Environmental Policy Act. (Copy attached marked Exhibit C.)

In 1981, this legislature enacted the Hard Rock Mining Impact Act which provided for development of an impact plan between the mineral developer and the local governments and included a timetable for development and

financial assistance from the local government to meet the needs for services. A copy of the impact plan section of this Act (§ 90-6-307, MCA) is attached hereto marked Exhibit D. Thus mining, in addition to being a preferred industry which has received basic encouragement from the state, has also become a heavily regulated industry to safeguard the general population and environment.

The sponsor of HB 821 may assert that the right of eminent domain was denied to coal strip mining some time ago, and therefore, why not now to other forms of mining. This assertion can be directly answered by reference to § 70-30-106 which I have attached hereto marked Exhibit E. In this connection I point out the following subsections of that 1973 bill which established the reasons for this policy:

(1) Because of large reserves of and the renewed interests in coal in eastern Montana, coal development is potentially more destructive to land and water courses and underground aquifers and potentially more extensive geographically than the foreseeable development of other ores, metals, or minerals and affects large areas of

land and large numbers of people. . . .

(3) The magnitude of the potential coal development in eastern Montana will subject land owners to undue harassment by excessive use of eminent domain.

It should also be clear that the broad, flat expanses to eastern Montana present fewer access and siting problems with the steep, rocky, and sometimes inaccessible areas which the hard rock industry must confront in western Montana. In eastern Montana there are large expanses owned by Burlington Northern and the Bureau of Land Management, both of whom have favored coal development in the past. In western Montana the only access or site may be the one which the regulator has chosen as environmentally compatible, and that may belong to a number of third parties.

Mr. Chairman and Members of the Committee, I respectfully submit House Bill 821 should not pass. Its passage would be a very serious blow to the entire hard rock mineral industry in Montana, regardless of whether

the mine in question produces precious metals or such industrial metals as talc and limestone.

Hard rock minerals are difficult to locate, difficult to reach with service roads and utilities, and difficult to process, particularly in an era of environmental sensitivity such as our present time. The delegation by the State of Montana giving power of eminent domain to the mining industry was a good decision when it was first made 116 years ago. Today, it is absolutely vital to the continued development of hard rock mines in this state.

Respectfully submitted,

Ward A. Shanahan
Stillwater Mining Company
301 First Bank Building
P. O. Box 1715
Helena, MT 59624
(406) 442-8560

8959W

Exhibit 6 also contained the attachments referred to as Exhibit A and Exhibit B. The original exhibit is stored at the Montana Historical Society, 225 North Roberts, Helena, MT 59601. (Phone 406-444-4775)

EXHIBIT 1
DATE 2-20-91
HB 821

House Bill 821

House Bill 821 would strip the right of eminent domain for mines, mills and smelters. It represents a severe threat to economic activity in Montana.

Hard rock mining in Montana is crucial for the state's economic activity. Hard rock minerals are locatable as opposed to leasable. As such, a prospector or exploration company can stake a claim on public land subject to certain development requirements. These requirements could be unachievable by the passage of HB-821. HB-821 would restrict the mine's ability to condemn property that might be necessary for access for miner and equipment and associated facilities. Thus, a viable project might be stopped with the resulting lost economic benefits to Montana.

This bill would place similar restrictions on the development of underground coal mines. In addition, the stricken language on page 2, lines 14 and 15 calls into serious question the right of a surface coal mine operator to obtain access to its property if it is cut off by a hostile property owner.

Such changes to the eminent domain statutes are unnecessary and should be resisted. Eminent domain is only granted when the public good outweighs private property rights. The encouragement of mining in Montana meets that test.

In addition, passage of HB-821 would likely lead to future attempts to restrict eminent domain for other activities such as logging or the transmission of electric power. Such efforts are counterproductive to the development of a strong economic base for Montana. HB-821 should be defeated.

Ken Williams
MPC/Entech
02/19/91

FAX TRANSMITTAL MEMO

TO: John Lahr
DEPT: _____ FAX #: _____
FROM: _____ PHONE: _____
CO: _____ FAX #: _____
Post-it™ brand fax transmittal memo 7671 ab 15

NO. OF PAGES 1

EXHIBIT 8
DATE 2-20-91
HB 675

Montana Magistrates Association

February 20, 1991

HB 675, an act revising temporary injunction procedures.

Testimony by Pat Bradley, Lobbyist for MMA before House Judiciary

Mr. Chairman and Committee Members:

The courts of limited jurisdiction are the primary court in Montana for filing petitions for injunctive relief under Sec. 40-4-121.

The MMA supports legislation such as HB 675 that will give clearer intent and guidance from the legislature to adjudicate these vexing cases.

In a Dec. 22, 1989 opinion, the Attorney General concluded that the legislature did not intend to provide injunctive relief under 40-4-121(3) in the absence of physical abuse, harm, or bodily injury. Since that time, the courts have followed this interpretation. I submit a copy of this opinion with my testimony.

Rep. Squires' bill, broadens legislative intent to include the threat of physical abuse, harm or bodily injury. This expanded language will allow greater latitude for a temporary restraining order, but the courts would appreciate a clear statement from the legislature exactly those circumstances where an applicant qualifies for relief.

Judge Michael Morris and Judge David Clark, Justices of the Peace in Missoula, cannot be here today but have sent a written request for clarification of this law. I will attach their letter to this testimony.

They ask, among other things, that you address the problem of a justice court issuing a TRO which may conflict with those of a District court in a pending case. Sec. 40-4-123 states that District and Justice courts have concurrent jurisdiction over TRO's. This conflict could have been remedied under HB 291 which was heard in this committee on Jan 30, and which specified that if a case is filed in District court, an application for a TRO must be filed in that court. This bill was tabled, but your reconsideration of this bill would eliminate this problem.

We ask that you clarify your intent in this statute to supercede the attorney general's opinion, to give a definition of "harm" and advise if physical harm is the only criteria for a TRO.

Thank you.

Pat Bradley

Exhibit # 8
2/20/91 HB 675

December 17, 1990

Senator Mike Halligan
Missoula County Attorneys Office
Missoula, Mt. 59802

Dear Senator,

As we discussed a few days ago, the Courts have experienced various difficulties with the interpretation and application of that statute, 40-4-121 MCA, which authorizes courts of limited jurisdiction to grant Temporary Restraining Orders and Injunctions. Per your request, these have been reduced to writing for your consideration. Since it seems that the best remedy to these issues is legislative, please review these issues again and let us know if we can be of any assistance.

Here then is the first difficulty.

Clause (3) of the above statute provides that, under certain conditions, relief may be sought through a verified petition "alleging physical abuse, harm or bodily injury...". A recent Attorney Generals Opinion contrues this to mean that threats of physical injury, or the (justifiable) apprehension of bodily injury is an insufficient basis upon which to grant the relief requested. This suggests that any notion of "harm", under 45-2-101(25) which does not include that of bodily injury or physical abuse cannot be invoked under clause 3 of 40-4-121 MCA. (See the enclosed AG Opinion, #50, 1989.) Many judges throughout the State now interpret the statute in this way.

An obvious problem with such a reading is that it excludes relief to someone who has e.g., been threatened with a gun, but was not otherwise harmed (or "disadvantaged).

The legislature could clear this up by providing a precise definition of "harm" which lays out exactly those circumstances, <u>if any</u>, where an applicant under this section qualifies for relief but does not allege bodily injury or physical abuse.

Here now is the second problem.

It is clearly the intent of 40-4-121 (4) that <u>a condition</u> of issuing an <u>ex-parte</u> TRO is that the reviewing judge make a factual

finding that a failure to issue the Order will result in immediate and irreparable injury to the petitioner.

However, it is not clear whether the statute countenances that the Court, without making the above finding, but upon the filing of a verified petition alleging physical abuse, harm or injury, can issue a restraining order at a hearing where both parties have the opportunity to be present. If this circumstance is intended, the statute should clarify this explicitly, and clarify also whether such a restraining order is "temporary" ie, also expires in 20 days, or is instead a temporary injunction good for up to one year, which has been issued without any prior hearing.

Thus, one way of framing this issue is that of whether the factual finding regarding immediate and irreparable harm is a pre-requisite of any restraining order under this clause, or whether there are alternatives, these need to be spelled out explicitly.

A third problem arises regarding the status of an Order for relief which has been removed or appealed to the District Court under either 40-4-123 MCA or 40-4-124 MCA. In particular, it is unclear whether an Order given through e.g., the Justice Court, (set for hearing within twenty (20) days, but also, under the statute, set to expire within 20 days) does in fact expire within 20 days if removed to District Court before the hearing, but is not heard by the District Court within that 20 days.

A sensible remedy to this quandry may be to provide that the Justice Court Order, upon removal, remains in effect until reviewed and ruled upon by the District Court, subject to any District Court modification etc.

The fourth problem (which we did not discuss) concerns jurisdiction between limited courts (Justice, City, and Municipal) and the District Courts in cases where the District Court has had parties involved in a dissolutionment or legal separation. Under 40-4-123 MCA the above Courts have concurrent jurisdicition to issue TRO's. Under (2) of 40-4-123 MCA, the limited Courts are to certify pleadings in a requested TRO to the District Court "if an action for declaration of invalidity of marriage, legal separation, or dissolution of marriage, or child custody is pending between the parties." The difficulty arises where the District Court has already granted orders in the above circumstances. Judge Morris, in particular, feels that it is a questionable practice for the Justice Court to grant a TRO in cases where the District Court recently granted a dissolution or determined child custody or visitation.

Often the Justice Court has no information of the specific requirements in the District Court orders concerning custody, visitation etc. Further, the District Court Orders almost always have a "no harassment" provision.

To avoid a limited court issuing orders which conflict with

those of the District Court and which may result in confusion for an officer at the scene who has a District Court Order saying one thing, and a Justice Court Order issued later saying another thing, it may be useful to consider language which directs that if parties have previously appeared in District Court in a marital or custody dispute, then a request for a TRO should be directed to the District Court which had jurisdiction previously, but that if parties have moved and no longer reside within the confines of that District Court, then such application can be made to any court having appropriate authority to issue a TRO.

Thank you for your attention to these problems.

David K. Clark
Justice of the Peace, Dept. #1

Michael D. Morris
Justice of the Peace, Dept.#2

Enc.

Exhibit # 8
2/20/91 HB 675

VOLUME NO. 43 OPINION NO. 50

COURTS - Necessary allegations in petition for temporary restraining order under section 40-4-121(3), MCA;
MONTANA CODE ANNOTATED - Sections 27-19-201(5), 40-4-121, 40-4-123, 45-5-206(1)(b);
MONTANA LAWS OF 1985 - Chapters 526, 700.

HELD: A petition for injunctive relief under section 40-4-121(3), MCA, must allege physical abuse, harm, or bodily injury.

December 22, 1989

Keith D. Haker
Custer County Attorney
1010 Main
Miles City MT 59301

Dear Mr. Haker:

You have requested my opinion on the following question:

> Must there be physical abuse committed before a temporary restraining order may be issued by a justice court under section 40-4-121(3), MCA?

In 1985 the Legislature addressed the issue of domestic violence by enacting two separate pieces of legislation. Senate Bill 449 (1985 Mont. Laws, ch. 700) created and defined the criminal offense of domestic abuse, codified at section 45-5-206, MCA, and amended criminal procedure statutes concerning arrest and bail. House Bill 310 (1985 Mont. Laws, ch. 526) amended statutes in Titles 27 and 40 of the Montana Code Annotated so as to permit certain abused family and household members to obtain self-help temporary restraining orders and preliminary injunctions. See §§ 27-19-201, 27-19-315, 27-19-316, 40-4-121, MCA. House Bill 310 also provided for municipal and justice court jurisdiction to hear and issue the protective orders. In 1989 the Legislature extended this civil jurisdiction to city courts. § 40-4-123, MCA.

injury. In particular, the judge may order the defendant to avoid all contact with the alleged victim of the crime. § 46-9-501(b)(v), MCA.

THEREFORE, IT IS MY OPINION:

A petition for injunctive relief under section 40-4-121(3), MCA, must allege physical abuse, harm, or bodily injury.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

MR/JP/bf

EXHIBIT 4
DATE 2-20-91
HB 675

Montana Catholic Conference

February 20, 1991

CHAIRMAN STRIZICH AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

I am John Ortwein, representing the Montana Catholic Conference. I serve as the liaison of the two Roman Catholic Bishops of the State of Montana in matters of public policy.

I am here today in support of HB 675.

A study conducted by the United States Catholic Conference entitled: **Violence in the Family; A National Concern/A Church Concern,** stated that one of every two women in the United States will be abused during her lifetime. This translates to an abusive situation occurring every 18 seconds somewhere in the United States. The study also showed that a disproportionately large number of attacks by husbands seem to occur when the wife is pregnant, thus posing a grave threat to the life of the unborn child as well as the woman.

Research by Dr. Lenore Walker indicates a definite cycle composed of three phases in most domestic violence situations. The first one is the tension-building stage; the second is the explosion; and the third is the calm, loving, respite stage.

With the knowledge we have of domestic violence it seems reasonable to us that it should be halted in stage one of its three stage process. A temporary injunction procedure will help alleviate a number of domestic abusive situations.

Please give your "yes" vote to HB 675.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

CARE & SHARE

EXHIBIT 10
DATE 2-20-91
HB 872

Testimony of Michael Sherwood
Opposing HB 872

The same court that, as you heard yesterday, has declared the actions of a janitor and a road foreman to be "legislative acts" for purposes of finding immunity from suit for the acts of the legislature and the political subdivisions of the state which employs the judges of that court, has also ruled that the state is immune from a suit on contract when the contract is implied rather than express.

This ruling came about in spit of language in the constitution, stating:

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

It also flies in the face of a statute which confirms the constitutional safeguard of citizen rights when dealing with the state. Section 18-1-404(1), MCA, reads:

"The state of Montana shall be liable in respect to <u>any</u> contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana shall not be liable for interest prior to or after judgment or for punitive damages.

State law acknowledges the existence of and the binding nature of "implied" contracts in Section 28-2-103 MCA, yet the Court refused to allow the misled students in the Peretti access to the courts of this state.

Please vote do not pass on HB 872.

EXHIBIT 11
DATE 2-20-91
HB 797

Testimony of Michael T. Pablo
Tribal Chairman of the
Confederated Salish & Kootenai Tribes
of the Flathead Nation

February 20, 1991
House Judiciary Committee

Mr. Chairman, members of the Committee, my name is Mickey Pablo. I am the Tribal Chairman of the Confederated Salish and Kootenai Tribes of the Flathead Nation.

It is an honor to testify before you this morning. The bill under consideration - House Bill 797 - is of tremendous importance to the Flathead Nation. If it becomes law, future generations of our people will look back upon this bill and this time with pride.

The Tribes have mailed to all members of this committee, and to all members of the Montana Legislature, a briefing paper on this bill. This briefing paper provides background on Public Law 280, explains why the Tribes consented to Public Law 280 jurisdiction in 1965, and explains why the Tribes believe we are now capable to reassume those responsibilities. There is not time this morning for me to get into the specifics contained in that briefing document. But I urge you to review it. I do have some extra copies with me if you need one.

House Bill 797 is really a simple bill: it allows the Flathead Nation to withdraw their consent to Public Law 280 jurisdiction on the Flathead Reservation. Our Tribe is the only Montana Indian tribe to consent to Public Law 280 jurisdiction. Under Montana law, no tribe can be subjected to Public Law 280 jurisdiction without its consent.

We are asking for something that all other Montana Indian tribes presently enjoy: the right to assume responsibility for their own people. Because no other Montana tribe consented to Public Law 280 jurisdiction, enactment of this bill would place the Flathead Nation on an equal footing with its sister tribes in Montana.

The Tribes consented to 280 jurisdiction at a time when federal Indian policy was hostile to the concept of tribal self-determination. At that time our tribal government was small. It consisted of 11 employees. The total tribal budget was less than $250,000. At that time the Tribes did not have the resources or the capabilities to assume full responsibility for our people.

Our tribal government is now over 100 times the size it was in 1965. It includes over 1200 tribal

employees and our annual combined tribal/federal operating budget is 70 million dollars. As our Executive Secretary Joe Dupuis will further explain this morning, we have made the determination that we are fully capable to reassume the jurisdiction which we have shared with the State since 1965.

The opponents to this bill will argue that this legislature should not allow the Tribes to withdraw their consent, and that the entire matter should be deferred and studied until the legislature meets again.

We strongly disagree. If a true "government to government" relationship exists between the State of Montana and the Flathead Nation, the playing field must be even. If the Tribes have the option to consent to Public Law 280, they should likewise have the option to withdraw. Just as the Tribes were in the best position to determine when to consent to 280 jurisdiction, the Tribes are in the best position to determine when to withdraw.

If this legislature passes this bill, retrocession would **not** occur overnight. The Tribes will not withdraw from Public Law 280 until we are comfortable that the transition will work smoothly. For example,

the Tribes would like the opportunity to explore opportunities for cooperative agreements and cross-deputization agreements with the State and other affected governments.

Retrocession will save the state and counties money. The Tribes are fully prepared to assume the financial responsibility to make retrocession work smoothly.

The Flathead Nation has one of the largest tribal governments in the nation. We also have one of the largest tribal law enforcement programs in the state. With retrocession, the size of that law enforcement program will grow as needed.

Our police officers are as well-trained as any in Western Montana. They attend either the Montana Law Enforcement Academy or the Federal Enforcement Training Center - in addition to on-going specialized training at regional training programs. One of our officers is federally cross-deputized - and more officers will be applying for federal cross-deputization.

The opponents will argue that this retrocession will lead to lawlessness. That is not true. The

Tribes will never allow lawlessness to take place on the Flathead Reservation. We will do everything in our power to make sure that there are adequate tribal and federal resources to prevent lawlessness from occurring. If Lake County has concerns about lawlessness than it should have no objection to cross-deputization of our respective police officers.

The federal policy of encouraging tribal self-determination means nothing if Tribes like the Flathead Nation are deprived of the ability to implement self-determination. House Bill 797 is about tribal self-determination. It is about taking care of our people. It also saves the State and counties money. Self-determination for the Flathead Nation is not possible without the passage of House Bill 797.

As one sovereign government to another, we ask your support.

Thank you.

DATE 2-20-91
HB 797

Statement in Support of House Bill No. 797
Before the Judiciary Committee of the House of Representatives
Montana Legislative Assembly

By Margery H. Brown
February 20, 1991

Chairman Strizich and Members of the Committee:

House Bill No. 797 is a simple and straight forward approach to a jurisdictional issue in Indian law that has implications for the federal government, the State of Montana, four county governments, especially Lake County, and most specifically -- the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

As clearly set out in the background paper prepared by the Confederated Salish and Kootenai Tribes for this Committee and all legislators, Public Law 280, the backdrop for 2-1-306 MCA -- emerged from Congress in 1953, as one expression of the termination policy then current. We know that the roots of Public Law 280 traced primarily to California and a perceived need to strengthen law enforcement on Indian reservations in that state. Public Law 280 mandated that initially five, and after Alaska statehood, six willing states assume criminal and civil jurisdiction over most -- but not all -- reservations in the listed states. Exceptions were specific reservations in Minnesota, Oregon, Wisconsin, and Alaska where tribal law enforcement was functioning well.

Public Law 280 also authorized all other states -- the so-called optional states -- to assume jurisdiction in Indian Country as provided in the Act. In time, nine states, including Montana, took up that invitation.

The basic jurisdictional authorizations by Congress for assumption by the states on reservations to which the Act was applied were these:

- criminal jurisdiction over offenses committed in Indian Country by or against Indians to the same extent that a state had jurisdiction over offenses committed elsewhere in the state

- the criminal laws of a state were to have the same force and effect in Indian Country as elsewhere in the state

- states were to have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in Indian Country to the same extent that a state has jurisdiction over other civil causes of action

- the civil laws of a state of general application to private persons or private property were to have the same force and effect within Indian Country as elsewhere in the state

Public Law 280 expressly prohibited state jurisdiction over such matters as adjudicating rights in trust property, or encumbering or taxing that property, and Congress also stated that nothing in Public Law 280 deprived any Indian or tribe of rights

under treaties and statutes to hunt, trap and fish and control the regulation of those rights.

Significantly, when state criminal jurisdiction was extended to a reservation under Public Law 280, the two principal federal criminal states applicable in Indian Country -- the Federal Enclaves Act, 18 U.S.C.A. 1152, and the Major Crimes Act, 18 U.S.C.A. § 1153, no longer applied. While federal criminal authority was supplanted by the state, nothing in Public Law 280 diminished tribal jurisdiction.

Between 1953 and 1968, the optional Public Law 280 states could have assumed jurisdiction on Indian reservations through their unilateral action. To their credit, most of the nine optional states worked out a means to gain tribal consent before extending state jurisdiction to reservations under the Act. Most of the optional states also fashioned particular adaptations of Public Law 280, and in time the courts gave their blessings to these arrangements, and to a state's electing either constitutional revision or statutory law in applying Public Law 280 to Indian Country.

The agreement that the State of Montana and the Confederated Tribes of the Flathead Reservation reached in 1963-65 was part of those developments. The state's position in 2-1-301 - 307 MCA was that it would assume such civil and criminal jurisdiction over the tribes as the pertinent tribal council might request. Under the statute, a tribal council could withdraw its consent to be subject to the criminal and/or civil jurisdiction of the state for a period of two years after Public Law 280 jurisdiction was assumed by the state.

House Bill 797 removes that 2-year limitation on withdrawal of tribal consent, and permits a tribe now and in the future to withdraw its consent and terminate state jurisdiction within the reservation as now permitted by Public Law 280.

As you well know, the only Public Law 280 agreement in Montana is the jurisdictional framework set forth in Ordinance 40-A (revised) enacted by the Tribal Council of The Confederated Salish and Kootenai Tribes in 1965. It pertains to criminal law and jurisdiction and to eight civil law subjects, and states expressly that concurrent jurisdiction on all of the matters remains with the Flathead Tribal Court.

Three years after this jurisdictional agreement took effect, Congress responded to criticism by both tribes and states and made these amendments to Public Law 280 as part of the Indian Civil Rights Act of 1968:

- Thereafter, no state could assume Public Law 280 jurisdiction without the consent of the tribe or tribe concerned, and

- A method was provided for states to return Public Law 280 jurisdiction to the federal government. The United States was authorized to accept retrocession by any state of all or any measure of the criminal or civil jurisdiction acquired by that state under either the mandatory or optional provisions of Public Law 280.

Ten years later -- in 1978 -- in *Bryan v. Itasca County*, 426 U.S. 373, the United States Supreme Court made clear that the civil laws of a state that can be applied in Indian Country under Public Law 280 are not state civil regulatory or tax laws, but are instead the civil law that courts apply to decide cases before them. That same year, in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), the United States Supreme Court held that tribal courts do not have criminal jurisdiction over non-Indian defendants.

Since the *Oliphant* decision, in cases arising on the Crow and Blackfeet reservations in Montana, the United States Supreme Court has refused to extend the rule of *Oliphant* to tribal court civil jurisdiction over non-Indians. The Court has described the vital role played by tribal courts in self-government, and the consistent encouragement given by the federal government to their development. [See *National Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845 (1985), and *Iowa Mutual Insurance Company v. LaPlante*, 480 U.S. 9 (1987).]

The growth and development of the tribal justice system of the Confederated Salish and Kootenai Tribes is described in the briefing document before you and in testimony to this Committee today. I have had the opportunity to observe this tribal court over the past decade and a half as it expanded its staff and resources, benefitted from the permanency of seasoned judges, and provided a respected forum in discharging its responsibilities in both criminal and increasingly complex civil matters.

I believe that the tribal justice system of the Confederated Salish and Kootenai Tribes is well prepared to handle increased responsibilities if the State of Montana seeks and obtains retrocession of Public Law 280 jurisdiction on the Flathead Reservation. It is well to note, as the briefing document emphasizes, that once retrocession is accomplished, the same jurisdictional framework will be in effect on the Flathead Reservation as prevails on each of the other six Indian reservations in Montana.

The basic guidelines of that jurisdictional framework result from Congressional enactments dating back to 1790, 1834, and 1885, and United States Supreme Court decisions dating from the late nineteenth century (for criminal jurisdiction) and 1959, 1985, and 1987 (for civil jurisdiction).

If retrocession is accomplished, criminal jurisdiction on the Flathead Reservation will be divided between federal, tribal, and state authority as follows:

- Under the Federal Enclaves Act, § 18 U.S.C.A. 1152, federal jurisdiction will extend to offenses committed by non-Indians against Indians and to offenses not covered by the Major Crimes Act committed by Indians against non-Indians except for Indians committing such offenses who have been convicted and punished by the tribes. (The Assimilative Crimes Act, § 18 U.S.C.A. 13, in combination with the Federal Enclaves Act, § 18 U.S.C.A. 1152, provides for the application of state criminal law in federal court when there are gaps in federal enclave criminal law).

- Under the Major Crimes Act, § 18 U.S.C.A. 1153, federal jurisdiction will extend to Indians committing one of the listed 14 major offenses against either an Indian or a non-Indian.

- The Tribal Court will have exclusive jurisdiction over non-major crimes committed by Indians against Indians on the reservation, and over victimless crimes committed by Indians on the reservation.

- The Tribal Court will have concurrent jurisdiction with federal courts over non-major crimes by Indians against non-Indians on the reservation.

- State courts will have exclusive jurisdiction over crimes by non-Indians against non-Indians committed on the reservation, and over victimless crimes committed by non-Indians on the reservation when no Indian interests are affected. State courts will also have jurisdiction over any Indian offenses committed outside of the reservation.

Under guidelines for civil jurisdiction set forth in judicial decisions, the Tribal Court will exercise exclusive instead of concurrent jurisdiction over civil matters arising on the reservation involving two Indian parties, or an Indian defendant. State courts will continue to have jurisdiction to hear cases arising on the reservation brought by an Indian plaintiff against a non-Indian defendant. State courts will also continue to have jurisdiction over suits by non-Indians against non-Indians arising on the reservation. State courts also will retain jurisdiction over claims against Indian defendants (whether the plaintiff is Indian or non-Indian) that arise outside of the reservation.

The effect of Public Law 280, enacted in the termination era, radically changed the traditional division of jurisdiction among the federal government, the states, and the tribes for those states and tribes to which the law applied. Otherwise applicable federal law was displaced, and tribal authority was diminished. State law and states gained an unprecedented force in Indian Country and an unprecedented power over Indian people as individuals.

The Public Law 280 agreement reached between the State of Montana and the Confederated Salish and Kootenai Tribes reflects circumstances that no longer exist, especially regarding the capability of the tribes to build and support law enforcement and tribal court systems distinguished -- as is the entire tribal governmental development -- for their planning, organization, staffing, and performance.

A headline in a newspaper yesterday proclaimed: "Tribes Try to Dismantle the Shared Jurisdiction Pact." I believe the sentence is misleading, ignoring as it does that federal policy ever since 1968 has permitted states to seek retrocession of Public Law 280 jurisdiction in response to changed circumstances.

As noted above, another aspect of the 1968 Congressional legislation was to require tribal consent for any future assumption of Public Law 280 jurisdiction. The only post-1968 application of Public Law 280 of which I am aware occurred in Utah, and Utah fashioned its legislation along lines similar to House Bill 797 -- binding itself to retrocede

Public Law 280 jurisdiction when a tribe requested it by a majority vote at a special election.

A final comment -- which also cuts against the implications of the newspaper headline. If the Confederated Salish and Kootenai Tribes do withdraw their consent to the Flathead Public Law 280 agreement under an amended 2-1-306 MCA, and Montana obtains federal approval for retrocession of the jurisdiction it obtained on the Flathead Reservation in 1965, there will be no termination of the need for the state, the tribes, and the federal government to work together to obtain an excellent system of law enforcement on the Flathead Reservation. Federal resources and increased tribal resources will be added to the collective law enforcement and adjudicatory institutions at work. The tribal justice system will be able to perform a role that is crucial to the self-government of the Confederated Salish and Kootenai Tribes, and for which it is fully prepared, as a result of two and a half decades of planning, and careful growth and development.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

EXHIBIT 13
DATE 2-20-91
HB 797

STATEMENT OF JOHN S. BUSHMAN, OFFICE OF THE ASSISTANT SECRETARY - INDIAN AFFAIRS, UNITED STATES DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C., BEFORE THE HOUSE JUDICIARY COMMITTEE, 52nd MONTANA LEGISLATURE, HELENA, MONTANA ON HOUSE BILL 797

GOOD MORNING, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I AM PLEASED TO BE BACK IN MY HOME STATE, AND TO BE HERE TO PRESENT THE VIEWS OF THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, AND THE DEPARTMENT OF THE INTERIOR ON HOUSE BILL 797. THIS BILL WOULD ALLOW THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION TO RETROCEDE FROM PUBLIC LAW 280 JURISDICTION. THE DEPARTMENT OF THE INTERIOR ENCOURAGES YOUR FAVORABLE CONSIDERATION OF BILL 797 FOR THE FOLLOWING REASONS:

1. IT IS FURTHERANCE OF THE FEDERAL POLICY OF INDIAN SELF-DETERMINATION.
2. THIS POLICY ENCOURAGES TRIBES TO ASSUME GREATER RESPONSIBILITIES FOR SERVICES SUCH AS ENFORCEMENT OF TRIBAL LAWS.
3. THIS POLICY RECOGNIZES THE IMPORTANCE OF INDIAN SOVEREIGNTY IN A NATION OF SOVEREIGN STATES.

TODAY ALL THREE BRANCHES OF THE FEDERAL GOVERNMENT ENDORSE THE FEDERAL POLICY OF INDIAN SELF-DETERMINATION.

CONTEMPORANEOUS WITH AND IN FURTHERANCE OF THIS FEDERAL INDIAN POLICY, THE CONGRESS HAS RESPONDED BY ENACTING A SERIES OF LAWS WHICH SEEK TO PROMOTE AND FOSTER SELF-DETERMINATION.

THESE INCLUDE:

1. THE INDIAN SELF-DETERMINATION ACT
2. THE INDIAN CHILD WELFARE ACT
3. THE INDIAN TRIBAL GOVERNMENT TAX STATUS ACT
4. AND THE INDIAN FINANCING ACT

IN THE ENVIRONMENTAL ARENA, THE CONGRESS HAS AUTHORIZED TRIBES TO BE TREATED AS STATES OVER SUCH MATTERS AS AIR QUALITY, WATER QUALITY, PESTICIDES, HAZARDOUS WASTE SITES, AND PUBLIC DRINKING WATER ON INDIAN RESERVATIONS.

WE CONTINUE TO BELIEVE ITS PAST THE TIME THAT INDIAN POLICIES SHOULD RECOGNIZE AND BUILD UPON THE CAPACITIES AND INSIGHTS OF THE INDIAN PEOPLE. WE ALSO BELIEVE THE TIME HAS COME TO BREAK DECISIVELY WITH THE PAST AND TO CREATE CONDITIONS FOR A NEW ERA IN WHICH THE INDIAN FUTURE IS DETERMINED BY INDIAN ACTS AND INDIAN DECISIONS.

IN CLOSING, WE URGE YOUR FAVORABLE CONSIDERATION OF HOUSE BILL 797 AND WE OFFER YOU ANY ASSISTANCE YOU MAY REQUIRE DURING THE COURSE OF YOUR IMPORTANT DELIBERATIONS ON THIS BILL.

THANK YOU, I'D BE PLEASED TO ANSWER ANY QUESTIONS THE COMMITTEE MAY HAVE.

EXHIBIT 17
DATE 2-20-91
HB 797

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

Honorable Hal Harper
Speaker of the House
Montana House of Representatives
State Capitol
Helena, Montana 59620

FEB 14 1991

Dear Mr. Speaker:

It has come to my attention that the 1991 Montana Legislature will soon be considering legislation to allow the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation to retrocede from Public Law 280 jurisdiction. I am writing to advise you of the Department of the Interior strong support of the Tribes's desire to reassume Public Law 280 jurisdiction.

As you may be aware, the Salish and Kootenai Tribes are one of the largest tribal governments in the nation and has repeatedly demonstrated its commitment and capabilities to achieve our nation's goal of tribal self-determination. This fact was underscored when the Salish and Kootenai Tribes were selected by Congress in 1989, as one of ten Indian Nations, for inclusion in the tribal self-governance project.

As you are probably aware, the Congress has authorized the Secretary of the Interior to accept state offers to retrocede from state jurisdiction under Public Law 280. This office has been delegated authority to accept state retrocessions. Since 1968, approximately thirty Indian tribes have retroceded from Public Law 280 jurisdiction. If and when the State of Montana makes an offer of retrocession to the Department of Interior, please be assured the Department will look favorably upon such an offer. However, we will obviously have to defer action until such a request is received from the State.

In closing, I want you to know that the Department of the Interior supports the Salish and Kootenai Tribes in this effort and that we will be pleased to provide any assistance or information you may require as you begin deliberations on this important matter.

An identical letter is being sent to Governor Stephens and the Honorable Joseph Mazurek, President of the Senate, Helena, Montana.

Sincerely,

Eddie F. Brown

Assistant Secretary - Indian Affairs

Montana - Wyoming

Tribal Chairmen Association

EXHIBIT 15
DATE 2-20-91
HB 797

ARAPAHOE BUSINESS COUNCIL
P.O. Box 396
Fort Washakie, WY 82514
(307) 332-5006
FAX: 332-7543

BLACKFEET TRIBAL BUSINESS COUNCIL
P.O. Box 850
Browning, MT 59417
(406) 338-7276
FAX: 338-7530

CHIPPEWA CREE BUSINESS COMMITTEE
Rocky Boy Route, Box 544
Box Elder, MT 59521
(406) 395-4282
FAX: 395-4497

CONFEDERATED SALISH & KOOTENAI TRIBES
P.O. Box 278
Pablo, MT 59855
(406) 675-2700
FAX: 675-2806

CROW TRIBAL COUNCIL
Box 159
Crow Agency, MT 59022
(406) 638-2601
FAX: 638-2380

FORT BELKNAP COMMUNITY COUNCIL
Box 249
Harlem, MT 59526
(406) 353-2205
FAX: 353-2729

FORT PECK EXECUTIVE BOARD
P.O. Box 1027
Poplar, MT 59255
(406) 768-5155
FAX: 768-5478

NORTHERN CHEYENNE TRIBAL COUNCIL
Box 128
Lame Deer, MT 59043
(406) 477-6284
FAX: 477-6210

SHOSHONE BUSINESS COUNCIL
P.O. Box 538
Fort Washakie, WY 82514
(307) 332-3532
FAX: 332-3055

February 14, 1991

Confederated Salish and
Kootenai Tribes
P.O. Box 278
Pablo, Mt. 59855

Dear Mr. Chairman,

The Montana/Wyoming Tribal Chairman's Association support the efforts of the Confederated Salish and Kootenai Tribes to retrocede PL280, on the Flathead Reservation.

It is another step for tribal self-governance for the Confederated Salish and Kootenai Tribes to re-assume criminal jurisdiction of Confederated Salish and Kootenai Tribal members on the Flathead Reservation.

This is also a reaffirmation of true government to government relationship with the state of Montana and the United States of America.

MT/WY Tribal Chairmen Association

Clara Gunnee, Chairperson Crow

[signature], Chairman Fort Belknap

[signature], Chairman Fort Peck

[signature], Acting Chairman Rocky Boy

[signature], Chairman Shoshone

[signature], Acting Chairman Northern Cheyenne

EXHIBIT 10
DATE 2-20-91
HB 797

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P. O. Box 278
Pablo, Montana 59855
(406) 675-2700
Fax (406) 675-2806

February 22, 1991

Representative Bill Strizich
Chairman of the Judiciary Committee
House of Representatives
State Capitol
Helena, Montana 59620

Dear Chairman Strizich:

This letter is a followup to the January 20 hearing on House Bill 797 - the Flathead retrocession bill.

In my testimony before the House Judiciary Committee, I emphasized the following point:

> "If this legislature passes this bill, retrocession would **not** occur overnight. The Tribes will not withdraw from Public Law 280 until we are comfortable that the transition will work smoothly. For example, the Tribes would like the opportunity to explore opportunities for cooperative agreements and cross-deputization agreements with the State and other affected governments."

After listening to the testimony of the opponents, I was troubled by the fact that they appeared to ignore the above-quoted commitment. The opponents painted a bleak picture wherein the Tribes would blindly and recklessly seek an immediate withdrawal from Public Law 280, resulting in lawlessness and a "black hole" in enforcement.

Such conclusions and assumptions are not only unfounded, they are an insult to the intelligence and integrity of the Tribes. The Tribes are not going to allow lawlessness or a "black hole" to exist in law enforcement. To the contrary, the Tribes - as stated above - will seek cooperative agreements and cross-deputization agreementswith affected governments. In addition, the Tribes (in concert with the Bureau of Indian Affairs) will be working closely with the

Ex. 16
2-20-91
HB 797

federal justice department to ensure that adequate federal resources are in place before tribal withdrawal from Public Law 280 is triggered.

House Bill 797 does not mandate an immediate retrocession. It merely affords the Tribes **the option** of withdrawing their consent to Public Law 280 jurisdiction. The Tribes, on the other hand, have stated in plain terms that they will seek to withdraw only after adequate law enforcement arrangements have been put in place.

But without the enactment of House Bill 797, there is no real impetus for the U.S. Justice Department or State and affected counties to seriously engage in discussions with the Tribes about cross-deputization, cooperative agreements, and acquisition of any necessary additional federal resources. Without enactment of House Bill 797, the probability of tribal retrocession is not real.

For example, Congress is unlikely to allocate additional federal resources to western Montana based on the possibility that some future legislature may authorize the Tribes to retrocede. If the Lake County non-Indian community is truly as concerned about lawlessness under retrocession as it leads us to believe, then that same non-Indian community should be in the forefront of a combined tribal-state-community effort to augment federal resources and to cross-deputize law enforcement personnel on the Flathead Reservation.

As pointed out in our briefing document and at the hearing before the House Judiciary committee, federal law (25 USC § 1323(a)) requires federal approval before a retrocession can take effect. This federal approval requires consultation between the Department of Interior and the U.S. Justice Department regarding the effects of retroceding criminal jurisdiction from the state back to the federal government.

As mentioned in my testimony, the Tribes have made the commitment - and I reiterate that commitment now - to allocate whatever tribal resources necessary to make retrocession work. The Tribes already have a federally cross-deputized officer, and more officers are scheduled for federal cross-deputization this Spring. In addition, the Tribes will add additional law enforcement personnel as needed. A feasibility on a new tribal justice center, which includes expanded jailing facilities, is already underway.

Finally, the Tribes view the retrocession issue as a "government-to-government" issue between the Tribes and the

Ex. 14
2-20-91
HB 797

State of Montana. This view is shared by the courts.[1] .

For more than 20 years, the Tribes have carefully studied this issue. We have concluded that we are now capable or reassuming our rightful responsibility to care for our people.

Thank you for the opportunity to present our views.

Sincerely,

Michael T. Pablo
Chairman of the Tribal Council

cc: Honorable members of the Montana House of Representatives

[1] *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975), *cert. denied*, 429 U.S. 1038 (1977)(held that Public Law 280 only confers jurisdiction on the state not local governments reasoning: "A construction of P.L.280 denying jurisdiction to local governments comports with the present congressional Indian policy."). See also *California v Cabazon Band of Mission Indians*, 107 S.Ct.1083, 1089-90 n.11 (1987) (The U.S. Supreme Court states: "it is doubtful that Pub L 280 authorizes the application of any local laws to Indian reservations.")

The Office of the:

EXHIBIT 11
DATE 2-20-91
HB 797

ROSEBUD COUNTY ATTORNEY

Rosebud County Courthouse
Drawer M
Forsyth, MT 59327

Telephone: (406) 356-2236

John S. Forsythe
County Attorney

February 13, 1991

Mr. Larry Nistler
Lake County Attorney
Lake County Courthouse
Polson, MT 59860

RE: Repeal of Public Law 280

To Whom It May Concern:

After sixteen years of dealing with jurisdictional issues involving Indian reservations, mostly as a county attorney, I would recommend retention of Public Law 280 for the benefit of the citizens of Lake County. Further limitation of State criminal jurisdiction is not a good idea.

Very truly yours,

John S. Forsythe
Rosebud County Attorney

JSF/nls

2-19-91

Exhibit # 17
2/20/91 HB 797

2-20-91
HB 797

OFFICE OF THE COUNTY ATTORNEY

County of Hill

P.O. BOX 912
HAVRE, MONTANA 59501-0912
265-4364

DAVID G. RICE
COUNTY ATTORNEY

PATRICIA JENSEN
DEPUTY COUNTY ATTORNEY

February 14, 1991

Mr. Larry Nistler
Lake County Attorney
c/o Lake County Courthouse
Polson, MT 59860

RE: Criminal Prosecution on Indian Reservation

Dear Larry,

In response to your request regarding criminal investigation and prosecution on Indian reservations.

At this point, there is no cooperation between this office and the Rocky Boy's Reservation. The reservation has a fairly well defined boundary and the tribe asserts all jurisdiction within the reservation boundaries. Our law enforcement is not allowed to serve papers or warrants within the reservation boundaries. There is also no extradition agreement between the state and Rocky Boy. In short, this office basically has to write off prosecuting or investigating anything or anyone within the reservation; we have to leave matters to the tribal police, BIA or FBI.

I hope that this answers your questions. If you need anything further, let me know.

Sincerely,

PATRICIA JENSEN
Deputy Hill County Attorney

PJ/sl

2-15-91

PHONE 653-2653
Ralph J. Patch
County Attorney

Exhibit # 17
2/20/91 HB 797

COUNTY OF ROOSEVELT
OFFICE OF
COUNTY ATTORNEY
WOLF POINT, MONTANA 59201

February 15, 1991

Larry Nistler
Lake County Attorney
Lake County Courthouse
Polson, MT 59860

Re: Retrocession of Public Law 280

Dear Mr. Nistler:

Pursuant to our telephone conversation of earlier this week, I am writing you to give you a brief summary of a particular problem which arises in Roosevelt County because a large part of Roosevelt County is located on the Fort Peck Assiniboine/Sioux Indian Reservation and therefore confronted with the jurisdictional questions of Federal Law, Tribal Law and State Law.

The primary problem that occurs in a very frustrating way is the situation where a non-Indian spouse commits the crime of domestic abuse against his Indian spouse. While an arrest is made by either the Roosevelt County Sheriff's Department or the Bureau of Indian Affairs police, and the crisis situation is alleviated, once the individual is transported to jail, the question becomes into which Court should this person be charged. Unfortunately the answer is no Court. This is because the State has no jurisdiction over the non-Indian person who attacks his Indian spouse. That is set forth in State of Montana v. Greenwalt, 40 St.Rep. 767 (772)(1983). And, the Tribal Court has no jurisdiction over the non-Indian person as set forth in Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), and unfortunately the Federal authorities, which definitely have jurisdiction over those cases, will decline to prosecute that particular crime. The result is that the non-Indian person has received a license to abuse his or her Indian spouse. If that is the situation that the State wishes now to impose upon the Reservation in which a part of your county is, then I feel that a great disservice is being done to all of the people residing on the Reservation.

2-19-91

We also discussed the problem with prosecution of writers of bad checks. That, I believe is a situation that can be rectified through cooperative efforts between Tribal authorities, Local and State authorities. At present time my office is attempting to establish an ongoing extradition procedure with the Fort Peck Assiniboine/Sioux Tribal Court system. It appears that the Governor's office is reviewing that matter and has yet to make a final determination. Until that time occurs we will have to deal with the bad check situation on a case by case basis.

If you have any further questions that I might answer, feel free to contact me.

Very truly yours,

Ralph J. Patch
Roosevelt County Attorney

RJP/lcp

Exhibit # 17
2/20/91 HB 797

OFFICE OF

GLACIER COUNTY ATTORNEY

14 EAST MAIN STREET
P. O. BOX 428
CUT BANK, MONTANA 59427

PHONE: 406-873-2278

JAMES C. NELSON
COUNTY ATTORNEY

FAX: 406-873-2643

LARRY D. EPSTEIN
DEPUTY COUNTY ATTORNEY

February 14, 1991

Larry Nistler
Lake County Attorney
Lake County Courthouse
Polson, Mt.

Dear Larry:

In a conversation with Jim Nelson, Glacier County Attorney, this morning, you indicated that legislation has been introduced in the Montana Legislature providing for repeal of the grant of criminal jurisdiction on the Flathead Reservation to the State of Montana, enacted many years ago pursuant to U.S.Public Law 280.

As someone with property interests in Lake County, on the Flathead reservation, and as a deputy County Attorney with 15 continuous years experience as a prosecutor in Glacier County, working with the jurisdictional problems created by the non-P.L. 280 status of the Blackfeet Reservation, I urge you to work to defeat this proposal. Passage of this legislation and the resulting jurisdictional morass would result in decline of property values, incredible criminal law jurisdictional problems, unequal treatment for victims and criminals and overall loss of effective law enforcement now enjoyed by all citizens and visitors in Lake County, Indian and non-Indian, alike.

Currently, on the Blackfeet Reservation in Glacier County, all misdemeanor prosecutions and traffic offenses involving enrolled members of the Blackfeet Tribe or any other federally recognized tribe, whether as victims or perpetrators, must be handled by Bureau of Indian Affairs Law Enforcement officers stationed in Browning or the FBI. The BIA contingent is underfunded and understaffed due to BIA budgetary restraints and cutbacks. The FBI also maintains a 2-3 man office for the reservation to handle serious violations of the law with respect to tribal members.

Prosecution of crime on the Blackfeet Reservations is handled by Tribal Court prosecutors, a centralized BIA registry in Denver or the U.S. Attorney's offices in Great Falls, Helena or Billings, depending on nature of the crime, the tribal affiliation of the parties, etc. All non-Indian matters are handled by the Glacier County Sheriff's office and our office. Sorting all this out is, as you can appreciate, a jurisdictional nightmare. In your County, you would also have local city police departments in Ronan and Polson to add to the confusion.

Exhibit # 17
2/20/91 HB 797

Once the tribe takes over criminal prosecutions, I believe that you will find that the law provides that the State will not be able to prosecute any crime on the reservation where the defendant is an Indian or where the victim is an Indian or where Indian property is involved. Crimes committed by non-Indians which fall into one of those categories (Indian victim or Indian property) are likely not to be prosecuted at all. Tribal courts do not have criminal jurisdiction over non-Indians, and unless the offense is fairly serious -- usually of a felony class -- the federal government will decline prosecution because of budgetary or manpower constraints or because the offense does not fit their internal operating criteria for prosecutions.

To give you an example, ~~the~~ if a non-Indian commits domestic abuse against his Indian spouse, it is highly unlikely that the offense will ever be prosecuted. Similarly, if a non-Indian sells a small amount of marijuana to an Indian, again, the offense will likely not be prosecuted.

To make matters worse, the jurisdictional morass is complicated when crimes are committed by persons with Indian blood who are not members of any tribe, but who claim Indian status. Canadian Indian, likewise, present similar problems of jurisdiction. The nuances and problems generated are literally endless.

I would expect that a similar result would obtain from passage of this proposed legislation. You can be sure that the U.S. Attorney's budget does not include staff and an attorney for assignment to the reservation. Further, either the BIA or the Tribe would take over criminal law enforcement with respect to "Indian" crimes on the reservation. All non-Indian matters would still be handled by your office and your local law enforcement. I can assure you from this office's perspective that you are facing a jurisdictional problem on a daily basis even if you have the excellent tribal-county cooperation such as we enjoy here in Glacier County with BIA and U.S. law enforcement agencies.

I urge you to contact other reservations with respect to the problems presented to local law enforcement in the absence of Public Law 280 jurisdiction. I feel you will receive similar input from other County Attorneys facing these problems. I also suggest you lobby for defeat of this proposed legislation. Let me know if Jim Nelson and I can assist you in this regard.

Exhibit # 17
2/20/91 HB 797

Our office speaks from experience when we advise you that the citizens of Lake County, Indian and non-Indian alike would see an immediate and very direct decline in the quality of prosecution and law enforcement if this legislation passes and as a consequence, a sharp reduction in investment (both business and personal), property values and the overall quality of life enjoyed by all who live in Lake County within the exterior boundaries of the Flathead Reservation. Many residents of Glacier County, enrolled Blackfeet and non-Indian alike, would agree.

If I can be of any further assistance or support, or if you need specific examples of the problems presented on the Blackfeet reservation, please give our office a call. Good Luck.

Sincerely,

LARRY D. EPSTEIN

LDE:mjp

LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

Feb. 19, 1991

EXHIBIT 18
DATE 2-20-91
HB 797

Bill Strizich, Chairman
House Judiciary Committee
Capitol Station
Helena, MT 59620-0002

The Board of Lake County Commissioners would request that you vote to "not Pass" H.B. 797. The reasons are many but some are as follows.

Passage of this legislation would result in a jurisdictional morass creating confusion for non-members and members alike.

Prosecution of crimes involving an indian victim, indian defendant, or indian property would have to be handled by tribal court, centralized BIA registry in Denver or U.S. Attorney's offices in Great Falls, Helena or Billings. The U.S. offices as you can see are not close in proximity and pose huge problems in access, transporting of defendants and often times the Federal Courts decline prosecution because of budgetary or manpower constraints or worse yet the offense does not fit their internal operating criteria for prosecution.

We are quite certain that the additional load from the Flathead Reservation would not be conducive to the Federal Budget or manpower.

Without further detail, we would purport that the nuances and problems generated by this action would create endless confusion and a very direct decline in quality of prosecution and law enforcement in Lake County.

Thank you for your time and consideration. Please vote "no" on this matter.

BOARD OF LAKE COUNTY COMMISSIONERS

Gerald L. Newgard

Gerald L. Newgard, Chairman

Mike W. Hutchin

Mike W. Hutchin, Member

id

RAY HARBIN - Out of the Office

HB-797 Hearing Feb 20, 1991 8 AM EXHIBIT 19
~~Senate~~ House Judiciary Committee, Helena, MT. DATE 2-20-91
HB 797

This is a statement AGAINST revocation of PL 280 on the Flathead Reservation.

We believe the Tribes are trying to "Railroad" some more legislation without allowing adequate time to determine the FULL impacts and NOT telling the people who will be affected. We see some real problems.

1. Getting "RACE" into law enforcement. A "911" call now gets action. Without PL 280 RACE must be established to find out who - if anyone - can respond immediately. This is AGAINST our Constitutional Principles.

2. The Tribes say State, County and City will SAVE money because Federal Courts, Judges and Marshalls will provide. Where do they get the money for the increased case loads and is this Guaranteed? Will the Feds. set up an office and staff on the Reservation? If they don't - ALL investigations, courts, travel etc. must go to Great Falls, Billings or Helena - involving great expenses to the Federal Gov. not to mention lawyers and the local citizens. The State may save initial money BUT if law enforcement declines - ADVERSELY affecting businesses, property values etc. - this would REDUCE State, County and City TAXES. We are NOT sure the long term would SAVE the State money. Besides - the State and County would NOT reduce our TAXES but Citizens would pay much MORE

3. Our Flathead Reservation is NOT like the other Reservations in Montana whose populations exceed 75% Indian - and they STILL have many jurisdictional problems

Ex. 17
2-20-91
HB 797

for law enforcement. Our Reservation is 75% NON-Indian so these jurisdictional problems will be that much greater. We understand our present law enforcement system is the BEST of any Montana Reservation.

WHY CHANGE IT ??

We also understand there are many Tribal members who do NOT want the present law changed, either.

We, therefore, recommend this bill be KILLED!

If the Tribes still want to push this bill - we recomend you INSIST there be a two year interim & Public Hearings ON the Reservation and that information be given the Public thru newspapers, radio and TV to show the advantages AND consequences of this bill.

Sincerely

John Monteith
Marie R. Monteith
P.O. Box 183
Big Arm, MT. 59910
(406) 849-5066

EXHIBIT 20
DATE 2-20-91
HB 797

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-20-91 **BILL NO.** HB 797 **NUMBER** _____

MOTION: Rep. Brown Do Pass

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	11	9

EXHIBIT 21
DATE 2-20-91
HB 812

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-20-91 **BILL NO.** HB 812 **NUMBER**

MOTION: Rep. Whalen: Table

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	15	5

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Judiciary COMMITTEE BILL NO. HB #821

DATE 2-20-91 SPONSOR(S) Rep. Took

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Mockler	MT. Coal Council		✓
Jessica Rabbins	MVSS. Valley Dev. Corp		✓
WARD SHANAHAN	STILLWATER MINING		✓
Richard Parks	AMRC	✓	
Ted J. Doney	ASARCO Inc.		✓
John Fitzpatrick	Pegasus Gold Corp		✓
Jim Jensen	MEIC	X	
W R Mackey Jr	Self	X	
Doug Casey	DSL		
Mary A Candler	Mt. Mining Assn.		X
Dave Doherty	Senate #20	X	
Eileen Brooke	Stockgrowers/Wadgrowers	✓	
Ken Williams	Entech		X
Steve Brown	Noranda		✓

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 821

DATE 2-20-91 SPONSOR(S) Cooke

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Larry Pasbender	Meridian Minerals		✓	

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

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Judiciary COMMITTEE BILL NO. HB #675

DATE 2-14-91 SPONSOR(S) Rep. Squires

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
PAT BRADLEY	MT MAG. ASSN	X	
JOHN ORTWEIN	MT CATHOLIC CONFERENCE	X	

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

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Judiciary COMMITTEE BILL NO. ~~HB~~ # 773

DATE 2-20-91 SPONSOR(S) Rep. Hickey

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Dan Anderson	Department of Institutions	✓	
J. Shontz	Mental Health Assoc.	✓	
Frank Lance	G.M. MHC	✓	
Bill Fleiner	Mont. Sheriff's & Police Offic Assoc		✓

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

6

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Judiciary COMMITTEE BILL NO. HB #864

DATE 2-20-91 SPONSOR(S) Rep. Gould

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Chuck Brooke	Commerce Dept.	✓	
Newell Anderson	DOC	✓	
Jim Oppedahl	Court Administrator/Sup Court	✓	

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

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Judiciary COMMITTEE BILL NO. HB #812

DATE 2-28-91 SPONSOR(S) Rep. Cobb

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Michael Sherwood	MTLA		X

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

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

1065

House Judiciary COMMITTEE BILL NO. HB# 797

DATE 2-20-91 SPONSOR(S) Rep. Russell

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Anita Dugan	Self	✓	
Antoine Spencerbola	CSKT	✓	
Jim Jensen	Self	X	
Eva Anderson	Self	✓	
Annie Sorrell	Self	✓	
Eva Boyd	Self	✓	
Genevieve Yanzie	Self	✓	
Andrew Kelly	Self	✓	
Frances Vanderburg	Self	✓	
Michael Durglo	Self	✓	
Gordon Hunter	Self	✓	
Martina Lanza	self	✓	
Lyalin Kallerud	self	✓	
Velda Shelby	CSKT	✓	

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

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Judiciary COMMITTEE BILL NO. HB# 797

DATE 2-20-91 SPONSOR(S) Rep. Russell

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Rosemary Coyle	Kootenai Tribe	X	
George B. Heavanlcorn	Kootenai	X	
Lorena Couture	Kootenai Tribe	X	
Marcy Kenmore	Reservation	X	
Bob Servais	C.S.K. #9	✓	
Ellen Swaney	CSKT Tribes.	✓	
Lynn ENGLES	BUREAU OF INDIAN AFFAIRS	X	
Ray Forbin	LAKE COUNTY		X
J. Aldrich	LAKE COUNTY SHERIFF		X
Bill Covey	Myself		X
Ruby Gene Covey	myself	✓	X
LARRY J. MISTER	LAKE COUNTY ATTORNEY		X
Charles Matigeau	Kootenai/Salish Tribes	X	
Robert Dority	CSKT College	X	

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

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

365

House Judiciary COMMITTEE BILL NO. HB # 797

DATE 2-20-91 SPONSOR(S) Rep. Russell

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Hank Blaylock	self	✓	
Mary Stasso	self	✓	
Joe Antiste	self	✓	
Charnel Dellier	"	✓	
Robert Woodcock	self	✓	
Fred Couture	self	✓	
Shannon Burke	Self	✓	
Cheryl Mathias	" "	✓	
Tom Antiste	" "	✓	
Susie Antiste	" "	✓	
Kurt Folden	CSKT	✓	
Louis Caye JR	" "	✓	
Michael R. Schwarz	CSKT	✓	
Michael A. Finley	CSKT	✓	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Judiciary COMMITTEE BILL NO. HB #797

DATE 2-19-91 SPONSOR(S) Rep. Russell

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Don Dupuis		X	
John Monteith III			X
Diane Monteith			X
Jim Wheelis		X	
Gbird		X	
R. McLeod		X	
Terry L Tanner		X	
Steve T. Ashley		X	
Ernest Sands		X	
Louis Neuner		X	
Joe Depuis		X	
Francine Dupuis		X	
Lester Bigcrane		X	
Angela Russell	HD 99	X	

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 797

DATE 2-20-91 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
391 LaBonte Lane 59860 Shirley Cramer Polson MT	myself		X	
391 LaBonte Lane Polson MT 59860 John E Cramer	All Citizens Equal		X	
Box 172 Gene Lozeau Elmo, MT	CSKT			X
Margaret Stasso Adams	CSKT & Selg.	280		X
Sylvia J. Krantz	self	797	X	
JOHN F. KRANTZ	Self	797	X	
Bud Gillin	Self.	797		X

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