MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD,** on January 19, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 155, SB 190, SB 191, SB 201, 1/17/1999
Executive Action: SB 190, SB 191, SB 201, SB 33, SB 152

HEARING ON SB 155

Sponsor: **SEN. DALE BERRY, SD 30, Hamilton**

Proponents: **Zane Sullivan, Montana Association of Realtors**
Rod Wilson, Montana Association of Realtors
Steven Mandeville, Real Estate Licensee

Opponents: **Al Smith, Montana Trial Lawyers Association**

Opening Statement by Sponsor:

SEN. DALE BERRY, SD 30, Hamilton, introduced SB 155. He explained that the bill addressed Megan's law which involves the registration and identification of sex offenders. This creates a burden of enforcement on licensees. There are problems involved due to the rural nature of Montana and the poor reporting process. This legislation will reduce some of the liability for licensees.

Proponents' Testimony:

Zane Sullivan, Montana Association of Realtors, maintained that real estate licensees in the state respect, honor and intend to uphold the concepts and theories of Megan's Law. This is a very worthwhile and commendable act. In 1995, the legislature enacted a disclosure law effective and applicable to real estate licensees in the state. This is called the "adverse material fact disclosure". The disclosure of adverse materials facts includes that the real estate licensee disclose those items affecting property which materially affects its value, those items that affect the structural integrity of the property, and those items which present a documented health risk.

Does a real estate licensee have the obligation to investigate the whereabouts of a registered sexual or violent offender relative to properties that are being sold? Montana does not have any uniform registration system whereby this information can be obtained. For example, in Flathead County there are books available at the sheriff's office in which the name of the offender and an address is written. However, they do not know when the address was entered or whether the offender has moved.

There is also a question regarding how close to the property does the offender need to live before there is a responsibility to report this information. If this is disclosed and the offender has moved, the property may be stigmatized. This information needs to be made available to the consumer by the intended reporting office, law enforcement agencies, and not by real estate licensees.

Six or seven states have elected to opt out of any investigation or disclosure requirement for real estate licensees. This bill attempts to clarify the obligation of a real estate licensee. At the present time, the current adverse material fact definition excludes information that the property was the site of a homicide, suicide, or other felony. Also excluded from the

disclosure requirement, is information regarding the last occupant having a communicable disease.

They do not attempt to lessen the disclosure requirements of Megan's Law. Section 46-23-511 is to be amended. The language presently states that state and local governmental entities, private entities, officers, or employees of an entity are not liable for negligence and failing to disclose or disclosing information relative to the registration process or the individuals registered under the act. The proposed bill expands this to clarify a private entity by adding the language "private entity or an individual".

He provided a copy of a proposed amendment, EXHIBIT(jus14a01). This merely adds to the definitional change of an adverse material fact that communicable disease, homicides, suicides, and other felonies are not within the scope of disclosure nor are the materials in the registration act.

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Rod Wilson, Montana Association of Realtors, remarked that real estate professionals are recognized as experts in marketing properties and facilitating the sale or lease of properties and they should not be required to assume responsibility for notifying home buyers or renters of the location of released sex offenders.

Steven Mandeville, Real Estate Licensee, rose in support of SB 155.

Opponents' Testimony:

Al Smith, Montana Trial Lawyers Association, presented his written testimony in opposition to SB 155, EXHIBIT(jus14a02).

Kate Cholewa, Montana Womens Lobby, stated that it is not good policy to allow an individual to knowingly sell a house next to a pedophile to a family with children without advising the family of the situation.

Scott Crichton, American Civil Liberties Union, commented that before 1995 there were no laws to require both the registration for life and the notification for certain sex offenders. The judiciary decided which cases warrant public notification of address of a sex offender. Last session, this power was taken away from the judiciary and given to local law enforcement to decide a three-tiered level of rating sex offender's risk to the community. Only the high risk offenders were mandated to have

notification of addresses made public. The House expanded that list in HB 76. The list is being expanded to people who may be considered moderate threats. It seems to be hypocritical to ignore the responsibilities of knowingly identifying who lives next door when someone is purchasing a home.

{Tape : 1; Side : A; Approx. Time Counter : 9.20}

Questions from Committee Members and Responses:

SEN. DOHERTY questioned whether an amendment which only left the concurring information to notify under the sexual registration statutes would be acceptable. This would eliminate the immunity and pertinent facts language. **Zane Sullivan** stated that would be acceptable but there would be a problem with a conflict between the registration requirement of the act versus the disclosure requirement of the real estate licensing law.

CHAIRMAN GROSFIELD asked why this did not only apply to the Title 46 concerns. **Zane Sullivan** explained that subsection (10) is an effort to clean up the definition of an adverse material fact. In 1995, this language was left in the legislation. The industry believes that an adverse material fact incorporates the same concepts as are involved in subsection (10). This does not specifically deal with Megan's Law but seems to be incorporated in the definition of an adverse material fact.

CHAIRMAN GROSFIELD asked for the definition of how close a sex offender needed to live to the property before this needed to be disclosed. **Mr. Smith** responded that it would be impossible to set out what would be reasonable. Professionals should exercise their discretion. If a selling point for the property is that it is near a local park and there is a sex offender living near the park, that would be an adverse material fact.

CHAIRMAN GROSFIELD believed it would be difficult for a broker to have confidence that he or she was covered. There is no test. **Mr. Smith** stated that if immunity was given that it was not necessary to notify of a sex offender, it should be clear in a contract up front that this information is available as well as where it is available.

Mr. Sullivan maintained that the last page of the bill continues to have the language regarding good faith failure to release information. The only lessening of liability is where there is a good faith failure to release information. If a real estate licensee has direct knowledge that a registered offender is living next door to the property that is being sold, they have an obligation to disclose this information. The only grant of

immunity is for a good faith failure to disclose. Most of the counties in the state do not have a source of information for use by the consumer or the licensee.

SEN. DOHERTY remarked that "all pertinent facts" would be a catchall phrase that would require disclosure in those instances when a fact might be pertinent to a sale but not necessarily adverse. **Mr. Sullivan** responded that this was the problem with the language prior to 1995. The enactment of adverse material facts was an effort to make more clear exactly what it was about a property that a licensee should attempt to identify and disclose to the consuming public. There are now two standards which include an adverse material fact and something called a pertinent fact.

SEN. DOHERTY suggested changing "all pertinent facts" to "all material facts" for consistency. **Mr. Sullivan** agreed.

CHAIRMAN GROSFIELD asked about the status of registration in the counties. **Mike Batista, Department of Justice,** explained that the central repository is maintained in their division. Sex or violent offenders are required to register with their local law enforcement officials. This information is forwarded to the Department of Justice. There is a retroactive date of 1989 for sexual offenders and 1991 for violent offenders. The department is providing inventory lists to local law enforcement since they are responsible for public notification. The department is also responsible for registering out-of-state offenders who come into Montana. The program is in the infancy stage. Complete inventory lists should be sent out in the next few months. This is being done currently for the counties and cities where they believe they have accurate information. This information is continually updated.

CHAIRMAN GROSFIELD remarked that the bill could include that the local sheriff's office had this information. **Mr. Smith** responded that this would give the potential buyer the knowledge of how to obtain the information. This doesn't do much as far as the grant of immunity. The proposed legislation strikes "negligence, gross negligence, willful or wanton misconduct". This is a material change. If the language of "pertinent fact" was removed this could be construed as a higher standard.

Mr. Sullivan responded that many of the real estate licensees in the state in applicable situations are already providing a notice to the consumer that this information may be available at the local sheriff's office. However, most of the counties do not have a registration format in place at the present time. Notice to the consumer would be effective once this becomes available.

SEN. HOLDEN asked how the realtors became involved in the notification process. He believed this responsibility was with the law enforcement agencies. **Ms. Sullivan** stated that in 1995 when adverse material facts language was passed, the Montana Sexual and Violent Offender Registration Act was already in place. When the Federal Megan's Law passed it raised the question as to the obligation of a real estate licensee relative to this issue. A number of states have passed opt out provisions for real estate licensees to make it clear that this is not the source of information and have placed it back with law enforcement and the consumer.

He added that even where the information appears to be available within the county law enforcement agency, they have repeatedly refused to give out this information on the grounds that it was confidential criminal investigation information.

{Tape : 1; Side : B; Approx. Time Counter : 9:43}

SEN. DOHERTY remarked that it may be necessary to define proximity. **Mr. Sullivan** responded that what may be a workable definition for proximity in one community may not be in another community.

SEN. HALLIGAN asked how law enforcement defines proximity in respect to giving notice. **Mr. Batista** explained that there isn't a uniform application as to how local law enforcement is disseminating this information. Some use the newspaper while others have the information in a book. There are three levels of violators. Level three, the most likely to reoffend violator, is the only level where the exact address will be provided. For a level two violator, the name and the county in which the person resides can be disclosed. For a level one violator, only the name is disclosed. Since local law enforcement is responsible for registering offenders in their communities, they should have a good list of who resides in their community that is on the registry. The department will provide a quality control mechanism as well as information on out-of-state offenders.

Closing by Sponsor:

SEN. BERRY remarked that in Billings or Missoula, the neighborhood could be two or three blocks. In Big Timber, it could be the entire town. In Jordan, it could be two or three counties. If the local sheriff's department can't or won't give the location of a sex offender and he happens to be next door to the house that is sold, the licensee is still held accountable. This is a huge liability. There are two many unanswered questions involved. He called his local county attorney for

information about this issue. He was told to call the undersheriff. The undersheriff explained that the only information he could give was a name because they were worried about their liability. A month later they decided that they could give the name and the offense. Finally, they decided they could give an address but they would not be able to maintain the addresses. Until this is sorted out, licensees should not be held liable for disclosure.

There is no one in the real estate industry who is opposed to Megan's Law or disclosing there is a sex offender in any location that they believe is material to a sale of a property.

HEARING ON SB 190

SEN. MIKE HALLIGAN, SD 34, Missoula, introduced SB 190. This bill was brought to the Committee by the Code Commissioner. There was a Supreme Court case in which an individual who was convicted in municipal court, tried to exercise his right to a jury trial when this was appealed to district court. They were denied that right. The Supreme Court held that the second jury trial right could not be taken away. This bill allows for that second opportunity for a jury trial.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Greg Petesch, Code Commissioner, explained that this bill uncodifies the law passed last session that restricted a defendant in a misdemeanor case to a single jury trial. That election needed to be made up-front that the trial would either be held in the lower court or in district court. The Supreme Court held that although Article II, Section 24, of the Montana Constitution refers to a jury trial, Article II, Section 26, provides that the right to a jury trial is inviolate. Since the district court proceeding is de novo, a new trial in which new evidence can be presented, the restriction on election was in violation of Article II, Section 26.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. HALLIGAN closed on SB 190.

HEARING ON SB 191

SEN. REINY JABS, SD 3, Hardin, introduced SB 191, which is legislation suggested by the Code Commissioner. The bill will resolve existing statutory conflict between Section 25-13-101 and 102. Both provide a general six year time limit for executing on a judgment. Rule 23(b) of the Montana Justice and City Court Rules of Civil Procedure incorporates a six year limit by reference. On page 1, line 17, this bill amends Section 27-2-201 to make the five year period for commencement of an action in Justice and City Courts agree with the six year time period contained in the other sections. This bill makes Section 27 coincide with other sections of the codes.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Greg Petesch, Code Commissioner, maintained that this legislation simply resolves a statutory conflict on the time for executing on a judgment that was rendered in a court of limited jurisdiction. This problem was brought to his attention by the Justice of the Peace from Yellowstone County. Since the Supreme Court used the six year statute, it seems most appropriate to amend this statute to coincide.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. JABS closed on SB 191.

HEARING ON SB 201

SEN. WALTER MCNUTT, SD 50, Sidney, introduced SB 201, which is legislation requested by the Code Commissioner. This bill is to clarify when jeopardy occurs in a trial.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Greg Petesch, Code Commissioner, explained that this statute has been invalid since 1978 in terms of when jeopardy attaches in a criminal trial for purposes of determining multiple prosecutions for the same offense. In 1978, the U.S. Supreme Court held that

Montana's statute, which has remained on the books and unchanged, was in violation of the federal double jeopardy provision. The Court pointed out in a case decided in 1998 that the legislature has not addressed that statute. This issue arose again in Keating v. Sherlock. This bill will clarify the statute so that jeopardy attaches when the jury panel is sworn.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. MCNUTT closed on SB 201.

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EXECUTIVE ACTION ON SB 190

Motion/Vote: SEN. DOHERTY MOVED THAT SB 190 DO PASS. The motion carried unanimously. (9-0)

EXECUTIVE ACTION ON SB 191

Motion/Vote: SEN. DOHERTY MOVED THAT SB 191 DO PASS. The motion carried unanimously. (9-0)

EXECUTIVE ACTION ON SB 201

Motion/Vote: SEN. DOHERTY MOVED THAT SB 201 DO PASS. The motion carried unanimously. (9-0)

EXECUTIVE ACTION ON SB 33

Ms. Lane explained that the amendments SB003304.avl EXHIBIT(jus14a03) have been agreed to by the Department of Corrections. The bill as originally drafted put in a definition of regional correctional facility that it did not include a private prison licensed by the department. The reason they wanted the language is because they did want private prisons that may run a regional correctional facility to be licensed by the department. This was in direct conflict with existing language in the code that stated that private correctional facilities can include a regional correctional facility. The intent was that they wanted the bill to state that a regional correctional facility, if it is run by a private entity, would have to be licensed and authorized by the Department of Corrections. The amendments amend the definition of regional correctional facilities and the laws relating to regional correctional facilities to make it very clear that if a regional correctional

facility is run, owned, or operated by a private entity they need to have the construction approved and the operation has to be licensed by the Department of Corrections.

Motion: **SEN. HOLDEN MOVED TO AMEND SB 33.**

Discussion:

SEN. GRIMES questioned whether this would place these correctional facilities under some additional state authority.

CHAIRMAN GROSFIELD explained that this bill states that non-resident inmates charged or convicted in other states cannot be housed in the state portion of these facilities. Amendment 10, page 3, states that a person charged or convicted in another state or charged or convicted in federal court may not be housed in the state correctional facility portion of a regional correctional facility unless a confinement is under and governed by the interstate corrections compact, and the department authorizes the placement of the person.

CHAIRMAN GROSFIELD further raised a concern regarding precluding the department from accepting any other inmates from out of state. He suggested that on page 3, subsection (10), the line beginning with "or 4, and" should be changed to "or 4, unless". This gives the department the ability to authorize other inmates if the need arises.

SEN. MCNUTT remarked that the covenant regarding the Shelby prison was that there would be no out-of-state prisons housed at that facility.

CHAIRMAN GROSFIELD commented that this language would state "unless the department authorizes".

Diana Leibinger-Koch, Department of Corrections, explained that the people at Shelby were assured that there would not be out-of-state inmates housed at the facility. It was the intent of Corrections Corporations of America (CCA) to try to have the ability to place out-of-state inmates there if the department did not fill the prison. The department had a problem with that because the administration and the Governor have a problem with placing out-of-state inmates in a correctional facility in this state.

The intent of the legislation last session was that out-of-state inmates would not be brought to Montana. Contract lawyers found a loophole which involved someone charged or convicted in federal court.

SEN. HOLDEN raised a concern with the possibility of bringing out-of-state prisoners into the state. He conceded that at some future date for economic reasons it may be necessary for a change in public policy. He added that the amendment would give the department the power to make a decision in this regard. He believed this to be a public policy decision which should be made by the legislature if the time arose that out-of-state inmates were needed to fill the facilities.

SEN. BARTLETT believed that the section being referred to was limited to "regional correctional facilities" and not the entire private prison system. The provisions in place for a private prison would remain in place.

CHAIRMAN GROSFIELD affirmed. If the same change were to be made to private correctional facilities, a change would need to be made on page 15, line 15.

SEN. BARTLETT questioned if there was a contractual or legal provision which stated that state prisons would first be placed in the regional correctional facilities and only after the state's obligation to those facilities have been fulfilled would beds be taken in the private prison.

Ms. Lane stated that there may be contractual obligations but she was not aware of anything in statute. The Department of Corrections and the Governor gave a letter of intent to the group that was considering building a regional correctional facility in Butte. This letter of intent was that they would guarantee them a minimal number of state prisoners before the prisoners were sent to the private prison. She added that current law, and the amendments as drafted, when addressing federal prisons from being kept in the regional correctional facility, only place the restriction on the state-funded side of the regional correctional facility. The detention center side of the regional correctional facility can house the out-of-state prisons and federal prisons.

Ms. Leibinger-Koch, affirmed that the department did give the group from Butte a letter of intent in order for them to get financing for the project. That has since been rescinded. They will have a inmate population in the state for at least the next four years that will keep all the facilities full.

SEN. HOLDEN withdrew his motion.

EXECUTIVE ACTION ON SB 152

Motion: **SEN. GRIMES** moved that **SB 152 BE AMENDED** - SB0015202.avl EXHIBIT(jus14a04).

Discussion:

SEN. GRIMES explained that the amendments addressed concerns of the educational community. Amendment l would allow for parents to exclude their children from education the parents consider inappropriate. School administrators have told him that this is in their statewide policy.

He added that **Loren Frazier, School Administrators Association,** advised that one of the reasons that parents' rights legislation passed in other states is because it was basically the same as the school board policy on parents' rights. This is addressed by the amendment.

The original federal legislation, which was signed by 140 Congressmen, stated that the act shall not apply to the items addressed in amendment 2. Page l of SB 152, lines 23-24, (b) and (c), had qualifiers in the federal legislation. Those elements are on page 1, lines 27-29.

SEN. BARTLETT questioned the word "appointment" in amendment 2 (a). **SEN. GRIMES** explained that this was taken from the federal statutes. For Montana statutes, the language could read "application of the parenting plan".

SEN. BARTLETT raised a concern with the first amendment with regard to mandatory attendance. **SEN. GRIMES** suggested changing the wording to "portion of education".

CHAIRMAN GROSFIELD remarked that if he didn't want his child involved in watching an R rated movie, he could approach the teacher or the school board regarding this issue. **SEN. GRIMES** maintained that child advocates will put on a seminar and the parents don't have knowledge of this. Teachers may not be involved in this session.

CHAIRMAN GROSFIELD believed that the way this type of thing is discovered is when the child comes home from school and talks about what they did in school that day. **SEN. GRIMES** stated that as a parent he had a right to know in advance about what his children would be taught. This legislation could place an additional incentive for those schools to know the content of the material presented to children in the school.

SEN. HOLDEN referred to a situation wherein an English freshman teacher had students read books that contained descriptions of the act of fornication. The students would receive a failing grade if they did not complete the assignment. He explained that he discussed this issue with **Nancy Keenan, Office of Public**

Instruction. The only protection the students had was that the teacher had to provide the principal with a weekly class agenda. Supervision was slack in that the administrator did not know what was going on in the classroom. **Ms. Keenan** discussed this issue with him. Ultimately the teacher's job was terminated.

Ms. Lane, referring to amendment l, stated that the word "appointment" could be substituted with "allocation" or "adjudication".

SEN. GRIMES suggesting stating "domestic relation cases concerning the allocation of parental agreements."

Ms. Lane maintained that parenting plans should not be referenced. This needs to be more generic and broad.

SEN. GRIMES revised amendment 2 by striking the word "appointment" and inserting the word "allocation". He also would strike "between parents". Amendment 1 would be changed by inserting the word "portions of" before the word education.

SEN. BARTLETT raised a concern that "portions of education" could mean the parent may not want their child to take first year algebra and this class is a requirement for graduation.

SEN. HALLIGAN remarked that regarding the situation in **SEN. HOLDEN'S** area, the parents had enough rights to be able to have a teacher fired. This was a severe consequence for one violation. The school board dealt with the issue.

SEN. DOHERTY maintained that a fundamental right would trump a state policy. This would introduce a new level of scrutiny that a reviewing court would need to use when it examines any conflict between laws. The unintended consequences of this bill would be very large.

SEN. GRIMES maintained that the bill addressed a U. S. Supreme Court decision that recognized the right of parents to direct the upbringing of their children as a fundamental right.

SEN. DOHERTY explained that he had not read the cases mentioned in the bill and during testimony. He could not find the cases. These cases are from 1923 and 1925 and don't relate to today's circumstances.

CHAIRMAN GROSFIELD remarked that the amendments did not address the fact that the teacher could give the child a failing grade for not completing an assignment in a class that was objectionable.

Vote: The motion failed on roll call vote - 4 yes, 5 no.

Motion/Vote: SEN. HOLDEN MOVED TO AMEND SB 152 (SB0015201.avl), EXHIBIT(jus14a05). The motion carried unanimously 9-0.

Motion: SEN. HOLDEN MOVED SB 152 DO PASS AS AMENDED.

Ms. Lane explained that when the legislature passes a law, the courts will look at the law to determine whether or not it is constitutional. The courts particularly look at equal protection, due process, etc. When reviewing equal protection, the courts have established some tests to decide whether or not a law is constitutional. The rational basis test includes that if there is a rational basis for the law, it is constitutional and would be upheld. If the court applied a strict scrutiny test to a law, they had to determine that there was a compelling state interest for the legislature to make that law. A strict scrutiny test is difficult to meet.

In the past 20 years, the U.S. Supreme Court and the Montana Supreme Court have recognized a middle tier test which is less than strict scrutiny but more than rational basis. A fundamental right will need to meet the strict scrutiny test. A compelling state interest is difficult to prove and almost never passes constitutional muster.

In certain cases, the Montana Supreme Court has said that any right which is specifically enumerated in the Montana Constitution is a fundamental right. This includes the right to privacy, due process, equal protection, right from discrimination, etc.

CHAIRMAN GROSFIELD questioned the significance of page 1, line 20, if a period followed the word "children". **Ms. Lane** stated that she believed parental rights are fundamental rights under the Constitution and pertain to the life and liberty clauses. If the legislature enumerates something as a fundamental right, it muddles the situation. Passing this bill would confuse the issue of parental rights.

SEN. GRIMES remarked that the purpose of the legislature is to establish the right incentives. There were 140 Congressmen who signed onto this legislation. Parents rights are being eroded.

SEN. BARTLETT explained that she had a concern with Section 3 which raised a doubt about whether or not Child Protective Services, in a case of real abuse or neglect, would have the authority to remove a child whose physical well being and safety is in danger. She also believed that in addition to the

rights of the parents, the bill needed to address their responsibility to their child.

SEN. DOHERTY stated that he did not want government interference in minor everyday occurrences of a family.

SEN. HALLIGAN stated that he is guardian ad litem, the children's attorney, in about 40% of his caseload. He believes there was only one case in the last ten years where the Department of Family Services overstepped their bounds. In 99% of the cases, the facts were there to justify intervention. Bad parents would use fundamental rights in a way that is not intended by this legislation.

SEN. JABS commented that parents have rights under present law. This legislation may give unreasonable people more power than is intended.

Vote: The motion failed on roll call vote - 1 yes, 8 no.

Motion/Vote: SEN. HALLIGAN MOVED THAT SB 152 BE TABLED. The motion carried on roll call vote, 9-0.

Additional exhibit, Memo dated 1-18-99 from **Loren Frazier, School Administrators of Montana, EXHIBIT(jus14a06).**

EXECUTIVE ACTION ON SB 33

SEN. BARTLETT remarked that last session there was a concern that the private prison would not take precedence over the regional correctional facilities in terms of the placement of state prisoners. She question whether there was anything, either contractual or legal, which would establish the priority in which people would be assigned to the regional correctional facilities as opposed to the private prison.

Rick Day, Director of the Department of Corrections, responded that the regional prisons are a county/state cooperative. In the agreements, the department guarantees 50% of the state capacity. In the regional prisons they are both financially bound. If the county changes its mind, it would owe the state its investment. If the state were to change its mind, the county would inherent the property free and clear. These agreements were not made with the private firm.

SEN. BARTLETT questioned whether in the case that there were not enough prisoners to fill the 50% commitment to a regional correctional facility, would the department be paying as if the beds were filled. **Mr. Day** affirmed that would be the situation.

Motion: **SEN. HOLDEN MOVED TO AMEND SB 33 (SBOO3304.avl - exhibit 5.**

CHAIRMAN GROSFIELD commented that he had earlier suggested an amendment that would not allow prisoners on the state side unless the department authorized the placement and it was approved by the appropriate authority. **Mr. Day** stated that their position is clear in that they told the public that they would not allow out-of-state inmates in these facilities. These prisons were to serve Montana inmates. The current process does not interfere with the sheriff's ability to operate the county detention side of the facility and contract as he deems appropriate. He believed this was a good structure.

Vote: **The motion carried 8-1 with SEN. GROSFIELD voting "no".**

Motion/Vote: **SEN. MCNUTT MOVED THAT SB 33 DO PASS AS AMENDED. The motion carried unanimously, 9-0.**

ADJOURNMENT

Adjournment: 11:37 A.M.

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SEN. LORENTS GROSFIELD, Chairman

_____
JUDY KEINTZ, Secretary

LG/JK

EXHIBIT(jus14aad)