

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By CHAIRMAN RUSSELL FAGG, on March 23, 1993, at 9:00 a.m.

**ROLL CALL**

**Members Present:**

Rep. Russ Fagg, Chairman (R)  
Rep. Randy Vogel, Vice Chairman (R)  
Rep. Ellen Bergman (R)  
Rep. Vivian Brooke (D)  
Rep. Dave Brown (D)  
Rep. Bob Clark (R)  
Rep. Duane Grimes (R)  
Rep. Scott McCulloch (D)  
Rep. Angela Russell (D)  
Rep. Tim Sayles (R)  
Rep. Liz Smith (R)  
Rep. Bill Tash (R)  
Rep. Howard Toole (D)  
Rep. Karyl Winslow (R)  
Rep. Diana Wyatt (D)

**Members Excused:** Rep. Jody Bird (D)

**Members Absent:** Rep. Jim Rice (R)  
Rep. Tim Whalen (D)

**Staff Present:** John MacMaster, Legislative Council  
Beth Miksche, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 217, SB 252, SB 260, SB 425  
Executive Action: SB 252

**HEARING ON SB 217**

**Opening Statement by Sponsor:**

SEN. LORENTS GROSFIELD, Senate District 41, Big Timber, said that SB 217 authorizes the Department of Social and Rehabilitation Services (SRS), Child Enforcement Services Division (CESD) to

revoke licenses of people delinquent in the payment of child support.

Proponents' Testimony:

Mary Ann Wellbank, Administrator, Social Rehabilitation Services, Child Enforcement Services Division, presented written testimony. EXHIBIT 1

Noreen K. Seifert, representing herself, presented written testimony. EXHIBIT 2

Kate Cholewa, Montana Women's Lobby, stated that many mothers and children who rely on child support are 62 percent below poverty. She encouraged the committee's support.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. VOGEL asked SEN. GROSFIELD if HB 482 exempts attorneys under the provision stressed in this bill. SEN. GROSFIELD said yes, per SRS.

CHAIRMAN FAGG asked Ms. Wellbank how the bill relates to REP. BOHLINGER'S bill. Ms. Wellbank said that REP. BOHLINGER'S bill takes action to restrict all state licenses which would include drivers licenses, hunting or fishing licenses, occupational and professional licenses or any other licenses the state issues. SB 217 is more limited in scope; it just speaks to occupational and professional licenses issued by the Department of Commerce. There is no problem passing both bills because there is no duplication in language or intent.

REP. TOOLE asked Ms. Wellbank if this bill is the same as REP. BOHLINGER'S bill as far as the notice of hearing and due process language. He asked her to walk the committee through some of the language. Ms. Wellbank said that if an individual holds his professional or occupational license and is delinquent in support six months or more, the CESD or the district court will issue a notice of delinquency and an intention to suspend a license. The individual would have sixty days from the date of the notice to pay the debt in full or to present an acceptable repayment plan or to appear in a hearing to show cause that suspension is not appropriate. If, however, suspension is determined to be appropriate, the license board will give the orders to remove the license.

REP. BROOKE asked Ms. Wellbank why attorneys are exempt. Ms. Wellbank said that CESD cannot statutorily change anything that the Supreme Court already has control of constitutionally. REP.

TOOLE asked Ms. Wellbank to point to where that exemption is. Ms. Wellbank said it isn't an exemption, this bill only speaks to occupational and professional licenses regulated by the Department of Commerce. It is on page 4, Section 4, "Licensing Agency" which means the Department of Commerce or any other department or board that issues a license under Title 37; this does not include the Supreme Court of Montana. REP. TOOLE urged that the Supreme court include attorneys or a parallel provision that the Supreme court exempt attorneys.

Closing by Sponsor: None

HEARING ON SB 252

Opening Statement by Sponsor:

SEN. JOHN HERTEL, Senate District 15, Moore, said that SB 252 is an important bill for those performing a service involved with surveying. Those people will be licensed surveyors, those who need the survey, and also the landowners who have property next to where the survey is being done. The bill identifies regulations for surveyors.

Proponents' Testimony:

Stewart Nash, past president, Montana Association Registered Land Surveyors, presented written testimony. EXHIBIT 3

Virginia Mueller, local surveyor, Montana Association of Registered Land Surveyors, said she supports SB 252.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. TASH asked SEN. HERTEL why line 9 in the title and subsection (9), page 4 were stricken from the bill. SEN. HERTEL said that language was stricken from the title and moved to page 1, lines 18-20. That same language was also adequately covered in page 4 of the bill.

Closing by Sponsor: None

HEARING ON SB 260Opening Statement by Sponsor:

SEN. SUE BARTLETT, Senate District 23, Helena, said that SB 260 simply makes consistent time periods in which an action can be brought either to prove the existence of paternity actions or non-paternity actions. As a result of a Montana Supreme Court case, the existing statute under that case was found to violate the equal protection law. This makes the time period conform when applying for equal protection laws. EXHIBIT 4

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON SB 425Opening Statement by Sponsor:

SEN. BOB BROWN, Senate District 2, Whitefish, said that SB 425 revises the judicial selection procedures to conform to recent constitutional amendments. Roughly three years ago, Justice Gulbrandson resigned from the Supreme Court, and Governor Stephens appointed the district judge from Billings, and she resigned; thereafter, Governor Stephens appointed Karla Gray to complete the rest of the term. Justice Gray was appointed toward the end of the eight-year term; since the Senate couldn't confirm her until after the confirmation of her term, that particular term on the Supreme Court actually extended in years. To correct that, the constitutional amendment approved last fall was proposed to correct that problem. The amendment now says if an election occurs before legislative session occurs, the election takes precedence over the confirmation of the appointed judge.

Proponents' Testimony:

Garth Jacobson, Chief Counsel, Secretary of State, presented written testimony. EXHIBIT 5

Opponents' Testimony: None

Questions From Committee Members and Responses: None

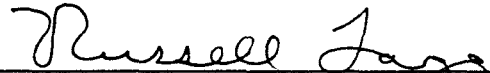
Closing by Sponsor: None

EXECUTIVE ACTION ON SB 252

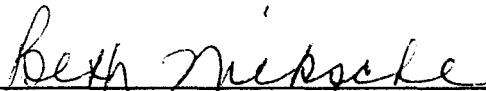
Motion/Vote: REP. TASH MOVED SB 252 BE CONCURRED IN. Motion carried 17-1 with REP. BROWN voting no.

ADJOURNMENT

Adjournment: 11:30 a.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm

# HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-23-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird			✓
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice		✓	
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen		✓	
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

wp.rollcall.man


CS-09

HOUSE STANDING COMMITTEE REPORT

March 23, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Bill 252 (third reading copy -- blue) be concurred in.

Signed:   
Russ Fagg, Chair

Carried by: Rep. Tash

Committee Vote:  
Yes 17. No 4.

651032SC.Hss

DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES  
CHILD SUPPORT ENFORCEMENT DIVISION

EXHIBIT  
DATE 3-23-93  
SB 217

MARC RACICOT  
GOVERNOR

PETER S. BLOUKE, PhD  
DIRECTOR

STATE OF MONTANA

FAX # (406) 444-1370  
(406) 444-4614

PO BOX 5955  
HELENA, MONTANA 59604-5955

March 22, 1993

To: Sen. Mignon Waterman and members of the House Judiciary Committee

From: Mary Ann Wellbank, Administrator

Re: SB 392 - Increasing the State's ability to enforce support obligations

During the House Judiciary Committee hearing on SB 392, Rep. Whalen requested copies of other state's statutes from which the language of subsections (4) & (5) of Section 4 of the bill were taken. The language at issue provides that a support order is prima facie evidence of a person's legal obligation to provide support, that in the absence of a support order no other evidence is required to prove a legal obligation to provide support than that which is necessary in a civil action, and that payment records are prima facie evidence of the amount of support paid and the arrearages accrued.

The language the CSED relied on when drafting these sections comes from four states: Illinois, Nevada, Wisconsin and Wyoming.

Illinois Rev. Stat. ch. 40, par. 1109 provides:

@6. No other or greater evidence shall be required to provide the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is or shall be required to prove such fact in a civil action.

Nevada Rev. Stat. Ann. @201.070 provides:

1. No other or greater evidence is required to prove the marriage of the husband and wife, or that the defendant is the father or mother of the child or children, than is required to prove such facts in a civil action.



Wisconsin Stat. §948.22 provides:

(4) Under this section, the following is prima facie evidence of intentional failure to provide child, grandchild, or spousal support:

(a) For a person subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she is required to pay support equal to at least the amount set forth under s. 49.19 (11)(a) or causing a spouse, grandchild or child to become a dependent person, or continue to be a dependent person, as defined in s. 49.01(2).

Wyoming Stat. §20-3-104 provides:

No other or greater evidence is required to prove the marriage of a husband and wife or that the defendant is the father or mother of a child or children than is required to prove such facts in a civil action. . . .

ILL. REV. STAT. CH. 40, PAR. 1109 (1992) printed in FULL format.

ILLINOIS REVISED STATUTES

\*\*\* THIS SECTION IS CURRENT THROUGH THE 1992 SUPPLEMENT (1991 SESSIONS) \*\*\*

CHAPTER 40. DOMESTIC RELATIONS  
NON-SUPPORT OF SPOUSE AND CHILDREN ACT

Ill. Rev. Stat. ch. 40, par. 1109 (1992)

EXHIBIT #1  
DATE 3-23-93  
1 SB-217

[Effective 1/1/93, Cite as: 750 ILCS 15/6 ]

1109. Evidence

@ 6. No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is or shall be required to prove such fact in a civil action.

NEV. REV. STAT. ANN. @ 201.070 (1991) printed in FULL format.

NEVADA REVISED STATUTES ANNOTATED  
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\*\*\* THIS SECTION IS CURRENT THROUGH THE 1991 SUPPLEMENT \*\*\*  
\*\*\* (SIXTY-SIXTH (1991) SESSION) \*\*\*

TITLE 15. CRIMES AND PUNISHMENTS  
CHAPTER 201. CRIMES AGAINST PUBLIC DECENCY AND GOOD MORALS  
DESERTION AND NONSUPPORT OF SPOUSE AND CHILDREN

Nev. Rev. Stat. Ann. @ 201.070 (1991)

201.070. Evidence; husband and wife competent witnesses

1. No other or greater evidence is required to prove the marriage of the husband and wife, or that the defendant is the father or mother of the child or children, than is required to prove such facts in a civil action.
2. In no prosecution under NRS 201.020 to 201.080, inclusive, does any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife are competent witnesses to testify against each other to any and all relevant matters, including the fact of the marriage and the parentage of any child or children; but neither may be compelled to give evidence incriminating himself or herself.
3. Proof of the desertion of a spouse, child or children, in destitute or necessitous circumstances, or of neglect or refusal to provide for the support and maintenance of the spouse, child or children, is prima facie evidence that such desertion, neglect or refusal is willful.

HISTORY: 1923, p. 288; CL 1929, @ 10521; 1985, p. 64.

NOTES:

CROSS REFERENCES. --As to husband-wife privilege, see NRS 49.295.

CASE NOTES

EVIDENCE TO SUSTAIN A CONVICTION. --In order to sustain a conviction under NRS 201.020, the state must prove: (1) parentage under NRS 201.025; (2) that defendant owed a legal obligation to pay child support (e.g., through a court order) under this section; (3) that defendant knew, or should have known, of the obligation; and (4) that defendant willfully failed to support his children. Epp v. State, 107 Nev --, 814 P.2d 1011 (1991).

ESTABLISHMENT OF WILLFULNESS. --The state establishes willfulness by showing that a parent: (1) had the ability to generate income; (2) earned wages during the time period in question; and (3) failed to make the child support payments. Epp v. State, 107 Nev --, 814 P.2d 1011 (1991).

Once the state established the element of willfulness, the defendant was free to demonstrate by way of a defense, that his nonsupport was lawfully excused or justified. Epp v. State, 107 Nev --, 814 P.2d 1011 (1991).

WIS. STAT. @ 948.22 (1989-1990) printed in FULL format.

WISCONSIN STATUTES 1989 - 1990

\*\*\* THIS DOCUMENT IS CURRENT THROUGH THE 1989 - 1990 LEGISLATIVE SESSIONS \*\*\*

CRIMINAL CODE  
CHAPTER 948 CRIMES AGAINST CHILDREN

Wis. Stat. @ 948.22 (1989-1990)

EXHIBIT #1  
DATE 3-23-93  
SB-217

948.22 Failure to support

(1) In this section:

(a) "Child support" means an amount which a person is ordered to provide for support of a child by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(b) "Grandchild support" means an amount which a person is legally obligated to provide under s. 49.90(1)(a) 2 and (11).

(c) "Spousal support" means an amount which a person is ordered to provide for support of a spouse or former spouse by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(2) Any person who intentionally fails for 120 or more consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of Class E felony.

(3) Any person who intentionally fails for less than 120 consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class A misdemeanor.

(4) Under this section, the following is prima facie evidence of intentional failure to provide child, grandchild or spousal support:

(a) For a person subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she is required to pay support under an order, failure to pay the child, grandchild or spousal support payment required under the order.

(b) For a person not subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she has a dependent, failure to provide support equal to at least the amount set forth under s. 49.19(11)(a) or causing a spouse, grandchild or child to become a dependent person, or continue to be a dependent person, as defined in s. 49.01(2).

(5) Under this section, it is not a defense that child, grandchild or spouse support is provided wholly or partially by any other person or entity.

Wis. Stat. § 948.22 (1989-1990)

(6) Under this section, affirmative defenses include but are not limited to inability to provide child, grandchild or spousal support. A person may not demonstrate inability to provide child, grandchild or spousal support if the person is employable but, without reasonable excuse, either fails to diligently seek employment, terminates employment or reduces his or her earnings or assets. A person who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(7) (a) Before trial, upon petition by the complainant and notice to the defendant, the court may enter a temporary order requiring payment of child, grandchild or spousal support.

(b) In addition to or instead of imposing a penalty authorized for a Class E felony or a Class A misdemeanor, whichever is appropriate, the court shall:

1. If a court order requiring the defendant to pay child, grandchild or spousal support exists, order the defendant to pay the amount required including any amount necessary to meet a past legal obligation for support and, if appropriate, modify that order.

2. If no court order described under subd. 1 exists, enter such an order and do so, for orders for child or spousal support, after considering s. 767.25.

(c) An order under par. (a) or (b), other than an order for grandchild support, constitutes an income assignment under s. 767.265 and may be enforced under s. 767.30. Any payment ordered under par. (a) or (b), other than a payment for grandchild support, shall be made in the manner provided under s. 767.29.

HISTORY: 1985 a. 29, 56; 1987 a. 332 s. 33; Stats. 1987 s. 948.22; 1989 a. 31, 212.

NOTES:

Under 940.27(2), 1987 Stats., [now 948.22(2)] state must prove that defendant had obligation to provide support and failed to do so for 120 days; state need not prove defendant was required to pay specific amount. Sub. (6) does not unconstitutionally shift burden of proof. State v. Duprey, 149 W (2d) 655, 439 NW (2d) 837 (Ct. App. 1989).

WYO. STAT. @ 20-3-104 (1992) printed in FULL format.

WYOMING STATUTES ANNOTATED  
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\*\*\* THIS SECTION IS CURRENT THROUGH THE 1992 SUPPLEMENT \*\*\*  
\*\*\* (1992 REGULAR SESSION) \*\*\*

TITLE 20. DOMESTIC RELATIONS  
CHAPTER 3. DESERTION OF WIFE OR CHILDREN

DATE 3-23-93  
SB-217

Wyo. Stat. @ 20-3-104 (1992)

@ 20-3-104. Evidence required to prove marriage and parenthood; husband and wife as competent witnesses; disclosure of confidential communications; desertion, neglect, or refusal to support, as prima facie evidence of willfulness

No other or greater evidence is required to prove the marriage of a husband and wife or that the defendant is the father or mother of a child or children than is required to prove such facts in a civil action. In a prosecution under this act [@@ 20-3-101 to 20-3-104] no statute or rule of law prohibiting the disclosure of confidential communications between husband and wife shall apply. Both husband and wife are competent witnesses to testify against each other to any relevant matters including the fact of marriage and the parentage of the child or children but neither shall be compelled to give evidence incriminating himself or herself. Proof of the desertion of the wife, child or children in destitute or necessitous circumstances, or of the neglect or refusal to provide for the support and maintenance of the wife, child or children is prima facie evidence that the desertion, neglect or refusal is willful.

HISTORY: Laws 1915, ch. 72, @ 6; C.S. 1920, @ 5036; R.S. 1931, @ 32-808; C.S. 1945, @ 9-808; W.S. 1957, @ 20-76; Laws 1977, ch. 152, @ 1; Rev. W.S. 1957, @ 20-3-104.

NOTES:

CROSS REFERENCES. --As to husband and wife as witnesses in civil and criminal cases generally, see @@ 1-12-101 to 1-12-104.

REPEALING CLAUSES. --Section 7, ch. 72, Laws 1915, repealed all laws and parts of laws in conflict therewith.

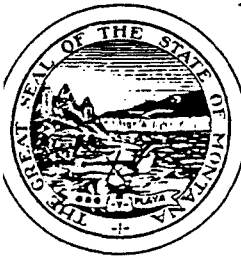
LAW REVIEWS. --See note, "Spouse's Testimony in Criminal Cases," 19 Wyo. L.J. 35 (1964).

For discussion of husband-wife testimonial privilege and the Federal Rules of Evidence, see XII Land & Water L. Rev. 601 (1977).

USER NOTE: For more generally applicable notes, see notes under the first section of this division, subarticle, article, chapter or title.

EXHIBIT #2  
DATE 3-23-93  
1 SB-323

BOARD OF WATER WELL CONTRACTORS  
DEPARTMENT OF NATURAL RESOURCES & CONSERVATION



1520 EAST SIXTH AVENUE

STATE OF MONTANA

(406) 444-6643

HELENA, MONTANA 59620-2301

April 8, 1992

REC'D APR - 9 1992

Nancy Fillinger  
Lewis & Clark County  
Sheriff's Department  
Civil Bureau  
221 Breckenridge  
Helena, Montana 59601

Re: Writ of Execution/Forrest D. Groves

Dear Ms. Fillinger:

I have enclosed a copy of the Savings Certificate Assignment and the CD by which Forrest D. Groves is bonded to be a licensed water well contractor in Montana. The Board is a joint holder of the CD with Mr. Groves and is without authority to surrender the CD in the absence of a well construction standards violation and notice and opportunity for hearing to Mr. Groves. (See provision 5 of the Assignment). There is good reason for this restriction--Mr. Groves license to construct water wells (his livelihood) would be invalid without the bond. Consequently, the Board does not believe the CD is subject to the Writ of Execution and is unable to transfer the CD to the Sheriff as notified in the Writ. I am available to answer any questions the Sheriff might have about this Board decision.

Sincerely,

*Fred W. Robinson*

Fred W. Robinson  
Legal Counsel

c. Diana Cutler

## SHERIFF'S RETURN

STATE PUBLISHING CO. HELENA, MONT.

STATE OF MONTANA  
County of Lewis and Clark

ss. 780 06

## OFFICE OF THE SHERIFF

I hereby certify that I received the annexed writ of execution on the 19th  
day of March, 19 92, and personally served the same on the 20th  
day of March, 19 92 upon Forrest D. "Frosty" Groves  
by delivering to

Department of Natural Resources, Fred Robinson, Legal Counsel, 1520 East  
6th Avenue, Helena, Montana, at 1150 hours

personally in the County of Lewis and Clark, a true and correct copy of said writ of execution issued,  
at the same time informing him of the contents thereof.

I hereby certify, that after diligent search I am unable to find any property in  
the County of Lewis and Clark belonging to said defendant Forrest D. "Frosty" Groves  
(UNABLE TO SATISFY: see copy of attached letter)  
out of which to satisfy said judgement or any part thereof, and said execution is hereby returned  
wholly unsatisfied.

Dated Helena, Montana, March 20, 19 92

Service . . \$ 23.00

Mileage . . \$ 1.00

Total . . \$ 24.00

Paid 25.00

Refund 1.00 - check attached

CHARLES M. O'REILLY

Sheriff

By

Deputy Sheriff

I, \_\_\_\_\_, Sheriff of the County of Lewis and Clark

do hereby certify that by particular instructions from plaintiff's attorney \_\_\_\_\_

\_\_\_\_\_, I have collected \$ \_\_\_\_\_ with costs and sheriff's fees  
covered by said execution from \_\_\_\_\_  
the defendant named herein,

I HEREBY FURTHER CERTIFY, That I have deducted from said sum of \$ \_\_\_\_\_  
my fees, commission and expenses amounting to the sum of \$ \_\_\_\_\_, leaving a net balance of  
\$ \_\_\_\_\_, which I have paid to \_\_\_\_\_

I therefore return this execution \_\_\_\_\_



Ladies and Gentlemen of the House Judiciary Committee,  
GREETINGS,

My name is Noreen K. Seifert I am 34 years old, and live in Polson. I am the mother of 5, three of which are owed and due Child Support by an absent parent. The non-custodial parent in my case has done everything he can to keep from paying his Child Support obligations.

In June of 1988 my children and I went on AFDC, (Aid to Families with Dependent Children). I was told that the State could get him to pay.

A garnishment was handed down in April of 1989. Child Support Enforcement Program, The Wage Withholding Unit garnished his wages for five months only. After that time when SRS would contact his employer, who was at that time and still is his Father-in-Law. The employer would tell SRS, he was no longer working for him. That was not the TRUTH!

He not only continued to work for his Father-in-Law, he did it illegally. Montana State Law requires a Licensed Driller to be on site at all times, when drilling water wells. He was not a licensed driller!

After my multiple calls to State Agencies, SRS included. He was investigated. With no reprimand for drilling illegally for 4 years. The State of Montana then licensed and Bonded him, by giving him a Water Contractors License, No. 521 and a Monitoring Well Constructors License No. 241.

My children and I are no longer on any assistance from the State as of July of 1991.

I took over my own legal representation in October of 1991. Having tried everything from executions on bank accounts, to executions on his business and many other things of which I have a complete file on, I know the system is not working.

Having my non-custodial parent in Court on May 13, 1992, I had Judge C.B. McNeil take himself off my case. I was tired of him being told to pay it when he could and getting just a slap on the wrist. Judge Green then took over my case. He did sign another execution against the next well being drilled, it was for the full and total amount owed. License No. 241 then pulled out of the job, and did not return to finish that well until the execution had been sent back unsatisfied, some 80 days later. Judge Green then became ill, and turned my case over to Judge Henson. He in turn assigned my case to a Special Master (an assuming judge). It is now some 11 months later, and I am still waiting for an Order to Show Cause Hearing. In which he is to show cause if any he has, why he has not paid his Child Support obligations.

To date he owes his children \$11,037.76. He also owes the State of Montana (SRS) \$12,158.87.

The irony of my case is, recently he was actually hired by The State of Montana to drill Test Holes, to check for ground contamination in the upper Flathead Valley area. Who should be paying whom for services rendered?

Please let the left hand know what the right hand is doing!

If he can afford a FDX rotary, Drill Tech drilling rig, pipe truck, and make around \$200,000 since being licensed in November of 1991. He can surely pay his obligations to his children and to the State of Montana.

I have had it better than many custodial parents. I have received payments from him over the years. There are many that have been totally abandoned. It has been 10 years today since my divorce. I have never been able to rely on child support payments.

I would never have made it without the financial help and love and support of my family. My father, former Representative Carl A. Seifert and my mother Peggy whom is here with me today.

I thank you and would appreciate your support of Senate Bill 217.

## SAVINGS CERTIFICATE ASSIGNMENT

#2  
DATE 3-23-93  
# SB-323

1. For value received, Forrest Groves, Assignor, does hereby assign, transfer and set over to the Board of Water Well Contractors, hereinafter called the Board, all rights and interests in a Savings Certificate No. 5353 in the amount of \$ 4000.00, payable on or after May 13, 1992 issued by Security State Bank & Trust Company. (automatically renewable every 26 weeks)
2. The Assignor makes this assignment in consideration of the Board issuing to Forrest Groves  
water well contractors license(s) (WWC-52, WWC-      , WWC-      ) and/or a monitoring well constructors license(s) (MWC-44, MWC-      , MWC-      ). The purpose of this assignment is to provide the Board with sufficient surety as required by Section 37-43-306, MCA.
3. The Assignor may not withdraw or otherwise dispose of any of the principal attributed to the Savings Certificate while the same is assigned to the Board. The Assignor may withdraw the interest earnings during the period of the assignment.
4. The Assignor may, with the consent of the Board, replace or renew a Savings Certificate once it has expired, or is voided by the Bank and the Assignor shall be entitled to the rights as laid out in Clause 3 with respect to the new Savings Certificate. A new Savings Certificate Assignment shall be executed if the Savings Certificate is replaced.
5. The Board may at any time after the Assignor fails to fully comply with all requirements and conditions of Title 37, Chapter 43, MCA and/or Title 36, Chapter 21, ARM, and after giving written notice and opportunity for hearing to the Assignor, surrender the Savings Certificate to the Bank in exchange for money, as provided in ARM 36.21.505.
6. The Assignor is entitled to any earnings or interest upon the cash proceeds after the Board has surrendered the Savings Certificate.
7. The Savings Certificate shall be held by the Board during the term of this assignment.
8. The Assignor hereby authorizes and directs the Bank to pay the above-described Savings Certificate as instructed by the Board until such time as the Bank shall receive the Release provided for below. The Bank shall not be liable to inquire whether there has been performance by Assignor or to see to the application of any moneys paid on instruction of the Board, and in such matter the Bank may rely upon the instructions of the Board executed over the signature of the person, or his designee, appearing under the Board Acceptance below without the need to verify the authority of such person. Nothing herein shall prevent the Board from designating a person authorized to act for it in another lawful manner.
9. Signed and Dated at Polson, Montana, this 13th day of November, 1991.

P. O. Box 820, Bigfork, MT 59911  
(Address)

[Signature]  
(Assignor's signature)

# BANK ACCEPTANCE

10. The Security State Bank & Trust Co., as witnessed below by the signature of a duly authorized officer, hereby recognized this above assignment of Savings Certificate No. 5353 in the amount of \$ 4,000.00 this 13th day of November, 1991.

Security State Bank & Trust Company  
(Bank)  
P. O. Box 1291  
Polson, Montana 59860  
(Address)

[Signature]  
(Authorized Signature)

# BOARD ACCEPTANCE

11. The Board of Water Well Contractors, hereby accepts the foregoing assignment of the Savings Certificate No. 5353 drawn on Security State Bank & Trust Co. in the amount of \$ 4,000 this 15th day of November, 1991.

[Signature]  
(Authorized Signature)  
Ed of Water Well Contractors

\*\*\*\*\*

# RELEASE

12. The above assignment of Savings Certificate No. \_\_\_\_\_ drawn on \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ is hereby released. The authorized signature below shall witness the termination of the Board's interest in the assignment.

\_\_\_\_\_  
(Authorized Signature)

13. I, \_\_\_\_\_, Assignor in the above Agreement, recognize by my signature below the release of this assignment.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Authorized Signature)

☒ Money Market Certificate  
☐ Investment Certificate

## Security State Bank & Trust Company

5353

Pay Interest as follows:

☐ Check ☐ Add to Certificate

☒ Cr. Check A/C No. 60-176-3

☐ Cr. Savings A/C No. \_\_\_\_\_

301 Main St. (406) 883-5363  
Polson, Montana 59860

Social Security No. 517-70-2516

November 13 1991

Forrest Groves or Montana Board of Water Well Contract, P.O. Box 820, Bigfork MT 59911

THE SECURITY STATE BANK 4,000.00 DOLLARS \$ 4000.00

Payable to said depositor, or, if more than one, to either or any of said depositors or the survivors or survivor, in current funds, upon presentation and surrender of this certificate on a maturity date. This Certificate matures on May 13, 1992 -26- ☐ days ☒ weeks ☐ months after date on the

return of this certificate endorsed, with interest at the rate of 4.90 per cent per annum (or at such lesser rate as the law shall from time to time limit by regulations.) This certificate shall be AUTOMATICALLY RENEWED FOR AN ADDITIONAL PERIOD OF TIME EQUAL TO THE ORIGINAL TERM HEREOF EFFECTIVE ON THE MATURITY DATE, UNLESS THE OWNER HEREOF PRESENTS THIS CERTIFICATE FOR PAYMENT ON, OR WITHIN TEN DAYS OF ANY MATURITY DATE, OR UNLESS THE BANK MAELS WRITTEN NOTICE TO THE OWNER, AT THE ABOVE ADDRESS, AT LEAST TEN DAYS PRIOR TO MATURITY, OF THE BANK'S INTENTION TO REDEEM THIS CERTIFICATE.

Interest hereon shall be payable during the period of each such renewal at the rate being paid by the bank on this type of Certificate of Deposit at the date of such renewal subject to Federal limitations and regulations.

Interest hereon to maturity will be paid ☒ at maturity ☐ monthly ☐ quarterly unless otherwise specified by remitting by mail a check or notice of credit per your instructions.

AUTOMATICALLY RENEWABLE

NOT TRANSFERABLE NOT NEGOTIABLE

[Signature]  
(Subject to provisions on reverse side)

"TELLS WHERE TO BUY IT"

1 SB-323

## Water Well Drilling & Service

**ANDERSEN DRILLING**  
Cable Tool Drilling  
S Shore Polson ..... 883-5317  
**BEARCAT DRILLING & PUMP CO**  
Polson ..... 883-2243  
Toll Free ..... 800 527-2723  
**BILLMAYER'S INC**  
115 Kelly Rd Kalispell ..... 755-5395  
**CAMP WELL DRILLING & PUMP SUPPLY CO**  
1522 S 14th W Missoula ..... 549-3411  
(See Advertisement On This Page)  
**CASTLIO DRILLING CO**  
Bayshore Dr Polson ..... 883-4873  
Shop Hwy 93 S Polson ..... 883-6181  
(See Advertisement On This Page)  
**LIBERTY DRILLING CO**  
3850 Hwy 93 S Kalispell ..... 752-2809  
(See Advertisement On This Page)

## CASTLIO DRILLING CO.

15 YEARS DRILLING EXPERIENCE IN THE  
MISSION & FLATHEAD VALLEYS

LATEST IN AIR ROTARY DRILLING  
ALSO MUD ROTARY FOR  
LARGER DIAMETER HOLES

• Residential • Commercial • Irrigation

LICENSED FOR MONITOR  
WELL CONSTRUCTION  
HAZARDOUS WASTE CERTIFIED WITH  
CONSIDERABLE EXPERIENCE  
REFERENCES

LICENSED • INSURED • BONDED

GARY CASTLIO 883-4873  
KELLY CASTLIO 257-4467  
SHOP 883-6181

HWY. 93 S., POLSON

## WESTERN WATER WORKS

### WATER WELLS

• Domestic • Environmental • Exploration

Frosty Groves

P.O. Box 820 • Bigfork, Montana 59911 • 756-3268

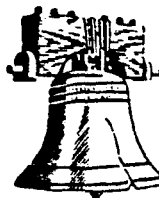
**Western  
Water Works**

**WATER WELLS**

DOMESTIC  
ENVIRONMENTAL  
EXPLORATION  
FROSTY GROVES

**756-3268**

Box 820 Bigfork



## LIBERTY DRILLING CO.

"SINCE 1951"

"CALL THE PROFESSIONALS"

INSURED • BONDED

LICENSED

WATER WELLS - MINERAL EXPLORATION

WATER CONDITIONALLY GUARANTEED IN LAKE & FLATHEAD COUNTIES

COMPLETE WATER SYSTEM INSTALLATION

CLEAR SANDFREE WATER

CALL COLLECT



CERTIFIED  
CONTRACTOR

857-3334  
857-3221  
844-3641

BILL OSBORNE  
BILL GARDNER  
BOB SORENSON

**752-2809**

3850 HWY 93 S KALISPELL

*Camp*

**WELL DRILLING &  
PUMP SUPPLY CO.**

SERVING WESTERN MONTANA SINCE 1953

LICENSED & BONDED

Wholesale Distr.  
Fairbanks-Morse  
Pumps



• INDUSTRIAL  
• DOMESTIC

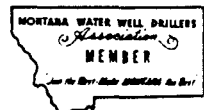


**Fairbanks  
Morse**

PUMP COMPANY

**549-3411**

IF NO ANSWER DIAL 543-6111  
1522 S. 14th W. MISSOULA



• MUNICIPAL  
• IRRIGATION

1 Noreen K. Seifert  
2 281 Sunny Slope Drive  
3 Polson, Montana 59860  
4 (406) 883-3360

5 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

6 In re the marriage of ) CAUSE NO. DR. 83-24  
7 FORREST D. "FROSTY" GROVES, )  
8 Co-Petitioner, ) EXECUTION  
9 and )  
10 NOREEN K. SEIFERT, )  
11 Co-Petitioner, )  
12 )

---

13 STATE OF MONTANA,

14 TO THE Sheriff of Lake County, Greetings;

15 WHEREAS, on March 23, 1983, NOREEN K. GROVES, now known as  
16 Noreen K. Seifert, recovered a judgment in the said District  
17 Court of the Fourth Judicial District of the State of Montana,  
18 in and for the County of Lake, against FORREST D. "FROSTY"  
19 GROVES for child support, which child support was to be paid  
20 through the Clerk of the above court, and for payment of a  
21 Promissory Note to Carl A. Seifert in the principal sum of One  
22 Thousand Five Hundred Dollars (\$1,500.00) at 10% interest;

23 AND WHEREAS, the Judgment roll, in the action in which  
24 such Judgment was ordered, is filed in the Clerk's office of  
25 said County; in the County of Lake, and the said Judgment was  
docketed in the Clerk's office, in the said County, on the day

EXHIBIT #2

DATE 3-23-93

SB-323

1 due and the sum of \$2,640.80 which represents interest to  
2 October 12, 1992. This making the total sum of \$8,090.80  
3 now due and owing in back child support. Also the sum of  
4 \$1,357.93 which represents the interest to April 13, 1992 is  
5 still due and owing on the aforementioned Promissory Note to  
6 Carl A. Seifert. And also for the sum of \$1,589.03 which  
7 represents the expenses and incurred costs herein to the date  
8 of October 12, 1992, that Noreen K. Seifert formerly Noreen K.  
9 Groves has incurred. This making the total judgment as of  
10 October 12, 1992 in the sum of \$11,037.76.

11 NOW, you, said Sheriff, are hereby required to make the  
12 said sums due on the said Judgment, for damages, plus accruing  
13 damages, with interest as aforesaid, and costs and accruing  
14 costs, to satisfy said Judgement out of personal property of  
15 said Forrest D. "Frosty" Groves, or, if sufficient personal  
16 property of said Forrest D. "Frosty" Groves cannot be found,  
17 than out of real property, especially any and all monies due  
18 to, owed to, or coming to, or belonging to said Forrest D.  
19 "Frosty" Groves D/B/A/ Western Water Works, Box 820, Bigfork,  
20 Montana 59911. Make return on this Writ within sixty days  
21 after the receipt hereof, with what you have done endorsed  
22 thereon.  
23  
24

1 WITNESS, the Honorable Jack L. Green  
2 Judge of the said Twentieth Judicial  
3 District of the State of Montana, at  
4 the Courthouse, in the County of  
5 Lake, this \_\_\_\_ day of ~~September~~,  
6 ~~OCTOBER~~  
7 1992.

8  
9 ATTEST: My hand and the seal of  
10 said Court, the day and year last  
11 above written.  
12

13  
14 Katherine E. Pedersen, Clerk of  
15 Court  
16  
17  
18  
19  
20  
21  
22  
23  
24



STATE OF MONTANA  
DEPARTMENT OF REVENUE  
CHILD SUPPORT ENFORCEMENT PROGRAM

EXHIBIT #2  
DATE 3-23-93  
AL SB-323

TO: CASTLIO DRILLING  
P.O. BOX 159

Case Number: 88025941  
RE: FORREST D. GROVES

POLSON, MONTANA 59860

SSN: 517-70-2516

\*\*\*\*\*  
ORDER TO WITHHOLD

COPY

\*\*\*\*\*  
PLEASE TAKE NOTICE that pursuant to the "Child Support Enforcement Act of 1985", Montana Code Annotated, Section 40-5-401 et seq, you are hereby directed as the employer of the above named individual to withhold and deliver income due or which may become due to the employee in the form of wages, salary, or other earnings in an amount equal to the LESSER of:

1. \$908.33 per month, plus an additional \$5.00 per month which you may retain as reimbursement for your costs

\*\* OR \*\*

2. 50% of the employee's net disposable earnings, if this amount is less than the sum set forth in paragraph 1 above. You may retain your \$5.00 reimbursement fee out of this amount.

THE TOTAL AMOUNT WITHHELD, INCLUDING THE EMPLOYER'S COST REIMBURSEMENT, CAN NEVER EXCEED 50 % OF THE EMPLOYEE'S NET DISPOSABLE EARNINGS.

UPON RECEIPT OF THIS ORDER you have certain special duties and obligations. These include:

- a. You have 14 days after receipt of this order to prepare for withholding from your employee's wages, salary or other earnings. You must withhold the amount indicated above on the first pay period which occurs after the 14th day, and continue regular withholding every month thereafter. If the employee is paid at intervals of more than once per month, you may withhold an equal amount at each pay period which is cumulatively sufficient to pay the monthly required sum.
- b. Withheld income must be paid over to the Department within 10 days of each pay period. Payments are to be made by check or money order and sent to the following address:

Department of Revenue  
Child Support Enforcement Program  
Wage Withholding Unit  
P.O. Box 8001  
Helena, Montana 59604-8001

To enable the Department to properly identify and credit the payment, you must place the employee's name and Social Security Number on each payment.

- c. Whenever there is more than one order for child support under the "Child Support Enforcement Act of 1985" against a single employee, you must honor all such orders in the sequence in which they were served upon you to the extent that funds are available.
- d. If you should ever be required to withhold income for more than one employee, you may combine all amounts withheld into a single payment to the Department for that month provided that the portion which is attributable to each employee is separately designated.

- e. For the purposes of this order, "Net Disposable Earnings" are defined as that part of the earnings of an employee remaining after deductions for the payment of federal and state income taxes, employment taxes, Social Security deductions (FICA), mandatory retirement, and federal or state income tax liens.
- f. The withholding process will continue for so long as the employee is employed by you or until you are notified in writing by the Department that the order is terminated or modified. Upon any modification order, you are required to withhold and pay over to the Department the amount as modified.
- g. An order to withhold the employee's earnings under the "Child Support Enforcement Act of 1985" takes priority over:
- 1) Any wage or income deduction order rendered under any other state law;
  - 2) Any voluntary or involuntary assignment of wages;
  - 3) any voluntary deductions of withholding of earnings;
  - 4) any levies, writs of execution, or garnishments, and;
  - 5) any other claims by the employee's creditors.
- h. Any employer who fails to withhold and pay over to the Department earnings as required by this order will become personally liable under the law for any amount up to the accumulated amount which should have been withheld and paid over.
- i. It is unlawful to discipline or discharge an employee, or refuse to hire an individual because of income withholding orders. An employer who violates this provision may be fined not more than \$500 and not less than \$150 and may also be required to make full restitution to the aggrieved person including reinstatement and back pay.
- j. If and when the employee ceases working for you, you must promptly notify the Department at the address provided below. You must also provide the employee's last known address and the name and address of the employee's new employer if such information is known to you.

SHOULD YOU HAVE QUESTIONS or require clarification concerning this order, please contact the Investigator, named below, who is responsible for this case. When you do, please make reference to the case number noted at the top of this order.

Investigator: R. K. Billedeaux

R. K. BILLEDEAUX

Address: 715 KENSINGTON SUITE 19

MISSOULA, MONTANA 59801

Telephone: (406) 721-1541

Dated this 17<sup>th</sup> day of April, 1984.

DENNIS SHOBER, Bureau Chief  
Child Support Enforcement Bureau

by: Dennis A. Shober  
Regional Supervisor

10/11/83 11-16-83 \$130 per month per child commencing 12-83  
 increased 10/83 11-16-83 \$130 per month per child commencing 12-83  
 Special Rate 10 per month

CHILD SUPPORT  
DEBT COMPUTATION WORKSHEET

AMENDED

IV-D Case Number: 88025941

Forrest D. Grooms  
(Obligor)

Moreen K. Seibert  
(Obligee)

MO/YR	AMT OF AFDC PAID	TOTAL SUPPORT DUE STATE OBLIGEE	MEDICAL PENALTY DUE	PAYMENTS REC'D	RE- TAINED BY STATE	PAID TO OBLI- GEE	MEDICAL PENALTY REC'D
PRIOR BAL.			-				
6/88	AFDC OPEN 6-6-88	650		-	-		
7/88		650		-	-		
8/88		650		300 <sup>00</sup>	300 <sup>00</sup>		
9/88		650		-	-		
10/88		650		-	-		
11/88		650		-	-		
12/88		650		-	-		
1/89		650		-	-		
2/89		650		-	-		
3/89		650		-	-		
4/89		650		-	-		
5/89		650		908.33	908.33		
6/89		650		-	-		
7/89		650		908.33	908.33		
8/89		650		908.33	908.33		
9/89		650		-	-		
10/89		650		1616.14	1616.14		
11/89		650		-	-		
12/89		650		-	-		
1/90		650		-	-		
2/90		650		400 <sup>00</sup>	400 <sup>00</sup>		
3/90		650		-	-		
4/90	Rehabilitation verified by Group's Employer	390		-	-		
5/90		390		-	-		
TO- TALS		15080 <sup>00</sup>	-	5041.13	5041.13		

Date Last Update Prepared: 9-10-92  
Prepared by: CAC

- TOTAL AMOUNTS OWED -

DATES OF THIS DEBT CALCULATION	SUPPORT DUE OBLIGEE: \$
FROM: 6-88	SUPPORT DUE STATE: \$
TO: Current	MEDICAL PENALTY DUE: \$
	TOTAL SUPPORT DUE: \$

CS-501.1A  
(NEW 12/90)

DATE 3-23-93  
31 SB-323

CHILD SUPPORT  
 DEBT COMPUTATION WORKSHEET

AMENDED

IV-D Case Number: 88635941

Forrest Graves

(Obligor)

Noreen K. Seibert

(Obligee)

MO/YR	AMT OF AFDC PAID	TOTAL SUPPORT DUE STATE OBLIGEE	MEDICAL PENALTY DUE	PAYMENTS REC'D	RE- TAINED BY STATE	PAID TO OBLI- GEE	MEDICAL PENALTY REC'D
PRIOR BAL.		15080 <sup>00</sup>	—	—	5041.13	5041.13	
6/90	AFDC cont	390		300 <sup>00</sup>	300 <sup>00</sup>	—	
7/90		390		—	—	—	
8/90		390		400 <sup>00</sup>	400 <sup>00</sup>	—	
9/90	Subsidization verified by workers comp	390		390 <sup>00</sup>	390 <sup>00</sup>	—	
10/90		390		390 <sup>00</sup>	390 <sup>00</sup>	—	
11/90		390		390 <sup>00</sup>	390 <sup>00</sup>	—	
12/90		390		390 <sup>00</sup>	390 <sup>00</sup>	—	
1/91		390		—	—	—	
2/91	Subsidization verified by workers comp	390		—	—	—	
3/91		390		—	—	—	
4/91		390		—	—	—	
5/91		320 <sup>00</sup>	70 <sup>00</sup>	390 <sup>00</sup>	320 <sup>00</sup>	70 <sup>00</sup>	
6/91		390	—	—	—	—	
7/91	AFDC closed 7/31/91	344 <sup>00</sup>	46 <sup>00</sup>	390 <sup>00</sup>	344	46	
8/1		390		—	—	—	
9/1		390		500 <sup>00</sup>	—	500 <sup>00</sup>	
10/1		390		490 <sup>00</sup>	—	490 <sup>00</sup>	
11/1		390		—	—	—	
12/1	NOREEN request closure	390		—	—	—	
5/92		—		100 <sup>00</sup>	100 <sup>00</sup>	—	
6/92		—		100 <sup>00</sup>	100 <sup>00</sup>	—	
7/92		—		100 <sup>00</sup>	100 <sup>00</sup>	—	
1		—					
1		—					
TO- TALS		20424 <sup>00</sup>	Closed 2/1/92		9371.13	8265.13	Closed

Date Last Update Prepared: 9-10-92

Prepared by: OR

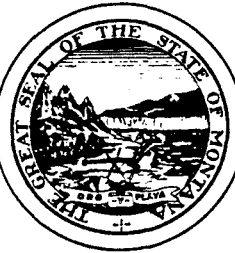
- TOTAL AMOUNTS OWED -

DATES OF THIS DEBT CALCULATION	SUPPORT DUE OBLIGEE: \$
FROM: <u>6-88</u>	SUPPORT DUE STATE: \$ <u>12,158.87</u>
TO: <u>Current</u>	MEDICAL PENALTY DUE: \$
	TOTAL SUPPORT DUE: \$ <u>12,158.87</u>

CS-501.1A  
 (NEW 12/90)

DEPARTMENT OF STATE LANDS

EXHIBIT 3  
DATE 3-23-93  
SB 202



STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2074

1625 ELEVENTH AVENUE  
HELENA, MONTANA 59620

December 4, 1992

Stewart Nash  
Past President  
P.O. Box 631  
Lewistown, MT 59457

RE: Proposed legislation for trespass for survey purposes.

Dear Mr. Nash:

The Department of State Lands (DSL) has reviewed the proposed legislation you asked us to review. The DSL legal staff saw no obvious legal pitfalls and did not see any reason why we could not support the legislation.

The Land Administration Division also reviewed and felt the proposed language looked good. The Division did have some comments which you may wish to consider:

The ten day response time may not be sufficient for public agencies. It may be difficult in some situations for the DSL to respond regarding any stipulations within ten days. You may wish to consider extending this time frame.

A common concern of landowners is off-road vehicle travel. You may wish to consider adding a restriction that vehicular trespass by surveyors is limited to established roads unless pre-approved by the landowner.

Does the "damages" provision include clearing of shrubs, trees and other vegetation? Should this type of activity require pre-approval of the landowner?

Another common concern of landowners regarding trespass is with the spread of noxious weeds. Does the "damages" provision cover the noxious weed issue or should it be covered separately?

Perhaps another consideration which might make the proposal more palatable to landowners would be to provide a copy of the completed surveys to the landowner.

Stewart Nash  
December 4, 1992  
Page 2

Thank you for the opportunity to review and comment on this proposed legislation. Feel free to contact me if you have questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. Jeff Hagener", written over the typed name.

M. Jeff Hagener, Administrator  
Lands Administration Division

c. Marylee Norris



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE  
P.O. BOX 110  
LEWISTOWN, MONTANA 59457  
(406) 538-8706



EXHIBIT #3  
DATE 3-23-93  
SB-252

February 4, 1993

Senator John Hertel  
Capital Station  
Helena, Mt 59620

Re: Senate Bill 252 To Exempt Professional Land Surveyors from Criminal Trespass Law

Dear Senator Hertel:

The U.S. Fish and Wildlife Service supports the effort to create a law to exempt professional land surveyors from criminal trespass. The FWS had to survey property in Garfield County last year to locate the property line between the Government and a hostile landowner. The potential threat of trespass charges prevented the surveyors from locating survey monuments within the private property. The situation required locating more distant monumentation on Federal land to complete the survey. This caused the survey work to cost more because substantial additional time was required. Had the situation been a little different and alternate monumentation not been available, it would have been impossible to complete the survey.

In addition to the legal aspects of being able to do a survey, the surveyors were subjected to harassment by the land owner. This included threats of trespass charges if they crossed onto the owners property and an on site visit by the County Sheriff.

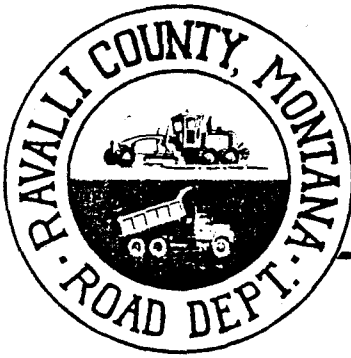
A law to protect surveyors from trespass charges is essential if they are going to be able to perform the necessary work expected of their profession.

If you wish to discuss this further please give me a call.

Sincerely,

John R. Foster  
Refuge Manager

cc: (blind) Pat Carson, Reg. Office, Denver  
Stewart Nash, Nash Surveying  
Craig Roberts, Dept State Lands



# Ravalli County Road Department

244 Fairgrounds Road • Hamilton, Montana 59840  
(406) 363-2733

COUNTRY ROADS TAKE ME HOME

House Judicial Committee  
c/o Stewart Nash  
P.O. Box 631  
Lewiston, Mt. 59457

February 18, 1993

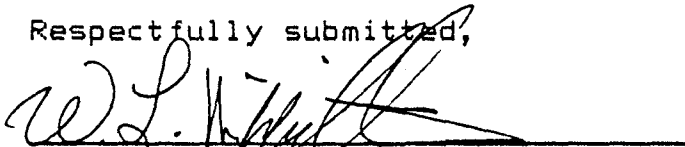
RE: SB 252

I have been engaged in the surveying profession since 1959 and have been a registered professional land surveyor in Montana since 1972. I have operated a survey office in the Bitterroot for 17 years. As such I have, on occasion, had difficulty gaining access to public land survey corners. The result of access denial is no survey or have your client obtain a court order at additional expense and considerable delay.

SB 252 will save time and money for all landowners, not surveyors. Access denial problems encountered by surveyors are simply passed on to clients (landowners) in the form of fees and delays. In order to maintain and preserve the right to ownership of private property we must have a method of determining and maintaining property boundaries. This method should be as simple and as inexpensive as possible.

I support SB 252 and urge you to approve this bill.

Respectfully submitted,

  
W.L. Higginbotham  
Road Supervisor  
Montana PLS 37128



CONCERNING AN EXEMPTION TO THE CRIMINAL TRESPASS LAWS FOR CERTAIN  
INDIVIDUALS WHO ENTER PROPERTY FOR SURVEY PURPOSES

The absence of the right of entry to the Registered Professional Land Surveyor of Montana, or those who are under the direct supervision of such a person as an employee, agent or representative denies them one of the basic tools by which to competently complete their work and remain within the laws and abide by the rules governing surveys.

Many surveyors have been denied access to private lands, at one time or another, in attempting to conduct surveys for their clientele. This denial may occur at some point of time after a previous illegal trespass by an inconsiderate surveyor, or because of poor relationships between neighbors, a "bad" survey by a previous surveyor - therefore they are all incompetent, or I just don't like the Highway Department and the power company charges too much.

Whatever the reason, <sup>for the denial</sup> the land surveyor cannot always determine accurate property corners and boundaries of their client and adjoining properties without having all of the controlling corners and evidence at their disposal.

The Montana Corner Recordation Act 70-22-102 gives the following as its purpose It is the purpose of this part to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners thereby providing for property security and a coherent system of property location and identification of ownerships and thereby eliminating the repeated necessity for reestablishment and relocations of such corners where once they are established and located.

When this purpose is denied by a land owner, it is also a denial for the land surveyor to carry out the guidelines as outlined in the Professional Engineers and Land Surveyors Laws and Rules Sub Chapter 12, Rules of Professional Conduct 8.48.1202 SAFETY, HEALTH AND WELFARE OF THE PUBLIC PARAMOUNT IN THE PERFORMANCE OF PROFESSIONAL DUTIES

(1) Registrants shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.

(a) Registrants shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgement is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate. <sup>Access denial to perform accurate surveys is overruling the surveyor's best judgement and is a detriment to the public</sup>

The following State and Federal regulations including pertinent definitions are the basic laws in which a Registered Professional Land Surveyor must adhere to, in effort to carry out the previous regulation.

PROFESSIONAL ENGINEERS AND LAND SURVEYORS LAWS AND RULES

Definitions 37-67-101(7) "Practice of Land Surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences and:

- (a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;
- (b) measurement and allocation of lines, angles, elevations and coordinate systems;
- (c) monumenting of property boundaries;

## Definitions 70-22-103

- (1) A "property corner" is a geographic point on the surface of the earth and is on, a part of, and controls a property line.
- (2) A "property controlling corner" for a property is a public land survey corner or any property corner which does not lie on a property line of the property in question but which controls the location of one or more of the property corners of the property in question. *These controlling corners are the key to most surveys*
- (3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.
- (4) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.
- (5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.
- (6) A "monument" is an accessory that is presumed to occupy the exact position of a corner.
- (7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and which serves to witness the corner.

## MONTANA'S SUBDIVISION AND SURVEYING LAWS AND REGULATIONS

Chapter 3, Part 4 - Survey Requirements 76-3-402(3) All divisions of sections into aliquot parts and retracement of lines must conform to United States Bureau of Land Management instructions, *over*

### SUB-CHAPTER 30 - UNIFORM STANDARDS FOR MONUMENTATION, CERTIFICATES OF SURVEY AND FINAL SUBDIVISION PLATS.

8.94.3001 (c) Prior to the filing of any subdivision plat or certificate of survey for record the land surveyor shall confirm the location of sufficient monuments to reasonably assure the perpetuation or reestablishment of any corner or boundary or retracement of the survey -----.

(e) The plat or certificate shall clearly show the relationship of all adjacent monuments of record and the relationship of the monuments of record to monuments set after filing.

(h) If the land surveyor uses any previously established monument he must confirm the location of the monument. If properly confirmed and shown and described on the filed certificate or plat, such a monument shall be considered a monument of record.

### CORNER RECORDATION ACT

70-22-110 Surveyor to rehabilitate monument. In every case where a corner record of a public land survey corner is required to be filed under the provisions of this part, the surveyor must reconstruct or rehabilitate the monument of such corner and accessories to such corner so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

EXHIBIT #3  
DATE 3-23-93  
SB-252

MANUAL OF SURVEYING INSTRUCTIONS 1973  
U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT,

THE DEPENDANT RESURVEY

6-25 The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified original corners and other acceptable points of control, and, second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey.

5-6 The recovery of previously established corners is simplified by projecting retracements from known points. The final search for a monument should cover the zone surrounding one, two, three, or four points determined by connection with known corners. These corners will ultimately control the relocation in case the corner being searched for is declared lost.

5-8 No decision should be made in regard to the restoration of a corner until every means has been exercised that might aid in identifying its true original position. The retracements will indicate the probable position and will show what discrepancies are to be expected. Any supplemental survey record or testimony should then be considered in the light of the facts thus developed.

The supplement to the 1973 Manual "Restoration of Lost or Obliterated Corners and Subdivision of Sections " States on page 25 under FUNCTION OF THE LOCAL SURVEYOR. --- His work may be simple, or quite complex, depending largely upon the existence of the original corner monuments or acceptable perpetuations of the corner positions.

Since the corners established in the original survey are controlling, it is essential that these corners be found, or properly restored, before the actual field work involving the subdivision-of-section is undertaken. The section boundaries should be retraced to develop the actual bearing and lengths of the lines between the corners. *back*

These regulations are paramount procedures by which the professional land surveyor performs their field work. The necessity to gain entry onto any lands that contains evidence which will aid in the proper restoration or identification of corners and monuments, is of the utmost importance.

By gaining this much needed tool, the surveying profession will be obligated to exercise care and proper restraint, respecting the property over which they perform surveys. They should be held responsible for any damages incurred upon entering private lands and should enter only after proper notification.

The following proposed bill is a serious attempt to address these concerns.

Attn: John N. Lee

1 page

EXHIBIT 4  
DATE 3-23-93  
SB 260

CODE OF ALABAMA  
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\*\*\* THIS SECTION IS CURRENT THROUGH THE 1992  
SPECIAL SUPPLEMENT \*\*\*  
\*\*\* (1992 REGULAR, ORGANIZATIONAL AND SPECIAL SESSIONS) \*\*\*

TITLE 30. MARITAL AND DOMESTIC RELATIONS  
CHAPTER 4. HUSBAND AND WIFE  
ARTICLE 3. CRIMINAL DESERTION AND NONSUPPORT PROCEEDINGS

Code of Ala. § 30-4-57 (1992)

§ 30-4-57. Proof of marriage and parenthood; communications between husband and wife not privileged; testimony of husband and wife; evidence of willful abandonment or desertion

No other evidence shall be required to prove marriage of such husband and wife or that such person is the lawful father or mother of such child or children, than is or shall be required to prove such facts in a civil action. In all prosecutions under this article, any existing provisions of the law prohibiting the disclosure of confidential communication between husband and wife shall not apply, and both husband and wife shall be competent and compellable witnesses to testify to any and all relevant matters, including the fact of such marriage and the parentage of such child or children. Proof that a person has left his wife, child or children in destitute or necessitous circumstances, or has not contributed reasonably to their support for a period of 10 days after his departure, shall constitute prima facie evidence of willful intention to abandon or desert his said family.

HISTORY: Acts 1919, No. 181, p. 176; Code 1923, § 4494; Code 1940, T. 34, § 104.

CITED in Ex parte Newsome, 212 Ala. 168, 102 So. 216 (1924); Smith v. King, 277 F. Supp. 31 (M.D. Ala. 1967).

USER NOTE: For more generally applicable notes, see notes under the first section of this subdivision, division, article, chapter, subtitle or title.

Att: John McKee

4 pages

DEERING'S CALIFORNIA CODES ANNOTATED  
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\*\*\* THIS SECTION IS CURRENT THROUGH THE 1993  
SUPPLEMENT (1992 SESSION) \*\*\*

PENAL CODE

PART 1. Crimes and Punishments

TITLE 9. Of Crimes Against the Person Involving Sexual Assault,  
and Crimes Against Public Decency and Good Morals

CHAPTER 2. Abandonment and Neglect of Children

Cal Pen Code § 270e (1993)

§ 270e. Proof of marriage or parenthood; Confidential communications; Proof of wilfulness; Admissibility of final establishment of paternity or nonpaternity

No other evidence shall be required to prove marriage of husband and wife, or that a person is the lawful father or mother of a child or children, than is or shall be required to prove such facts in a civil action. In all prosecutions under either Section 270a or 270 of this code, Sections 970, 971, and 980 of the Evidence Code do not apply, and both husband and wife shall be competent to testify to any and all relevant matters, including the fact of marriage and the parentage of a child or children. Proof of the abandonment and nonsupport of a spouse, or of the omission to furnish necessary food, clothing, shelter, or of medical attendance for a child or children is prima facie evidence that such abandonment and nonsupport or omission to furnish necessary food, clothing, shelter or medical attendance is willful. In any prosecution under Section 270, it shall be competent for the people to prove nonaccess of husband to wife or any other fact establishing nonpaternity of a husband. In any prosecution pursuant to Section 270, the final establishment of paternity or nonpaternity in another proceeding shall be admissible as evidence of paternity or nonpaternity.

HISTORY:

Added Stats 1911 ch 379 § 1 p 688; Amended Stats 1955 ch 938 § 1 p 1834; 1957 ch 1855 § 3 p 3256; Stats 1965 ch 299 § 138 p 1367, operative January 1, 1967; Stats 1976 ch 1170 § 3.

NOTES:

AMENDMENTS:

1955 Amendment: Added the next to the last sentence.

1957 Amendment: (1) Substituted "Section 270a or 270" for "Section 270" in the second sentence; and (2) added the last sentence.

1965 Amendment: Substituted "Sections 970, 971, and 980 of the Evidence Code do" for "any existing provisions of law prohibiting the disclosure of confidential communications between husband and wife shall".

1976 Amendment: Substituted "spouse" for "wife" after "nonsupport of a" in the third sentence.

**LAW REVISION COMMISSION COMMENT:**

1965 Amendment: The revision of Section 270e merely inserts a reference to the pertinent sections of the Evidence Code. [Recommendation, 1965.].

**CROSS REFERENCES:**

Proof of marriage: CC @ 4103.

Statute making one fact prima facie evidence of another fact as establishing rebuttable presumption: Ev C @ 602.

Uniform Act on Blood Tests to Determine Paternity: Ev C @@ 890 et seq.

Privilege not to testify against spouse: Ev C @@ 970 et seq.

Privilege for confidential marital communications: Ev C @@ 980 et seq.

**COLLATERAL REFERENCES:**

Witkin & Epstein, Criminal Law (2d ed) @@ 358, 832, 833, 2660, 2662, 3320.

Witkin Crimes pp 527, 529.

Witkin Criminal Procedure @ 348A.

Witkin Evidence 2d p 785.

Witkin Summary (9th ed) Husband & Wife @ 18.

Witkin Summary (8th ed) pp 4656, 4739.

Cal Jur 3d (Rev) Criminal Law @ 992.

Cal Jur 3d Family Law @@ 62 et seq., 154 et seq.

Cal Digest of Official Reports 3d Series, Parent and Child @ 17.

23 Am Jur 2d Desertion and Nonsupport @@ 105 et seq.

**LAW REVIEW ARTICLES:**

Admissibility of testimony of wife by alleged spurious marriage. 26 SCLR 452.

**ANNOTATIONS:**

Admissibility, in disputed paternity proceedings, of evidence to rebut mother's claim of prior chastity. 59 ALR3d 659.

**NOTES OF DECISIONS**

Where the legal obligation to support exists and the defense of the father is his inability to furnish such support, either because of his inability to communicate with his child or because of his lack of means, this section applies and proof of the omission is prima facie evidence that such omission is wilful. People v Wallach (1923) 62 CA 385, 217 P 81.

Where the evidence showed that the defendant abandoned and left his wife in a destitute condition, refusing and neglecting to provide her with necessary food, clothing, shelter and medical attendance, the evidence was sufficient to show that the defendant wilfully refused and neglected to provide his wife with the necessities of life. People v Martin (1929) 100 CA 435, 280 P 151.

In a prosecution for failure to support a minor child, assuming that an instruction as to the legitimacy of children born in wedlock placed on the defendant the burden of proving the illegitimacy of the child, any possible error in that regard was

cured by another instruction that the jury could not find the defendant guilty unless the evidence satisfied them beyond a reasonable doubt that the defendant was the father of the child. *People v Cagigas* (1945) 69 CA2d 301, 158 P2d 971.

Proof of nonsupport of a wife or children constitutes prima facie (or presumptive) evidence that the abandonment was wilful. *People v Hewlett* (1951) 108 CA2d 358, 239 P2d 150.

Presumption raised by provisions in § 270 and this section, that "Proof of. . . the omission by such father to furnish necessary food, clothing, shelter or medical attendance or other remedial care for his child is prima facie evidence that such. . . omission. . . is wilful and without lawful excuse" is not enough to prove innocent person guilty of offense of failure to provide for minor children, since language of statutes refers to case where "father" of minor child fails to provide for "his" child; man's neglect of child raises no presumption that he is guilty of violating law; to make out case, proof is required beyond reasonable doubt that neglected child is his. *People v Crawford* (1962) 205 CA2d Supp 858, 23 Cal Rptr 566.

Words "lawful father" mean father of legitimate child since, though father of illegitimate child is often referred to as natural father, he is never called lawful father, and, if words, "lawful father" were to mean father of either legitimate child or illegitimate one, word "lawful" would be surplusage, which it must be assumed Legislature did not intend it to be. *People v Grant* (1963) 212 CA2d Supp 947, 28 Cal Rptr 694.

Provision that no other evidence shall be required to prove that person is lawful father of child than is required to prove such facts in civil action does not obviate requirement that guilt of wilful failure to support minor child must be proved beyond reasonable doubt; it provides for prima facie finding of paternity but jury can only convict if it finds beyond reasonable doubt that defendant is father of child and has failed to support it. *Patterson v Municipal Court* (1965) 232 CA2d 289, 42 Cal Rptr 769.

Provisions that in child nonsupport prosecution presumption of paternity may be raised as in or from proceedings in a civil action does not require defendant to persuade jury of his innocence, but means that prima facie showing of paternity may be made by preponderance of evidence; if such showing appears, defendant need merely go forward with evidence to raise reasonable doubt that he is father of child, and when he has done so, he enjoys benefit of presumption of innocence; it is then incumbent on prosecution to establish his guilt beyond reasonable doubt. *Patterson v Municipal Court* (1965) 232 CA2d 289, 42 Cal Rptr 769.

Provisions of this section do not provide that final establishment of paternity or nonpaternity in another proceeding is res judicata as to such issues in child nonsupport prosecution but merely provide that such establishment is admissible in evidence; effect thereof is only to provide rebuttable presumption that paternity does or does not exist. *Patterson v Municipal Court* (1965) 232 CA2d 289, 42 Cal Rptr 769.

Paternity is an essential element of the crime of wilful failure to support a minor child (Pen Code, § 270), and Pen Code, § 270e,

in effect provides for a prima facie finding of this element by such evidence as would be sufficient to determine paternity in a civil action; however, if such showing appears by a preponderance of the evidence the defendant need merely go forward with evidence to the extent of raising a reasonable doubt that he is the father of the child, and a jury can convict only if it finds beyond a reasonable doubt that defendant is the father and that he has failed to support it. People v Sorensen (1968) 68 C2d 280, 66 Cal Rptr 7, 437 P2d 495, 25 ALR3d 1093.

In a paternity action in which defendant refused to respond to requests for admissions that would give rise to a conclusive presumption (Evid. Code, § 620) that defendant's wife's child was a child of the marriage (Evid. Code, § 621), on the ground of his privilege against self-incrimination, defendant could not constitutionally be required to respond to the requests for admissions in the absence of a tender of use immunity for past failure to support the child. Pen. Code, § 270e, provides for admissibility of a final establishment of paternity in "any prosecution" pursuant to that section, and it thus did not appear from a consideration of all the circumstances that defendant's answer to the requested admissions could not possibly have a tendency to incriminate him. However, defendant had no right to use immunity with respect to criminal prosecution for possible future failure to support. While the privilege of self-incrimination applies in some cases to prospective acts, the hazards of incrimination must be substantial and real, and not attenuated. Smith v Superior Court (1980) 110 CA3d 422, 168 Cal Rptr 24.



**SECRETARY OF STATE  
STATE OF MONTANA**

EXHIBIT 5  
DATE 3-23-93  
SB 425

**Mike Cooney  
Secretary of State**



**Montana State Capitol  
Helena, MT 59620**

Testimony in Support of SB 425

Before the House Judiciary Committee

March 23, 1993

Presented by Garth Jacobson

Mr. Chairman and members of the House Judiciary Committee, for the record I am Garth Jacobson, representing the Office of the Secretary of State. I am here to testify in support of SB 425.

SB 425 implements Constitutional Amendment 22, which was approved by the electorate last November. C-22 corrected a flaw in the timing of judicial elections. Under the prior constitutional language an appointed judge could avoid facing an election challenge until the completion of Senate confirmation. This requirement meant that some appointed judges served on past the expiration of the terms of their predecessors. Then when they finally faced an election they were elected to a shortened term of office. SB 425 adjusts the timing of the elections for judges following their appointments.

SB 425 makes Senate confirmation a requirement if possible. However, in most cases, the appointed judge would face an election challenge at the first general election following his or her appointment. This procedure would place the election of judges at higher priority than their confirmation. This would remove any unreasonable delays in subjecting the appointed judge to the scrutiny of the voters.

Let me give you some examples of how SB 425 operates:

Example 1. Judge A resigns Jan 1 on the year the legislature meets. The Governor appoints Judge X on March 1 of that year to fill the vacancy. The Senate confirms Judge X on March 15. Judge X then faces an election challenge at the next statewide election cycle. Judge A wins the general election and serves out the remainder of the term.

Example 2. Judge B resigns January 1 on the year the legislature is not in session. The Governor appoints Judge Y to fill the vacancy. The appointment is made before the primary election filing deadline. Judge Y faces an election challenge that year during the election cycle. Judge Y wins the election challenge and serves out the remainder of term.

Example 3. Judge C resigns July 1 between the primary and general election. Judge C has 5 years remaining on his term of office. The Governor appoints Judge Z to fill the vacancy. Judge Z does not face an election challenge at the November election. Judge Z faces the Senate confirmation process and is confirmed. Judge Z then faces an election challenge at the next regular statewide election cycle. Judge Z wins the election challenge and serves out the remainder of the term.

Example 4. Judge D dies on primary election day during the year he is up for re-election. The governor appoints Judge W as his replacement and also names Judge W as a candidate for the upcoming election. Judge W wins at that election and serves the next full term.

SB 425 still provides that if the Senate fails to confirm the appointee then another appointment must be made. Further it continues the process that if the judicial incumbent is unopposed in the general election then the voters still have an opportunity to not retain the judge.

SB 425 would have minimal impact on elections, from an election administrator's viewpoint. Except for elections held at the end of the term of a judicial office, an appointment would not cause any disruption to the process. A judicial appointment made after the filing deadline and not at the end of the predecessor's term of office would not stand for election at the immediate primary or general elections. Therefore there would not be any problems with disruption of the ballot printing process due to having to add an extra judicial race to the ballot.

The only time when the ballot may have to be adjusted would be if the appointment is made during the last year of the predecessor's term of office. If the judge vacating the office was also a candidate then it would be treated as a withdrawal of a candidate for election purposes. In that case then the provisions of Section 13-14-118, MCA would control the process.

In conclusion SB 425 provides the necessary implementation of C-22. It provides the electorate the soonest practical opportunity to elect the judge of their choice. Therefore, I urge your favorable recommendation of SB 425.

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

JUDICIARY COMMITTEE BILL NO. SB 252  
 DATE 3-23-93 SPONSOR(S) J. Hirtel  
 PLEASE PRINT PLEASE PRINT PLEASE PRINT

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HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 260  
DATE March 23, 1995 SPONSOR(S) S. Bartlett

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HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

COMMITTEE

BILL NO.

*SB 425*

DATE *March 23, 1993* SPONSOR(S)

*B. Brown*

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Garth Jacobson</i>	<i>Sec of State</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 217  
DATE March 23, 1993 SPONSOR (S) L. Grosfield  
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