

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, Chair, on February 12, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
David Martin, Committee Secretary

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

Committee Business Summary:

Hearing: HB 127, SB 217, SB 356
Executive Action: None

HEARING ON HOUSE BILL 127

Opening Statement by Sponsor:

Representative Ray Peck, District 15, said House Bill 127 is at the request of the Association of County Attorneys. He explained this will deal with "hearsay", defined in statute as "a statement other than one made by the declarant while testifying at the trial or hearing or offered in evidence to prove the truth of the matter asserted." He pointed out HB 127 deals with a limited area in which it would be allowed. House Bill 127 deals with the order for the immediate protection of youth, petitions

for temporary investigative authority, and is limited to statements made by the affected youth.

Proponents' Testimony:

John Connor of the Attorney General's Office appeared in support of House Bill 127 on behalf of the Montana County Attorneys Association. He said House Bill 127 was the product of a situation that arose when the Montana Supreme Court determined hearsay statements could not be used in cases which involved hearings on temporary investigative authority matters under the child sentencing abuse statutes. Mr. Connor explained the bill has limited application; it proposes to amend only MCA 41-3-403, the statute dealing with the procedural aspects of the temporary investigative authority matters. He stated when a county attorney is confronted with a case in which there are allegations of possible dependency or neglect of a child, the county attorney has two alternative approaches. They can to file a petition alleging dependency and neglect, and request a particular relief. He said these actions range from leaving the children in the home, under the Department of Family Services supervision, to actually removing them from the home and obtaining custody of those children by the state. Mr. Connor told the Committee this is a serious situation in which a hearing is required before any deposition can be made. He stated it is not the situation affected by the provisions of HB 127.

Mr. Connor said HB 127 deals only with a situation in which an emergency petition, a petition for temporary investigative authority is filed, and where it appears based upon the facts it is necessary to remove the child from the home immediately. He explained the county attorney, acting on behalf of the Department of Family Services, files a petition with the court alleging probable cause to establish the removal of the children from the home which is supported by an affidavit filed by the county attorney. He said the parent or guardian is served with that petition and the children are removed. If the parent or guardian chooses to exercise their right to go to a hearing the provisions of HB 127 are involved.

He stated in most of these cases, the county attorney attempts to put on testimony that would otherwise come in through the child by means of hearsay through social workers, law enforcement officers, medical personnel, who have witnessed the abuse the child may have suffered or were told things by the child. The child is then not required to appear at that temporary investigative authority hearing. This removes the child from having to appear and present testimony regarding "things done to them by their parents and guardians".

He explained there was concern in the House about the breadth of the language in the bill's original form in which it stated "hearsay is admissible at the hearing". Mr. Connor told the Committee "hearsay" is not all that uncommon and the rules of

evidence allow it to be used in everything from testimony involving the filing of felony charges to sentencing hearings. He explained the House chose to limit it by saying "only hearsay evidence of statements made by the affected youth". He stated there was no problem with this, since the bill was essentially designed to do this. He pointed out the House also felt HB 127 may not be necessary because the county attorney is required to file an affidavit. He stated the affidavit is not evidence itself; it cannot be utilized in place of the necessary evidence required to be presented at the hearing.

Mr. Connor stated House Bill 127 does not expand the authority of the Department of Family Services to undertake these kinds of actions. It simply allows the utilization of the process which presents less trauma to the affected youth.

Randi Hood, Chief Public Defender for Lewis and Clark County, told the Committee as part of her job she represents every child who is the subject of a dependence and neglect action in Lewis and Clark County. She stated as a public defender in Missoula, she has represented parents in these actions. Ms. Hood urged support of HB 127 which allows the hearsay testimony of children who are the subject of the action. She told the Committee as an advocate for children in these sorts of cases, besides the protection of the children, the overriding concern is to try to have the case conducted in such a way that the child is allowed to ultimately return home. She stated no matter that source of abuse or neglect is alleged against their parents, these children always want to go home, but if the child is placed within the first 20 days in the role of having to appear in court and testify against their parents, the damage to the child is significant. Ms. Hood explained children may not even be competent witnesses. She said the child feels they are to blame and this is an extremely damaging burden to children.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

Sen. Towe said he understood about not having the children testify but he asked about the protections the defendants, the accused parents would have. Randi Hood said there was still a hearing. She said the defendants still have the right to present any competent evidence they have, for example, the hearing could include people "who have come in this home 100 times and have seen these children treated properly". She said the child's credibility could be attacked through third parties.

Sen. Towe asked about the person receiving the statement who is not only in court testifying but is not truthful, how would that situation be addressed. Ms. Hood said there was an additional

safeguard in HB 127. She said she had been asked to speak with children because the social worker was not being truthful. Sen. Towe asked if she could testify. She said she never had an objection when asked to do so by a judge. She said she knew other attorneys who have done this and that the testimony did not always agree with the social workers. She said other professionals also evaluate the child, especially in cases of sexual abuse, so that would provide another professional opinion.

Sen. Rye asked if Mr. Connor would elaborate on Ms. Hood's answer. Mr. Connor pointed out that in temporary investigative authority matters, which he had tried in his years as a county attorney, were never based solely on statements made by children. A child's testimony is an isolated part of the case. He said the court and the county attorney have to be satisfied there is enough evidence to justify this very serious action being taken. He said, in his view, the child's statement alone was not sufficient to initiate a hearing without other investigation. He said HB 127 would allow a child's statements to be allowed in the form of hearsay.

Sen. Towe said the admission of a child's hearsay would place a greater reliance on that evidence. Mr. Connor said he did not think the court would grant a petition in that instance.

Sen. Halligan said there could be large volumes of hearsay evidence in such a case.

Closing by Sponsor:

Rep. Peck said he would address the Committee as a grandfather and a former school psychologist, who has recently worked in a spouse abuse program. He said he firmly believed HB 127 was necessary in this limited respect in this TIA request. He said child abuse and incest are prevalent. He said children are very upset and torn in bad marriages because they have loyalties to both parents. He said it is a terrible thing to require the children to come into court. He said HB 127 would help remedy this situation. He said HB 127 would allow professionals to come in and testify and still protect the children.

He said Sen. Aklestad voiced his concern in the House hearing for the protection of parents, and Rep. Peck said he agreed that parents should not be placed at a disadvantage. He said little children should not be brought in before the court and asked to testify in these situations. He said hearsay testimony should be allowed in this limited format. He said this situation can be very disturbing to children, and in stressful situations, it can be difficult for anyone to give clear and rational testimony.

HEARING ON SENATE BILL 217Opening Statement by Sponsor:

Sen. Dennis Nathe, District 10, presented SB 217, which would allow the Child Support Enforcement Division (CSED) the power to "go after" the self-employed. He said CSED works well for those employed by corporations, the state, counties, or a school district. He said a statute exists to withhold money from paychecks in the case of non-payment, and that it is difficult to collect child support from the self-employed. He said a large portion of the self-employed also hold licenses, professional and occupational, issued by the state. He said SB 217 would allow CSED, or the court, to issue an order to suspend that license if that person is six months or more delinquent in their child support payments. He said the accused is given sixty days to file for a hearing to prove they do not owe any child support payments. He said SB 217 has plenty of safeguards for those who hold the licenses and are delinquent in their child support payments. He said SB 217 would make a statement to the public that the State of Montana strongly feels that parents have an obligation to support their own children, first and foremost, before the taxpayers. He said SB 217 would empower the CSED to go after the self-employed to pay their child support payments.

Proponents' Testimony:

Mary Ann Wellbank, Administrator of the CSED, read testimony supporting SB 217 (Exhibit #1).

Kate Lovett, Montana Womens Lobby, said nonpayment of back child support payments drive women and children into poverty by the thousands and costs the taxpayers "big" money. She said SB 217 would prevent this.

Katie Conway, Lewis and Clark County Director for Association Children for Enforcement of Support, supported SB 217. She said parents often withhold child support payments to hurt the other parent. She said if proposed child support enforcement legislation is passed by this Legislature, Montana would become a forerunner in this country in saying that parents should be responsible.

Becky Shaw, Interdepartmental Coordinating Committee for Women (ICCW), read testimony (Exhibit # 2) supporting SB 217.

Steve Meloy, Department of Commerce, supported SB 217. He said although the department supported the bill there was still concern about the non-renewal of licenses during a nondisciplinary suspension. He said amendments will be offered. He said if lawsuits were brought against the Montana Licensing Board that could result in higher costs than reflected in the fiscal note.

Nancy McCaffree was unable to attend the hearing but sent written testimony to be entered into the record (Exhibit #2A).

Opponents' Testimony:

Steve Mandeville, Legislative Chairman for the Montana Association of Realtors, opposed SB 217. He said he did not want a person's ability to make a living to be taken away. He referred to page 10, lines 12-16, and said this would take away the capacity for an obligor to make payments. He said as a banker, when a debtor did not pay their debts the bank filed for a judgement. He said that process already existed and that SB 217 would be unnecessary.

Questions From Committee Members and Responses:

Sen. Halligan asked if the department could file for child support payments enforcement administrative actions pending modification or pending court rulings, and if the department could still proceed. Mr. John McRae, CSED Staff Attorney, said there were parallel systems, there is an administrative system and a judicial system, and both are designed to enforce child support obligations. He said the CSED does not compete with the courts on a jurisdictional level. If the court has jurisdiction, it remains with the court. He said CSED would "pick it up" and re-enforce whatever is necessary after the district court concludes, for example, the enforcement of a district court action.

Sen. Grosfield asked how many people were not making their child support payments. Ms. Wellbank said about 40,000 cases this year, with the number expected to grow to 54,000 in the next two years.

Sen. Grosfield referred to page 4, the definition of "license". He asked what was the limit of licenses that could be seized and what type. Ms. Wellbank said licenses under Title 37, which are primarily regulated under the Department of Commerce, could be seized. It does not speak to licenses that are already subject to revocation, for example, marriage licenses.

Sen. Grosfield asked about the "exclusion", in subsection 3, if a person can show a significant hardship, and thus cannot do anything. He also asked about the possibility of a "repayment plan". Mr. McRae said it was a "carrot and stick" type of approach. The idea is that the license would be held, almost as a hostage, to induce the obligor into a payment plan. He said that is what they were trying to achieve. He said obligors were given an "out" through the hardship program.

Sen. Grosfield referred to section 7 which talks about a terminating order to suspend the license. He asked how far behind the obligors were in making payments. Mr. McRae said he did not believe the timing would be a problem. He said the CSED was getting a new computer system which would enhance these

procedures, including the time elements and thus receive immediate notice of problems.

Sen. Doherty said SB 217 would "get" the doctors, the lawyers, occupational therapists, physical therapists, plumbers, and electricians. He asked Mr. McRae how he would respond to the concern that the obligors ability to make a living would be removed. Mr. Mcrae said that ability would not be removed if they made an agreement, with CSED or the court, to satisfy their obligation or proved a real hardship. He said the professional self-employed are difficult to "get to", regardless of their profession. He said he had even gone after worker's compensation funds to get health insurance for the children.

Sen. Towe asked how notification would be handled, for example by certified mail, and how would that be interpreted for a man who goes to Australia for 6 months and makes arrangement with his bank to make payments and something gets fouled up, through no fault of his own. Sen Towe said if the certified mail goes to this mans and he does not answer it. Six months later he comes back and the proceedings have all gone through and he does not have a license to practice his profession anymore. Mr. McRae said he has provided service by mail for a number of years. Service by mail is common in the federal scheme where even less than certified mail is used. He said the receipt is used to prove that the person received the mail. He said if it comes back with no evidence it was received or signed for, then no default occurs. Sen. Towe said there was no "service" unless the department received the receipt.

Sen. Towe referred to page 7, lines 22-25. He said the only issues which can be determined in a hearing under this section are the amount of the support debt or the support obligation, whether a delinquency exists, and whether the obligor has entered into a payment plan. He asked if "the whether a delinquency exists" was a separate item standing alone, or is the only issue the amount of the support and whether they have entered into a payment plan. He said there could be three items, but the language was not very clear. Ms. Wellbank said there would be 3 items.

Sen. Towe referred to page 13, line 12-15. He asked if it was the department's intent that no one could be sued for any actions taken while enforcing SB 217, and if so does that mean a waiver of sovereign immunity is necessary, and would that be good policy. Ms. Wellbank said SB 217 was designed to be as simple as possible and not drag the boards into every hearing. Mr. McRae said SB 217 does not prevent SRS from being sued. SRS would assume responsibility for the actions, the referred section separates out the Department of Commerce because they "have nothing to do with this". Sen. Towe said the Department of Commerce may not be negligent in following an order, but if they make a mistake and revoke the wrong license, he asked if the Department of Commerce should maintain immunity. Mr. McRae said

he did not think the exclusion went that far. He said if the DOC honored an order to revoke a license and then revoke the wrong license, that is negligence and would not be protected.

Sen. Towe said he had seen situations where husbands had tried to get out of child support payments, and sometimes there were justifiable defenses as well. He asked if it made sense from a policy standpoint to say a person has not been making their child support payments, even if they are financially unable, and to take away a person's right to make a living. Ms. Wellbank said the child support obligation would be based on the Montana guidelines for calculating child support and if a person had too high a child support order, they could request modification. Sen. Towe said that was not true with out-of-state orders. Ms. Wellbank said the guidelines take into account multiple families and allow the person self sufficiency, and other factors which make it difficult to meet a support obligation. She said if they are delinquent and have an arrearage, they can apply for a hardship adjustment which would not reduce the arrearage but could reduce it to a payment of \$25. She said SB 217 was an important policy decision because it sent a message that the state should not grant privileges to people who disobey the law, and that an order for child support payments was a "legal law".

Sen. Towe asked if "we" really follow, without any opportunity for modification, an out-of-state order. He said there are several references to not only orders of this state, but to orders from a district court out-of-state. Ms. Wellbank said there were jurisdictional issues involved and some orders could be modified. Mr. McRae said the department enforces orders from the state of Montana plus orders from any other state. He said sometimes the orders from other states grow "stale", that is why the legislature was asked in previous sessions for the ability to modify those orders, under the URESA system.

Sen. Halligan said the definition of "license" does include "lawyers" but then in subsection 5, referring to Title 37, "lawyers are not licensed". He said therefore, lawyers may be excluded from the bill. Mr. McRae said lawyers were intentionally excluded because lawyers are covered by the Montana Supreme Court, which "jealously" guards the right to discipline attorneys.

Closing by Sponsor:

Sen. Nathe offered amendments to SB 217 (Exhibit #3). He said SB 217 was necessary legislation, a "win-win" situation and good for the children involved who are being deprived of child support payments.

Opening Statement by Sponsor:

Sen. Doherty, District 20, said SB 356 was referred to as the "Bad Actor Bill". He said SB 356 is an attempt to move Montana into an enforcement mode in a situation where there are low budgets and few staff. He referred to comments made about SB 217, heard earlier in the day. He said Montana must clearly express what terms upon certain privileges are granted. He said "they" have a way out, if they clean up their act. He said the state should not continue to grant privileges to those who abuse the law. He asked, "how do you make environmental enforcement laws work? How do you make worker's safety laws work?". He said environmental laws are currently self-monitoring.

Sen. Doherty said SB 356 would establish tough consequences for negligent violations of law and establish very tough consequences for intentional and criminal violations of environmental and worker safety laws. Simply put if you are a "bad actor", and if you violate those laws, it will be difficult to do business in Montana. He said if you are a responsible corporate citizen, the doors will be wide open to do business in Montana. He said the length of SB 356 was due to the number of statutes dealing with permits pertaining to the bill. He said the primary enforcement mechanism is when someone applies to modify or obtain a permit in Montana you must disclose your past history, criminal, civil or administrative violations of environmental or worker safety laws. He said once that disclosure is done by the applicant for the permit, the state permitting agency, in the event of a previous civil or administrative violation, would have the discretion to consider that in deciding whether to grant the permit. He said if there have been criminal violations, a permit would not be granted to do business in Montana. He said SB 356 was lengthy because the bill covered the Air Quality Act, the Water Quality Act, the Solid Waste Disposal and Management License, Mega Landfill Operating License, Infectious Waste Management Act License, Nuclear Facilities Certificates, Strip and Underground Mining, Metal Mine Reclamation, Open Cut Mining Reclamation, and Oil and Gas Drilling Conservation Permits. He said the basic thrust of SB 356 was if a company violated civil or administrative laws, they were going to be considered and criminal violators would not be allowed to do business in Montana.

Sen. Doherty said another provision of SB 356 is called "debarment", the ability of a contracting agency, like the state of Montana to say when issuing contracts to a company is a past violator, the state of Montana will not do business with you because you are not a responsible operator. He said this was adopted by Ronald Regan by executive order in 1981 concerning federal contracts and "bad operators". A further aspect of SB 356 would be if someone falls out of compliance, the company would have to pay for the compliance audit from the permitting agency. Secondly, if they fall out of compliance their self-monitoring privileges would be "yanked". He said SB 356 is a response to the 1990s when budgets are short and enforcement

personnel are overworked. He gave an example of a water quality violation going unnoticed for 18 months during the last biennium. He said SB 356 would encourage "good corporate citizens" to do business in Montana, and it would state that Montana is serious about its environmental and worker safety laws.

Proponents' Testimony:

Jerome Anderson, Shell Western Drilling and Western Environmental Trade Association, said SB 356 was not available until late last night and asked the Committee to give the opponents time over the weekend to examine the bill. He asked the Committee to allow the proponents to testify today and the opponents testify after the weekend. Sen. Doherty said he had no objection to keeping the record open, but he did not know if waiting for two more hearing dates was necessary.

It was agreed that the record would be kept open until opponents had time to prepare testimony and time would be allotted so anyone who wanted to could give testimony.

Jean Clark, Vice Chair, Northern Plains Resource Council (NPRC), supported SB 356 (Exhibit #4A and #4B).

Jordan Shapiro, MontPIRG, supported SB 356 (Exhibit #5).

Wade Sikorski, concerned citizen, supported SB 356. He said he was concerned about Ross Electric constructing a PCB incineration plant in Fallon County. He said Ross Electric is a perfect example of a business that should be kept out of Montana. He said Ross Electric was responsible for 2 Superfund sites in Washington state. At one site Ross unloaded several truckloads of hazardous waste into a local landfill which was not designed to handle hazardous waste. He said the Department of Ecology issued a court order telling Ross Electric not to do this, and the next day Ross Electric dumped a load with the court order mixed in with the ash. He said he heard this story from a Department of Ecology Inspector. He said the incinerator site, which handled PCB wastes under 50 parts per million, had soil around the site which tested 20,000 parts per million. He admitted Ross Electric was not totally responsible for the levels in the soil. He said it was his understanding that Montana Power had some bad experiences with Ross Electric. He handed out examples of Ross Electric's record (Exhibit #6).

Cesar Hernandez, Cabinet Resource Group, supported SB 356.

Sherm Janhke, Montana Chapter of the Sierra Club, supported SB 356.

Drury Phebus, Baker, Montana, supported SB 356. He said Ross Electric would be a major "bad actor" if they are allowed to operate in Fallon County. He said regulatory agencies want

legislation to provide backup for enforcement and SB 356 would do that.

Iona Phebus, Baker, Montana supported SB 356. She cited Ross Electric as an example of a "bad actor" which could operate in Montana.

Donovan Archambault, Fort Belknap Indian Reservation, supported SB 356. He said the state of Montana should not have to pay for the bad practices of other companies.

Jim Barrett, Beartooth Alliance, Cooke City, Montana supported SB 356. He said there is a proposed mine in his area and it would be helpful to know the record of the companies applying for the mine. He said SB 356 would be helpful to citizen groups trying to be part of the decision making process. He said SB 356 would "level the playing field".

Charles Ereaux, Chairman of the Environmental Committee of the Fort Belknap Reservation, supported SB 356.

Susan Pauli, owner of a fly fishing business, supported SB 356. She said Chevron has a proposed platinum mine on the East Boulder River. She wanted a record of the company's past experience to inform the citizens of her county. She said people need resumes to apply for jobs and licenses to operate a business, and if they lie on either of these, then a job or license would be denied. She said the mining companies should have to follow the same rules.

Louis Jensen, Baker, Montana said he supported SB 356. He said some businesses were trying to come to Montana because the environmental laws in other states have become stricter and Montana's are more lenient.

Heidi Barrett supported SB 356.

Sen. Blaylock asked the rest of the proponents to give their names since the allotted time for proponents had expired.

Grady Wiseman, Montanans Against Toxic Burning, supported SB 356.

Darrell Holzer, Montana State AFL-CIO, supported SB 356.

Clyde Daily, Executive Director, Montana Senior Citizens Association, supported SB 356.

Dennis Olson, Northern Plains Resource Council, said he was authorized by Paul Berg, Southeast Montana Sportsman Association, to put them on record as supporting SB 356.

Opponents' Testimony:

Sen. Blaylock said the Committee would allow the Opponents 30 minutes on Monday to present their testimony.

Questions From Committee Members and Responses:

Sen. Halligan asked how public entities were treated under SB 356. Sen. Doherty said he would check on that.

Sen. Harp said usually when a permit is denied by the DNRC, the Department of State Lands, or the Department of Health, there is some type of appeals process. He said there is no appeal process under SB 356. Sen. Doherty said he had drafted an amendment which he would submit addressing that issue. He said he did not want to deny anyone their appellate rights.

Sen. Harp said there would be three different departments that will be listed in Section 11 through Section 30. He said each department would make sure that the holder of the permit will be in compliance with SB 356. He asked if a fiscal note would be forthcoming to explain the cost of implementing SB 356. Sen. Doherty said a fiscal note had not been ordered, but could be. He said if filing the disclosure statement was required before obtaining the permit, it would be an additional item which needs to be checked.

Sen. Towe said a permit was defined as any permit or license granted under environmental protection law which is very carefully defined as a certain environmental permit situation. He said the authority granted to deny a permit is limited to those specific environmental permit situations, which would include not an optometry permit, for example. Sen. Doherty said SB 356 was limited to just those permits listed. Sen. Towe said that SB 356 did not include safety laws, like OSHA laws with the exception of the renewal or modification for the sub-monitoring provisions. Sen. Doherty said OSHA is involved to the extent that violations of OSHA laws will be one of the considerations in deciding if there is a criminal violation, in which case they would not get the permit. He said with a civil violation, it would be one of the factors a permitting agency would consider.

Sen. Towe referred to Section 3 and asked if a person had forfeited a bond 50 years ago, could they be denied a contract, and if so, was that an oversight. Sen. Doherty said that it probably was an oversight.

Sen. Harp referred to section 7, the compliance audit, page 8, lines 1-4. He asked if 25 signatures by citizens was a triggering mechanism for a compliance audit. Sen. Doherty said the compliance audit started on page 9. Sen. Harp said he was looking at page 8. Sen. Doherty said that applied to permit renewal. He said if a hearing was held, the decision maker, the DNRC for example, decided whether it was in the best interest of

the public, or if 25 Montana citizens want to comment on the permit. He said if 25 citizens "sign up" the decision maker has to say no permit would be granted or that the current permit must be modified, and that would trigger the hearing.

Sen. Grosfield, referring to section 3, asked if Montana Power, for example, was convicted of any type of violations, or OSHA laws, would they not be able to get any other of their permits reissued or transferred. Sen. Doherty said that applied only in the case of a criminal conviction. He said a criminal violation involved "knowingly - purposely" violating the law. He said it would not apply to a negligent "slip-up". The criteria would be that the decision maker would be able to take that into account when deciding whether or not to grant the permit or to permit with conditions.

Sen. Harp, referring to sections 29-32, asked if it referred to both criminal and civil penalties. Sen. Doherty said sections 29-32 addressed about penalty increases for violations of this chapter. He said in a violation, the bad actor penalty doubles criminal violations, and in civil violations, the court would have the discretion to determine the penalty.

Sen. Harp asked if there was a civil proceeding against a company with multiple permits and certificates, could they lose their ability to operate in other facilities. Sen. Doherty said in a criminal violation, yes. He said in a civil violation, it would be up to the discretion of the court in terms of doubling the penalties.

Sen. Halligan referred to Section 3, which allows the denial of an application, subsection A is the judgement of criminal conviction required for a denial. Valencia Lane, Legislative Council, said as a matter of drafting styles you have Sections A, B, C, or D, and it could be anyone of those. Sen. Halligan said a conviction is not needed to deny a permit, it is just if you forfeited a bond. He said the intent needs to be clear.

Closing by Sponsor:

Sen. Doherty said he looked forward to a vigorous discussion on Monday.

Further Discussion:

Sen. Doherty said the Committee needed to hear from George Ochenski about the Committee bill on the Fish and Game Violations problem that had developed over the past 2 years on the Flathead Indian Reservation.

George Ochenski said this issue was discussed yesterday in Committee and he had spoken with the Governor since then.

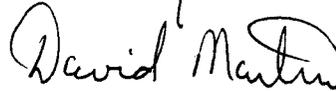
He said Governor Racicot indicated the administration was in "full support of this action". Mr. Ochenski said he had made a draft request. He said one sentence would be added saying "joint licensing and permit requirements supersede the general licensing permit requirements". It was unanimously agreed there would be a Committee bill.

ADJOURNMENT

Adjournment: 12:00 Noon



SENATOR BILL YELLOWTAIL, Chair



DAVID MARTIN, Secretary

BY/dm

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION



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Senate Bill 217
Suspension of Professional and Occupational Licenses

Testimony

Submitted by Mary Ann Wellbank, Administrator
Child Support Enforcement Division
Department of Social and Rehabilitation Services

A handwritten signature in cursive script, appearing to read "Mary Ann Wellbank".

Senate Bill 217 sends a clear message from the state of Montana that it is the primary and ultimate responsibility of parents to support their own children.

Senate Bill 217 only impacts parents who are seriously remiss in their obligation to support their children.

One of the single largest causes of children in poverty is an absent parent who is not supporting his or her children. Not only do parents break the law by failing to support their children, these parents force their children onto welfare, public assistance and medicaid - all at the taxpayer's expense. In this climate of budget constraints and tough choices, it makes sense to pass legislation which will place the burden of supporting children, squarely upon their parents - not the state.

State welfare programs are a safety net - not a substitute for parental responsibility. Parents who have the means to support their children, but intentionally fail to do so, consume limited and precious welfare resources and make the system less accessible for those who truly have no other means of support.

Ideally, government agencies such as the CSED should not be involved in enforcing fundamental parental responsibilities. But the fact remains that many parents in Montana are not supporting their children. \$100 million is owed in back support. Regrettably, many parents can afford to support their children. Many delinquent parents have income, assets, and an adequate standard of living, yet their children are subsisting at or below the poverty level.

Just last week I received the January 1993 publication of the Child Support Report published by the federal Office of Child Support Enforcement. It contained the results of a recent study in which Massachusetts compared its automated child support files with its income tax records.

SENATE JUDICIARY

EXHIBIT NO. 1

DATE 2/12/93

To quote the report,

"The result was a revealing financial portrait of 72,000 obligated parents, most of whom are delinquent in their child support payments....One major finding was that tens of thousands of Massachusetts parents who are obligated to pay support have much greater means to pay support than previously believed....Of the total 72,000 parents in the study, 5,667 earned over \$50,000 a year and ONE THIRD of them had children on AFDC....Almost 8,000 parents not paying child support, one in nine in the sample, either owned their own businesses or received income from partnerships..."

These are significant statistics. Although the raw numbers would be different in Montana, the conclusions of this study are applicable. A significant portion of parents who are delinquent in support have the means to meet their legal obligations and keep their children off welfare.

You may be aware that one of the biggest problems in Montana - and nationwide - with respect to child support is the inability to enforce obligations of self-employed obligor who do not cooperate in meeting their responsibilities. Many self-employed individuals are engaged in trades or professions requiring significant training or expertise, and which are licensed by the state.

Although we at CSED are doing all we can given our staffing and resources, we cannot help the increasing number of custodial parents who need child support income to maintain their self-sufficiency or to make the transition from welfare dependency to self-sufficiency. The legislation before you is one of several pieces of legislation recommended by the U.S. Commission on Interstate Child Support in its Report to Congress. Several states have this type of law on their books, including Arizona, California, Michigan, Minnesota and Massachusetts. Legislation is pending in North Dakota. In Arizona the law was challenged for constitutionality and upheld by the Arizona Supreme Court in an April 1991 case, Flores v. Board of Psychologists.

SB 217 is a tough law. It is a law which clearly spells out the terms under which the state will grant specific privileges. It shows that the right arm of government knows what the left is doing. It says that the state of Montana will not grant privileges to individuals who are currently violating their legal obligation to provide for their children.

Again, I need to emphasize that SB 217 only affects parents who have the financial resources, but who are intentionally denying support to their children. Hopefully, the message SB217 conveys will be sufficient to bring many delinquent parents into voluntary compliance with their support orders without further action.

The law would work as follows: If an individual holds a professional or occupational license and is delinquent in support six months or more, the CSED or district court would issue a notice

of delinquency and intent to suspend the license. The individual would have sixty days from the date of notice to either pay the debt in full, enter into an acceptable repayment plan, or appear at a hearing and show cause that suspension is not appropriate. If, however, suspension is determined to be appropriate, the licensing board is notified of the order to suspend the license, it must record the suspension on its records and cannot renew the license until it receives proper notice that the debt has been positively addressed or repaid.

infra structure already in place

However, the individual does have an opportunity at the hearing to obtain a stay of suspension if the individual substantiates that suspension of the license would create a significant hardship to the individual, employees, legal dependents in the household or to persons served by the individual.

Our objective is not for parents to lose income through license denial or to lose the means of supporting their children, but to make parents aware of the risk of losing their chosen livelihood if they do not make a good faith effort to support their children. Presumably, once they are aware of the risk, most parents will begin complying with support orders.

The CSED hearing and revocation is designed to minimize adverse clerical impacts on licensing boards, and place the primary administrative responsibilities on the CSED. The legislation would not interfere with board authority to issue disciplinary suspensions, nor would the board be party to the hearing or required to defend either the licensee or the CSED.

I urge you to support SB 217 for both its message and the effective enforcement tool it offers. The support of children should be the highest priority in the allocation of a parent's income, and children whose parents can afford to support them should not be forced into poverty or onto state welfare roles.

Thank you for the opportunity to provide this testimony. My staff and I would be happy to answer any questions or respond to your concerns.

*Dept of Commerce
Carol Bell
Bob Verdun
Steve Melting
Rae*

*- Also notified all
state licensing boards*

EXHIBIT _____
2-12-93
SB 217

SUPPORT TO STRENGTHEN AND ENHANCE
THE ENFORCEMENT OF MONTANA'S CHILD SUPPORT SYSTEM
February 12, 1993

The Interdepartmental Coordinating Committee for Women (ICCW) strongly supports the efforts of the Department of Social and Rehabilitation Services, the Legislature and other interested parties to strengthen and enhance the enforcement of Montana's child support system. Our support is extended to bills being presented today and throughout this legislative session that will benefit state employees who rely on child support as part of their financial income.

In today's society, we have an ever growing number of single parent families with dependent children. Some of these single parents, men and women alike, work for Montana state government. Trying to raise a family on limited income with sporadic or no financial support through the child support system can result in the loss of productivity -- a hidden expense to state government. Managers have cited increased frequency of errors and an increased use of sick leave due to the stress caused by such situations.

The challenging financial circumstances for these state employees further affect their performance in the workplace by limiting their opportunities to invest in job training. As a result of tight state budgets, more employees who desire additional training will be paying their own training costs. In these instances, state government employees who are financially burdened by a lack of child support are at an unfair disadvantage.

There are state government employees who depend on financial support from state-funded programs such as AFDC, as a result of the lack of child support. There are situations when these employees cannot accept opportunities for job advancement that would result in increased pay, because the job advancement may jeopardize their qualifications in state government assistance programs and result in less family income. We ask that you help to remedy situations like this. Strengthening and enhancing the enforcement of Montana's child support system will reduce dependence on welfare and social programs and could result in an overall reduction of expenditures for the State of Montana.

I urge you to support this bill and bills like it as a way to insure that children grow up with their basic needs met and that families' needs do not close doors of opportunities for single parents. ICCW asks that you recognize the potential benefits to Montana state government and state government employees.

Contact: Becky Shaw, 444-6594

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 2/12/93

BILL NO. 5B 217





PUBLIC SERVICE COMMISSION

1701 Prospect Avenue • PO Box 202601
Helena, Montana 59620-2601
Telephone: (406) 444-6165
FAX #: (406) 444-7618

SENATE JUDICIARY

EXHIBIT NO. 2A

DATE 2-12-93

BILL NO. SB 217

3 February 1993

Honorable Bill Yellowtail, Chair
Senate Judiciary Committee
State Capitol
Helena, MT 59623

RE: Senate Bill 217

Dear ~~Senator~~ *Bill* Yellowtail:

I may not be able to attend the committee hearing on February 10, regarding SB 217. I would like to have this letter considered as part of the testimony in support of this bill.

For sixteen years I was a single parent with five children. During that time I received one payment of \$250 for the support of my children. At that time, unless a single parent was in the welfare system, you had to hire your own attorney to press for support payment.

For many of us, who were on the lower end of the economic scale, it was just about impossible to find the money in order to get the money that was court ordered for us to receive. The problem was compounded by the fact that the father was living out of state. So - that meant attorneys fees in Montana as well as California. Court fees in both states, as well as fees for serving the papers.

I heartily support any and every effort to assist and support single parents in their efforts to receive the money necessary to support their children. I urge each and every member of the Judiciary Committee to give their support also.

Thanks for your time,

Sincerely,

Nancy
Nancy McCaffree

3

Amendments to Senate Bill No. 217
First Reading Copy

Requested by Senator Nathe
For the Committee on Judiciary

Prepared by Valencia Lane
February 2, 1993

1. Page 3, line 3.
Following: "and"
Insert: ", in IV-D cases,"
2. Page 6, lines 9 and 10.
Following: "services" on line 9
Strike: remainder of line 9 through "9]" on line 10
3. Page 9, lines 9 through 11.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections
4. Page 13, line 3.
Following: second "the"
Strike: "licensee's"
5. Page 13, line 4.
Strike: "is effective"
Insert: "has been reinstated"

SENATE JUDICIARY

EXHIBIT NO. 3

DATE 2/12/93

BILL NO. 217

Northern Plains Resource Council

4

Mr. Chairman, Members of the committee, my name is Jean Clark. My family owns a guest and cattle ranch in Sweet Grass County. I am presenting testimony on behalf of the Northern Plains Resource Council.

A "Bad Actor" law is an idea whose time has come. With revenue and budget shortfalls, Montana must look for innovative ways to reduce the costs of monitoring and enforcing the state's environmental laws. We must also recognize that with the corporate takeovers and merger mania of the 80's that the old rules of doing business may no longer apply. Large corporations, or those who buy them out, may not put the "good neighbor" policy at the top of the list, nor will they necessarily do what is best for the local community or the state. Just as the corporations must look out for their bottom line so must the State of Montana look out for its bottom line.

While many may characterize this bill as "anti-business", I would suggest that it is good for Montana's business. I draw your attention to the statement of intent which reads "to foster a business climate in Montana that favors responsible business operators". To ensure Montana's long term sustainable economy, we must insist that today's businesses operate responsibly.

In the summer of 1990, NPRC conducted an investigation of violations of Montana's hard rock reclamation laws within the Department of State Lands. We discovered that the state has been left with environmental cleanup costs not adequately covered by bonds of companies gone bankrupt, and that although fines totaled over \$600,000 only 10% of that amount has been collected. This bill would deny these kinds of operations a business license. Since we have not updated this study, we have no way of knowing if this record has improved. But it is easy to understand why this is the case since the department does not have the money or staff for adequate enforcement. Anyone

SENATE JUDICIARY
EXHIBIT NO. 4(a)
DATE 2/12/93
BILL NO. 356

reading the papers knows this is not likely to change soon.

This bill offers one solution by requiring a self-disclosure system which will weed out the "bad actors" resulting in fewer violations requiring staff time and money to enforce the law. The message will be loud and clear that we expect both the letter and spirit of the law to be obeyed. This is a win-win situation . . . good operators will not be dogged by the reputation of bad actors and state government will not have precious resources squandered through contracts offered to disreputable companies or in pursuing repeat violators.

To cite a couple of examples, Noranda Minerals violated permit conditions for water quality for 1 1/2 years at its Montanore project near Libby. Although the company did submit reports showing the violations, the department did not monitor them. I guess I can understand why the state did not do its job, but why did the company knowingly continue to violate its permit conditions? My guess is that the consequences of the violations was not a deterrent. This bill would force compliance with little cost to the state. The consequence would be very clear.

I would point out to the committee that while this legislation is very clear that criminal conviction results in the denial of permits for five years, section 6 does allow the department discretion to consider mitigating circumstances for civil or administrative violations.

Montana has a bright future ahead given its natural resources and quality environment if we set good ground rules. And the first rule should be that bad actors need not apply. I urge this committee to give this bill fair consideration and a "do pass" recommendation.

Northern Plains Resource Council

BAD ACTOR LEGISLATION

Senator Steve Doherty's Bad Actor bill would require regulatory agencies, and state and local government to consider a company's past compliance with environmental and OSHA (federal worker safety) laws when granting permits or awarding contracts.

This bill is intended to:

- enhance the protection of the public health, Montana workers and Montana's environment without burdening state agencies with new regulations;
- foster a business climate in Montana that favors responsible business operators over those who violate laws protecting public health, workers and the environment;
- ensure that Montanans' tax dollars don't go to irresponsible companies through state and local government contracts;
- Strongly discourage intentional or careless violations of important Montana laws.

Disclosure Statement:

Applicants for certain permits under Montana's environmental laws would be required to submit disclosure statements listing any *criminal, civil or administrative violations* of environmental or OSHA laws for which they had been convicted in the previous five years; *any forfeited bonds or unpaid fines* for which they were responsible; as well as any unresolved criminal, civil or administrative complaints filed against them. Disclosure would be required for all the "principals" of a company as well as the company itself. (The bill defines a principal as a partner, associate, officer, parent corporation, subsidiary corporation, contractor, subcontractor or agent of a company.)

Permit Block:

A permit application or transfer *would be denied* if an applicant had been convicted of a criminal violation in the previous five years, had outstanding fines or had an outstanding forfeited bond.

A decisionmaker *could* deny the application if the applicant had civil or administrative violations during that period.

A company with a criminal violation at a particular site *would not* get their permit for that site renewed or modified. A decisionmaker *could* decide not to renew or modify a permit if an applicant has civil or administrative violations at that site.

Debarment:

Montana law requires all state and local contracts over \$10,000 to be awarded, through a competitive bidding process, to the "lowest responsible bidder". A "responsible bidder" is defined as a person with "the integrity and reliability which will assure good faith performance." Under the Bad Actor bill, any company with a criminal conviction within 5 years, outstanding fines or a forfeited bond could not be considered a responsible bidder for state or local government contracts. Any bad actor that had been denied a permit application, transfer, modification or renewal within five years would also be debarred.

SENATE JUDICIARY

EXHIBIT NO. 4(b)

DATE 2/12/93

BILL NO. 356

- MORE -

Public Hearing:

If a company applying for a permit renewal had multiple violations at the permitted site, the decision making agency could hold a hearing to give members of the public an opportunity to comment on whether the permit should be renewed. The agency would be required to hold a public hearing upon petition by 25 concerned citizens or any party that commented on the original permit.

Maximum Penalties:

A criminal conviction *would double the maximum possible criminal or civil penalties* for any future criminal or civil violations. The court *could* double these penalties if a violator had a previous civil or administrative penalty.

Compliance Audit:

A company would have to pay for an environmental compliance audit of any facility at which a criminal violation occurred, as well as any other facility it operates in the state at which a similar violation could occur. The audit would be conducted by a knowledgeable and impartial third party. The regulating agency could require the violator to implement any of the auditor's recommendations. A regulating agency may require a compliance audit of a company with civil or administrative violations.

Self Monitoring Privilege:

Most permits currently being granted under Montana's environmental protection laws allow companies to be self-monitoring. The Bad Actor bill would require companies with a criminal violation to "pay for the full costs of permit compliance monitoring". The regulating agency would have the discretion to suspend the self-monitoring privilege for companies with civil or administrative violations.

Permits Covered Under Permit Block:

- Montana Air Quality Act (75-2-211 MCA)
- Control of Radioactive Substances (75-3-202 MCA)
- Montana Water Quality Act - Nondegradation Policy Exemptions (75-5-303 MCA)
- Montana Water Quality Act approvals and permits for sewage, industrial waste and other waste discharges into state waters (75-5-401 and 75-6-112 MCA)
- Lakeshore Development Permits (75-7-207 MCA)
- Solid Waste Disposal and Management Licenses (75-10-221 MCA)
- Hazardous Waste Management Permits (75-10-406 MCA)
- Megalandfill Operating Licenses (75-10-933 MCA)
- Infectious Waste Management Act Licenses (75-10-1006 MCA)
- Nuclear Facility Certificates (75-20-201 MCA)
- Strip and Underground Mine Siting (82-4-121 MCA)
- Coal and Uranium Mine Reclamation - Mining and Prospecting Permits (82-4-221 and 82-4-226 MCA)
- Metal Mine Reclamation - Exploration Licenses and Operating Permits (82-4-331 and 82-4-335 MCA)
- Opencut Mining Reclamation - Contracts with the Board of Land Commissioners (82-4-422 MCA)
- Oil and Gas Conservation - Drilling Permits (82-11-134 MCA)

MontPIRG

Montana Public Interest Research Group

360 Corbin Hall ☐ Missoula, MT 59812 ☐ (406)243-2907

February 12, 1993

Testimony for Senate Bill 356

Chairman Yellowtail and Members of the Senate Judiciary Committee:

For the record, my name is Jordan Shapiro and I am a student board member of MontPIRG.

The Montana Public Interest Research Group (MontPIRG) is a non-profit, non-partisan research and advocacy organization located on the University of Montana campus. MontPIRG represents 2500 student members and 1500 community members statewide.

We strongly support Senate Bill 356, which would automatically deny permits to companies which had been convicted of a criminal violation within the last five years, had outstanding fines, or had an outstanding forfeited bond.

This legislation protects citizens against socially and environmentally irresponsible industry, and supports businesses that abide by the law. Additionally, Senate Bill 356 encourages companies to not intentionally or carelessly violate important Montana health, worker safety, and environmental laws. State money will no longer be awarded to irresponsible businesses.

We believe that irresponsible industry is not the kind of industry which we need to attract here in Montana. MontPIRG urges you to support Senate Bill 356, and keep Montana's business responsible. Thank you.

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 2/12/93

BILL NO. SB 356

Students and citizens working for educated consumers, a clean environment and a more responsible government.



PRINTED ON
RECYCLED PAPER



December 29, 1992

Ross Electric - Logan Hill
Inspection Report
Page 16

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

7272 Cleanwater Lane, LU-11 • Olympia, Washington 98504-6811 • (206) 753-2353

3. The contaminated gloves need to be handled as Dangerous Waste until and unless proven otherwise.
4. I requested as a representative of Ecology, a copy of the video tape of the first part of the inspection. Bob stated it was not complete because the battery ran down after a while into the inspection. I reiterated my request. He then stated he did not have the ability to copy at the site. I stated I would be willing to make a copy for him. He stated then that he would send a copy.
5. I stated that all ash releases must be cleaned up.
6. I stated that since releases will be documented by this sampling that Ecology will be requiring the equivalent to MTCA cleanup standards and that would be reflected by the closure plan comment letter which I would be sending him.
7. I stated that the ash-contaminated metal being stored in Building #3 must be moved out and back into Building #1.

I then thanked Bob for his time and the inspection team left the site at 1530 hours.

During our lunch, we determined that we would like a photograph of Document #15. We therefore returned to the site at 1625 hours. When we returned, we found there were two children playing on-site. While we watched the two children, approximately 9 or 10 years of age, one driving a motorized go-cart, the other on a bike, rode around building #1 in a clockwise fashion, through the breezeway, around the front of the building again, through the area just north of the incinerator, and around again. When they went through the area between the incinerator and Building #1, ash-like material was kicked up off the concrete by the wheels. By this time I had my camera out and when they reached the area north of the incinerator again, I got some pictures of them stopping and looking back at us. When they realized I was taking pictures they exited quickly through the breezeway and out of the facility. Unauthorized, untrained persons accessing the site violates WAC 173-303-283(3)(1) by endangerment of the public. Such entry also violates WAC 173-303-310(2) since unauthorized entry was not prevented.

We then entered the office area and obtained pictures of Document #15, from Terri Ross who was acting as receptionist, and also obtained another copy of Document #15. I left Bob a note which stated that children playing in the incinerator area or active area of the site was forbidden that this was a restricted access facility. I also reiterated my request for a copy of the inspection video.

A truck full of transformers was parked on the southwestern corner of the site. There was no one in the truck. A man who identified himself as Robert Buntain stated he was the truck driver for Ross Electric and had just delivered this load of transformers from Clark County to Ross Electric. I

Testimony in support of SB 339 and SB 336
Submitted by
The Concerned Citizens for the Health of Our Children

6

Senate Natural Resources Committee (SB 339)
Senate Judiciary Committee (SB 336)
February 12, 1993

The attached articles and excerpted page from a recent Washington State Department of Ecology site inspection report are submitted as supplemental testimony by Concerned Citizens for the Health of Our Children, an organization of Baker-area citizens concerned about the potential social, economic and environmental impacts of the Ross Electric Company's proposal to site a Transformer Recycling and PCB Incinerating Plant at Baker, Montana.

We believe that both of these bills would provide important protections for Montana communities faced with waste facility siting proposals from dangerously irresponsible companies such as Ross Electric. We urge your support for this legislation. Thank you.

SENATE JUDICIARY 6
EXHIBIT NO. _____
DATE 2/12/93
BILL NO. SB 354

O'FALLON FACT FINDER

A FREE NEWSPAPER

U.S. POSTAGE PAID
3rd Class
Permit No. 5
Baker, MT 59313

Containing Facts, Conclusions and Opinions
Published by

The Concerned Citizens For The Health Of Our Children

The purpose of this newspaper is to bring pertinent facts and our conclusions and opinions to public attention with respect to the plans of Ross Electric of Washington to set up a Transformer Recycling and PCB Incinerating Plant at Baker, Montana

ROSS ELECTRIC: CORPORATE OUTLAW

By Glen T. Rugg

During its stay in Washington State, Ross Electric has repeatedly been fined by Washington State Department of Ecology, has generated a Superfund Site that federal taxpayers must pay for, and has refused to acknowledge any wrong doing or accept any responsibility for the damage it has caused.

From 1972 to September 1983 Ross Electric operated on Coal Creek. In February of 1983, due to heavy contamination by Ross Electric and two other companies, the Washington State Department of Ecology issued an order to Ross Electric as operator and Lewis County Public Utility District as owner to investigate and clean up the site.

Ross Electric moved their incinerator to the Logan Hill in 1983, and terminated their lease at Coal Creek. In defiance of both the Washington State Department of Ecology and the Federal Government, which had classified it as a Superfund Site, Ross Electric refused to accept any responsibility for the contamination at Coal Creek or pay anything toward the cost of cleaning it up.

In January of 1985 the Environmental Protection Agency—it isn't just an over zealous Department of Ecology

as Ross Electric would have it that is giving them so much trouble—fined Ross Electric \$23,000 for burning waste oil with concentrations of PCBs at 94 ppm. According to EPA regulations, they were only allowed to incinerate contaminated waste up to 50 ppm.

responsibility for the damage they have done or the costs they have forced on the taxpayer. There is nothing in their history to suggest that they have changed their ways or that they will do any better in Fallon County.

On August 11, 1986, the Washington Department of Ecology fined Ross Electric \$25,000 for two different spills of incinerator ash, falsifying incinerator reports, and leaving hazardous containers unlabeled.

In August 1986 Ross Electric was caught dumping ash from their incinerator at the Centralia, Washington landfill. The Washington Department of Ecology fined Ross Electric \$75,000 for this. Ross Electric protested the penalty, and Ross Electric and the Department of Ecology settled for \$48,000, with \$27,000 deferred, if they had no further Class 1

violations. But when Ross Electric made further Class 1 violations it made them "a high priority violator," and the \$27,000 deferment was made payable. Ross Electric is appealing.

In August and November of 1990, the Department of Ecology fined Ross Electric \$90,000. This time because Ross Electric had operated without a temperature probe from August 2 to August 27. (The probe is essential to determine if the temperature is high enough to destroy all the PCBs.) Besides that, their record keeping was so disorganized that the Department of Ecology could not determine whether the oil they were incinerating was under 50 ppm.

The Department of Ecology gave Ross Electric an ultimatum May of 1991. Either Ross Electric had to start

complying with the law or submit a plan for closing their plant down and disposing of all the hazardous wastes that had accumulated at their site. Ross Electric has refused to draw up a plan and to provide sufficient financial guarantees to assure that it is carried out. Now they are attempting to move into Fallon County.

As this lengthy list of penalties and court actions shows, Ross Electric has never been in compliance with the laws of the State of Washington. They have provoked several actions by the EPA. And they have refused to accept

EXHIBIT 6

DATE 2-12-93

L 5B 356

Poll Results

By: Wade Sikorski

We received 121 responses to our poll about Ross Electric that we put out in the last issue of our newspaper, and we want to thank everyone who took the time to respond to it. Of those who responded, 93 of them were against Ross Electric setting up here, and only 28 were in favor of it. In other words, our poll shows that Ross Electric has only one supporter for every three opponents.

Though this poll is not a random sample, we believe that it does accurately reflect the sentiment of the community. It confirms a sense of the community's mood that we have gained from our conversations with a large number of people in their homes, at work, in restaurants and bars, and in chance encounters. If a formal referendum were held on Ross Electric--and we all do believe that would be the best way to peacefully resolve this dispute--we have no doubt that Ross Electric would lose by an overwhelming margin.

We were delighted that a large number of people also added their comments, even if some of those comments included some decidedly unfriendly advice on what we could do with various parts of our anatomy and some rather colorful observations about our family ancestors. Most of the comments that we got, though, were quite supportive.

Virtually no one who was supporting Ross Electric signed their name, while a majority of those opposing Ross Electric signed theirs. By coming to town, Ross Electric has unleashed an angry torrent of emotions. Several people are so opposed that they wrote to us and said that if Ross Electric started operating they were going to sell everything and move away. They just couldn't accept the risks to their health

STATEMENT OF LOUIS JENSEN, MEMBER OF CITIZENS FOR THE HEALTH OF OUR CHILDREN, RECORDED FOR BROADCAST BY PUBLIC BROADCASTING CORPORATION

Western communities are being targeted as disposal locations for the nation's waste. Companies involved in the waste business are attempting to take advantage of the

Baker, a group pursuing economic development on behalf of the town personally sought out Ross Electric and invited them with open arms. That's when the trouble began for this small eastern Montana community of about 1,800 people.

The "Citizens for the Health of Our Children", a group of concerned citizens in the area, found that Ross Electric has accrued at least \$190,000 in fines for not complying with State of Washington's environmental regulations. In May of 1991, Ross Electric was classified as a high priority violator of environmental regulations in the State of Washington.

Two of the main concerns of incineration are the emissions and the resulting ash. The emissions will contain dioxins and furans, which, according to the EPA, are the most potent cancer causing chemicals ever tested. The ash would have to be taken to a hazardous waste site.

Electric's historic record of improper operation and their other violations of environmental law, the residents of Fallon County, Montana, are highly concerned about the prospects of this company operating in this or any community.

Sound economic development is welcomed everywhere, however, public officials should be cautious of extending open arms to strangers bearing gifts. It just may be their trash in disguise.

... IN CLOSING

We believe that it is very clear Ross Electric should not be allowed to come here, or go anywhere else. The process Ross Electric is using is simply too dangerous and Ross Electric is simply too irresponsible.

We call on the County Commissioners to prevent Ross Electric from coming in. We would like to meet with the full board of Commissioners in an open public meeting and present all of our findings. We are concerned that the risks with having Ross Electric here are not fully appreciated by the County Commissioners, and we would very much like the opportunity to present our case to them.

We also call on all those who have received gifts from Ross Electric to promptly return them. Anyone who has a public trust for presenting accurate information and investigating threats to the public's health and well being should not allow their credibility to be damaged by accepting gifts of such significance from the people and corporations they are looking into.

It is also possible, in the case of county employees, that laws were broken. We call upon Denzil Young, the County Attorney, to investigate and take appropriate action.

public to not let Ross Electric move in. In spite of the moratorium and various national and State laws, Ross Electric may still be able to come here and begin processing deadly chemicals--unless there is a great deal of public outcry. You are needed to keep Ross Electric out.

THANK-YOU

We have been overwhelmed with the public's generous support, and we would like to thank everyone who has contributed money or offered their support. So far, we have received about \$1,000. This has not covered all of our expenses (a number of people on the committee have contributed a great deal of their own money), but it has enabled us to send you this newsletter.

We are hoping, among other things, that we can send you another newsletter. There are a lot more facts that we simply didn't have space for this time. We would greatly appreciate more contributions. Please send them to our treasurer, Louis Jensen, Box 528, Baker, MT 59313.

DATE 2-12-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: H.B. 127

SB 217 SB 356

Name	Representing	Bill No.	Check One	Support	Oppose
FARWELL SMITH	NPRC	356	X		
Steve Prandeville	MT Assoc Realtors	217			X
Susan Pauli	NPRC / ERC / Self	356	X		
Ann Zilly	DFS	#B 127	X		
Stan Bradshaw	MT Trout Unlimited	356		✓	
CESAR HERNANDEZ	CABINET RESOURCE GROUP	356		✓	
Kate Cholera	MT Women's Lobby	SB 217	X		
Terry Minow	MT Ed. State Employees	356	X		
BRADY WISEMAN	Montana's Against Toxic Runoff	356	X		
DONOVAN ARCHAMBAULT	FT. BELKINAP TRIBES	356	X		
Charles Smeaux	FT BELKINAP Tribes	356	X		
Arnie Ludwig	Montana's Against Toxic Runoff	356			X
Jim Tutwiler	MT CHAMBER	356		✓	
Ken Williams	MPC/Entech	356		✓	
Don Allen	MT Wood Products Assn	356			X
Clyde Darby	MT Senior City Assoc	356	X		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-12-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 127 Park SB 217 Nathe
S.B. 356 Doherty

Name Representing Bill No. Check One Support Oppose

Name	Representing	Bill No.	Support	Oppose
Jan Clark	NPRC	356	<input checked="" type="checkbox"/>	<input type="checkbox"/>
John M. Phebus	MYSELF	356	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Terrest Erickson	Northwest Plains Resource Council	356	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Wade Skorski	Concerned Citizens for Wildlife	356	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jim Barrett	Bear Tooth Alliance	356	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heidi Barrett	Bear Tooth Alliance	356	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Phelps	NPRC	356	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jimmy G. Phebus	CON. CITIZENS	356	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Louis Jensen	"	"	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Katei Chuvace	ACES	217	<input checked="" type="checkbox"/>	<input type="checkbox"/>
John Connot	MT Gy Atty Assn	HB 127	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rebecca Shaw	ICCW	SB 217	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jordan Shapiro	Mont PIRG	SB 356	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dan Stahly	Mont PIRG	SB 356	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Kristen Weeds	Mont PIRG	SB 356	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Linda McMullen	NPRC	356	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-12-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 356

Name	Representing	Bill No.	Check One Support Oppose	
Ward Canabe	Stittwah Mining	356		X
Russell Halzer	Mt. State AFL-CIO	SB 356	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY