

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on April 22, 1991, at 9:10 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)  
Royal Johnson (R)  
Vernon Keller (R)  
Thomas Lee (R)  
Bruce Measure (D)  
Charlotte Messmore (R)  
Linda Nelson (D)  
Angela Russell (D)  
Jessica Stickney (D)  
Howard Toole (D)  
Tim Whalen (D)

Members Excused: Rep. Gould, Rep. Rice, Rep. Wyatt

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.

#### HEARING ON SJR 29 INTERIM STUDY OF RETROCESSION OF PL 280 JURISDICTION ON FLATHEAD RESERVATION

##### Presentation and Opening Statement by Sponsor:

SEN. DOHERTY, SENATE DISTRICT 20, stated that he was appearing on behalf of the Senate Judiciary Committee which drafted and co-sponsored SJR 29. He stated that retrocession in public law 280 was one of the more debated issues at the present legislative session. There are people on both sides of the issue that are responsible for SJR 29. He stated that the Judiciary Committee came up with a request that during the interim the two sides could get together and figures how best to make the retrocession

happen. He stated that it has occurred on 7 other reservation and will happen someday to the Flathead reservation. He stated that some of the concerns were about law enforcement, cross deputization, and other areas that need to be worked on. The mechanism for doing that is this SJR 29. He stated that the resolution talks about the Committee on Indian Affairs, how the study will issue public hearings to involve all sides of the issue, go out to the Flathead reservation and spend time hearing all sides of the issue and figure out how the retrocession can happen with all sides benefitting. He stated that SJR 29 is needed and necessary.

Proponents' Testimony: NONE

Opponents' Testimony: NONE

Questions From Committee Members:

REP. RUSSELL asked SEN. DOHERTY what the Flathead Nation feels about this resolution? SEN. DOHERTY stated that the last information he received was that they were in favor of the resolution. REP. RUSSELL asked SEN. DOHERTY if he is feeling that the committee on Indian Affairs is going to be able to be the proper referee during the meetings on the Flathead Reservation? SEN. DOHERTY stated that it will be difficult for the Committee on Indian Affairs, but the eyes of the world will be upon them in any hearings that occur. He felt the safest course would be to hold public hearings for testimony with everybody involved.

REP. RUSSELL asked SEN. DOHERTY why this resolution is needed? Why can't the tribe go through this without any the Legislature's involvement? SEN. DOHERTY stated that the tribes haven't done it yet. He didn't know that they would be able to and under the state, which has to be the one to approve the request of retrocession, the state is the appropriate agency to govern the proceedings.

REP. RUSSELL stated that she wasn't sure where the Flathead Nation was at present, but they have talked about going the administrative route through the U.S. Congress. She felt the state wasn't ready to sit down and discuss this issue. "I have real questions about this study."

SEN. DOHERTY stated that the tribes can always go to Federal Court and that it is an option. He believes that the study would be a good opportunity and the tribe representatives were consulted.

REP. WHALEN asked SEN. DOHERTY if the actual study will be done by the legislation? SEN. DOHERTY stated that he doesn't know how much money the Joint Committee on Indian Affairs has to conduct their business, but he felt this study should be their number one priority.

Closing by Sponsor:

SEN. DOHERTY stated that Indian Affairs may very well need additional money to get everything done that will need to be accomplished during this study. He stated that there has been some question about appointing different individuals in an advisory capacity. He didn't believe that having a statue appointing the committee could be done. He felt that the eyes of people will be on the study to make sure that input is received from all aspects. He stated that this is an appropriate vehicle for Indian Affairs and is something that has to be done and will be done.

HEARING ON SB 473Presentation and Opening Statement by Sponsor:

REP. DRISCOLL, HOUSE DISTRICT 92, stated that this bill is important to alternative sentencing in the state of Montana. Without this bill, there is no organization that will take the risk of unlimited court action in court for a work related injury. He stated if you are a probation, parole officer performing a community service, the agency that is in charge of the officer would pay worker compensation premium based on minimum wage for the work they perform and if the officer got hurt, the benefits would be limited to medical expenses and award if that person had permanent impairment. There would be no total award and not actually earning any money. He stated that without this bill there will be very little alternative sentencing in a community based organization.

Proponents' Testimony:

Michael Sherwood, Montana Trial Lawyers Association, stated that SB 473 seems to be a good bill in response to work related injuries. He felt this bill keeps community service alive and the association supports the bill.

Opponents' Testimony: NONEQuestions From Committee Members:

REP. BOHARSKI stated that he had a couple of concerns with the bill. He stated that the language in the subsection 3, on page 2 in a concern. He felt that it looks like the employer should be the governmental entity not the non-profit organization that the person is doing the service.

SEN. SVRCEK stated that situations like this have been hassled over right up until the time the Legislature suspended the rules and introduced the bill, between the Department of Institutions and the Division of Worker's Compensation, and several of the non-profits that handle this type of service. He stated that for

the sake of continuing community services programs, the non-profits have agreed to the structure outlined in the bill and are aware of the risks involved.

Closing by Sponsor:

SEN. SVRCEK stated that he knows the committee is aware of how important community service is in Montana and would hope the bill passes out of the committee favorably.

EXECUTIVE ACTION ON SB 473

Motion: REP. BROWN MOVED SB 473 DO BE CONCURRED IN.

Motion: REP. BROOKE moved to amend SB 473 on page 2, line 8, to insert "state or local government entity, or any".

Discussion:

REP. BROOKE stated that her amendment would be just for clarity.

REP. BROWN stated that it is clear enough on the bill's face and if the committee wants this bill to go back and forth on the sides with four days to go in the session then the committee can send the bill over with this amendment.

REP. BROOKE WITHDREW HER AMENDMENT.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SJR 29

Motion: REP. DARKO MOVED SJR 29 DO BE CONCURRED IN.

Discussion:

REP. BROWN stated that the issue of retrocession received long and substantial discussion in the House and some discussion in the Senate and felt that the Senate Judiciary was derelict in their responsibilities on this issue. He stated that he intended to move a motion to table when there has been a reasonable amount of discussion.

REP. RUSSELL stated that she commended the House Judiciary Committee for having taken a good look at the bill and passing it. She stated that after the bill was watered down in the Senate they still killed it and the Senate now wants to have a study on retrocession. She felt that the resolution should be tabled.

April 22, 1991

Page 5 of 5

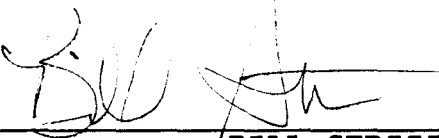
REP. BOHARSKI asked why all the hostility toward SJR 29.

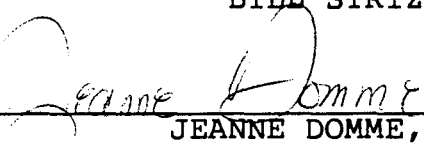
REP. BROWN stated that the process of discussion between the state of Montana and the Salish Kooteni can proceed well and should proceed well in the interim having this Legislature fail to pass the Retrocession bill. He stated that it was his judgment that a study resolution is not needed especially to a committee that is so overburdened with issues that they couldn't possibly deal with this study properly. He felt this was a cover-your-ass bill for those that didn't vote correctly the first time around.

Motion/Vote: REP. BROWN MOVED SJR 29 BE TABLED. Motion carried 16 to 4 with Rep's: Boharski, Clark, Keller and Johnson voting no.

ADJOURNMENT

Adjournment: 9:49 a.m.

  
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BILL STRIZICH, Chair

  
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JEANNE DOMME, Secretary

BS/jmd

# HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

ROLL CALL

DATE 4-22-91


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

11.12  
4-22-91  
JD 7  
April 22, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Bill 473 (third reading copy -- blue) be concurred in .

Signed:   
Bill Strizich, Chairman

Carried by: Rep. Driscoll

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

House Judiciary

COMMITTEE

BILL NO.

SJR# 29

DATE

4-22-91

SPONSOR(S)

Sen. Halligan

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.



HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

House Judiciary COMMITTEE BILL NO. 5B#472  
DATE 4-22-91 SPONSOR(S) Sen. Svrcek

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Michael Shmuss	HTL A	✓	

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