MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD,** on March 16, 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: HB 559, 3/16/1999
Executive Action: HB 27, HB 53, HB 65, HB 149, HB 310

HEARING ON HB 559

Sponsor: **REP. AUBYN CURTISS, HD 81, Fortine**

Proponents: **Bobbie Rossignol, Citizen**
Arla Jean Marie, Montana Stockgrowers and Montana Cattle Women
Wally Sept, Citizen

Lorna Karn, Montana Farm Bureau Federation
Jay Sage, Citizen
Riley Johnson, National Federation of Independent Business

Opponents: **Don Judge, AFL-CIO**
Lee Arbuckle, Montana League of Women Voters
Ralph Peck, Director of the Department of Agriculture
Beth Baker, Department of Justice
Kathleen Martin, Department of Public Health and Human Services
Anne Hedges, Montana Environmental Information Center
John North, Department of Environmental Quality
Van Jamison, Montana Wildlife Federation
Janet Ellis, Montana Audubon
Don MacIntyre, Department of Natural Resources
Al Smith, Montana Trial Lawyers

Opening Statement by Sponsor:

REP. AUBYN CURTISS, HD 81, Fortine, introduced HB 559 which is an act providing compensation for the owner of a parcel of real property, the fair market value of which is substantially and disproportionately reduced by the action of a state government agency.

Proponents' Testimony:

Bobbie Rossignol, Citizen, presented her written testimony, **EXHIBIT(jus59a01).**

Arla Jean Marie, Montana Stockgrowers and Montana Cattle Women, rose in support of HB 559.

Wally Sept, Citizen, remarked that acquiring and holding property is the universal engine driving prosperity. Coercive measures by government are both inefficient and invariably produce unintended results and are sometimes used to bargain away the true value of property. Property owners deserve nothing less than a fair market value when the subject of property falls into question. Municipal and county governments, if allowed to continue as they are, will destroy property rights entirely.

Lorna Karn, Montana Farm Bureau Federation, commented that in 1995 the Legislature passed HB 311, which was look-before-you-leap legislation. It required the state agencies to assess the

taking implications of state regulations before they were adopted. The Attorney General developed guidelines for the state agencies to use in determining whether the action had a takings implication. She reported from a Political Economic Research Center publication from 1995. This report stated that owners have little or no control of how their property can be used, yet the government pays no compensation. The Fifth Amendment states that no person shall be deprived of life, liberty or property without due process of law. Nor shall private property be taken for public use without just compensation. House Bill 559 defines a taking and allows for compensation of that taking. A taking creates a trigger point at which a regulation is presumed to have become a taking. Such bills entitle a property owner to automatic compensation upon proof that a government regulation reduced the value of his or her property by a certain percentage. House Bill 559 uses 20% as the compensation of taking. Property owners are only asking to be compensated when the government, through its action, deprive a property owner of his or her property, thus reducing the fair market value of the property.

Jay Sage, Citizen, remarked that if there is a necessity to regulate and decrease the value of someone's property, there also must be a community benefit to the action. The property owner should be justly compensated. Regulatory takings can be just as devastating to the property owner as seizing the property.

Riley Johnson, National Federation of Independent Business, rose in support of HB 559.

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Opponents' Testimony:

Don Judge, AFL-CIO, presented his written testimony, **EXHIBIT(jus59a02).**

Lee Arbuckle, Montana League of Women Voters, commented that they believe that wise decision making on resource management requires protection of private property rights. He presented his written testimony, **EXHIBIT(jus59a03).**

Ralph Peck, Director of the Department of Agriculture, claimed that one role assigned to the Department is the responsibility to regulate plant pests in an effort to protect our industry and the consumers, while minimizing the damage to Montanans as well as neighboring states and countries. The Quarantine and Pest Management Act, Title 80, Chapter 7, Part 4, authorizes the Department to adopt rules imposing quarantines to protect Montana agriculture. These rules could include a quarantine, a stop

sale, or even destruction of an infected crop to prevent the spread of disease in Montana. The Legislature intended this function to provide citizen protection for Montana and our state's commerce as a benefit, not only to the non-affected citizens and producers but also to the affected citizens and producers to eliminate and limit pest damage. While an individual may suffer immediate short term loss through no fault of his or her own, such a loss could greatly be outweighed by the gain in stopping this spread of a pest disease. This bill would make it difficult for the Department to issue and implement quarantines to protect agriculture commodities and preserve markets and the safety of crop lands in the state.

{Tape : 1; Side : A; Approx. Time Counter : 9.27}

Beth Baker, Department of Justice, explained that HB 311 required the Attorney General's Office to prepare guidelines and a checklist under the Montana and Federal Constitution, **EXHIBIT(jus59a04).** These guidelines identify legal standards and provide agencies with a frame work for analyzing their actions on a case-by-case basis. In contrast, HB 559 creates new standards and new obligations not recognized under any developed law. House Bill 311, now codified in Title 2, Chapter 10, of the Montana Code, requires agencies to use constitutional standards in evaluating their actions.

Section 8 would add to the definition of taking or damage causing a substantial and disproportionate reduction in the fair market value in a manner requiring compensation under the Fifth and Fourteenth Amendments to the Constitution. This is confusing. Under a constitutional takings analysis, a loss in the value of property only begins the inquiry. Other factors include consideration of the rules and restrictions that were in effect when the person purchased the property to determine the owners reasonable expectations at the time of purchase and the public interest and value served by the regulation.

There hasn't been a showing of a need for this legislation. The guidelines prepared in 1995 contain 15 cases decided by the Montana Supreme Court in this area since 1903. Six of those cases involve challenges to local regulation, which would not be covered by this bill. Eight of those challenges involved state statutes, also not covered by this bill.

There was one case that involved an administrative action by the State Highway Department. The case, which was decided in 1998, involved the construction of the Reserve Street Bridge in Missoula. Reserve Street had been designated a state highway before any of the properties in question were purchased. Several

property owners sued the Highway Department for a taking because the construction of the bridge devalued their property due to the increased traffic. The Court held that there was no physical taking of the plaintiff's land. When they purchased the property, the easement was already set wide enough to accommodate the traffic. Highways are constructed for a public benefit and the plaintiffs could not show that they suffered peculiar interference. Even though the property may have gone down in value as residential property, the property owners benefitted because the value of the property increased as commercial property. Under HB 559, would this be an agency action under Section 3.

There are over 200 years of court decisions that have developed a careful approach to dealing with the situations striking a balance between the government's responsibility to protect private property on one hand and to protect the public health, safety, and welfare on the other. The U.S. Supreme Court has ruled in favor of landowners, twice in recent years.

The passage of this bill will spawn litigation. There will need to be a case-by-case evaluation in the courts, to determine whether compensation is due a particular property owner.

Kathleen Martin, Department of Public Health and Human Services, remarked that the **Food and Consumer Safety Division** licenses and regulates a variety of establishments for public health purposes. Rule changes and application of regulation in these areas may well affect the real property value of the licensed establishments. The cost is unique to each establishment. Section 4, which defines disproportionate, is a vague phrase. It states that if the reduction is significantly greater than any prevailing level of reduction in the fair market value of real property as a result of agency action, the real property has been taken or damaged for public use and the owner or possessor may require just compensation from the state agency or state agencies that implemented the agency action. The term "significantly greater" is vague and will encourage litigation

An existing flow-through hot spring pool that does not meet the statutory requirements for water turnover rate, may be required to build a lagoon. Estimated costs for correction of these problems could amount to $100,000. Failure to correct these problems would result in high bacteria counts in the water exposing swimmers to a variety of water born diseases and the illegal discharge of sewage into state waters. This legislation would make it necessary for the state to pay for the renovations to that pool.

The bill is also unclear about what point in the process is considered implementation of agency action. Section 5 requires that an action be brought within two years after the date of the implementation of the agency action. Without knowing when the clock starts, it is not possible to know when time has run out.

Anne Hedges, Montana Environmental Information Center, pointed out that there is no reason for this legislation because there are no examples where governmental regulation is being so unfair to property owners that it needs compensation.

On page 2, line 11 explains what is exempt from being considered an agency action. It states that an agency action that abates a public nuisance or prevents a prospective public nuisance when the owner of the real property claiming compensation is willfully, wantonly, or negligently contributing to or threatening to contribute to the public nuisance. The definition of nuisance in law has nothing to do with willful, wanton, or negligent behavior. Line 14 states the issuance of a use permit is not considered an agency action. She questioned the definition of a "use" permit.

Page 3, line 5 speaks to compensation. This is incredibly convoluted.

John North, Department of Environmental Quality, presented his written testimony, **EXHIBIT(jus59a05).**

{Tape : 1; Side : B; Approx. Time Counter : 9.47 - 2.4 speed}

Van Jamison, Montana Wildlife Federation, stated that this legislation would harm the property and other rights of average Montanans because it would impose standards contrary to the balanced approach prescribed in the Constitution. In Wyoming, advocates of taking approaches similar to HB 559 have suggested that game management regulations constitute a taking because they interfered with the owner's right to hunt as they saw fit on their property. In Missouri, the creation of a wildlife management area on state lands was claimed to be a taking because it required taxpayers to pay for crops that were eaten by migratory ducks and geese. The courts in both Wyoming and Missouri rejected the takings arguments made in favor of the balanced public policy interpretation of the Constitution.

Janet Ellis, Montana Audubon, remarked that last session a similar bill was introduced. The fiscal note stated that the consensus of all affected state agencies is that litigation will result from passage of the bill. The Department of Transportation anticipated that the legislation would have cost

them $350,000 over the biennium. She added that anything under the Endangered Species Act would not apply since that is a federal law. She referred to her written testimony which included a state agency list of laws to which this legislation might apply, **EXHIBIT(jus59a06)**.

Don MacIntyre, Department of Natural Resources (DNRC), remarked that it is true that people who own property have rights to the protection of those properties. Obligations go along with that. Montana's Constitution states that we are entitled to health, safety, and happiness in all lawful ways.

Al Smith, Montana Trial Lawyers, remarked that on lines 15 and 16 on page 2, the language speaks to an agency action necessary to implement a federal statute or regulation or a federal or state court order. Their members see this as an opportunity for increased litigation. Also, line 15 on page 3 awards costs and attorneys fees to the prevailing party. In most civil litigation, the party is responsible for paying their own attorneys fees. Also on page 3, lines 27 and 28, rather than a discretionary award of attorneys fees, this is a mandatory award.

{Tape : 1; Side : B; Approx. Time Counter : 10.23}

Questions from Committee Members and Responses:

SEN. HOLDEN asked **Ms. Rosignol** why she was supporting this legislation. **Ms. Rosignol** remarked that she is experiencing takings at the local level through master planning and zoning. She is a proponent of property rights. She believes that master plans and zoning should also be included in this process. They live on Highway 93 south of Missoula. The area has not been zoned. Currently they are in the process of implementing a master plan. Highway 93 is the busiest highway in the state. They own several acres of frontage land which was planned as residential land. This land is currently in agriculture but they had planned for this land to be commercial.

SEN. HOLDEN questioned the intent of the legislation with regard to exemptions. **REP. CURTISS** explained that the bill does not urge state agencies to disobey the law. It states that agencies need to be responsible for their actions and planning. State agencies may have a very grandiose idea in the beginning of a project. After considering the funds needed to pay for such an action, they could modify the same so that it would be realistic.

SEN. DOHERTY questioned if the State of Montana would have to pay the National Park Service when they disposed of a buffalo. **Director Peck** responded that the state did not have to pay for

disposing of a buffalo. If the buffalo tested positive for brucellosis, they were taken to a slaughter facility. He added that under this legislation this may need to be addressed.

SEN. HALLIGAN questioned the takings application in an adoption of a comprehensive plan or a zoning policy which may affect someone's property. **Ms. Baker** remarked that their guidelines did not apply to local governments, but the same principles do apply. Under the takings clause, the government is allowed to enact and enforce regulations that restrict the use of property to the extent that it furthers the public health, safety, or morales. The government may establish requirements in return for permission to use property in a certain way. The courts look at whether the regulations have reduced the value of property. Also, they will look at the extent to which the regulation has interfered with investment backed expectations of the property owner. The court also looks at the character of the government action. A taking can be found if it involves a physical invasion of the property. An example is the Toston Irrigation District. The local irrigation district ended up flooding a person's property. Due to the way the irrigation water was diverted, a portion of the property became unusable. The court held that this did require compensation.

Page 6 of the guidelines, which she referenced earlier, spoke to land use regulation. Much of the litigation in the Supreme Court has been over zoning.

CHAIRMAN GROSFIELD remarked that the Montana Constitution addressed taking or damaged. He asked for further information regarding the "damage" portion involved. **Ms. Baker** explained that this is an unsettled area of law. There are several Montana Supreme Court cases that address the damaging impact. In a case involving the City of Billings, there was a showing of a 30% decline in value of certain property. The Court was careful to discuss why compensation was required. It involved a street project and property on the other side of the street had been condemned and there were zoning changes. On the side of the street where the plaintiffs lived, the City had denied any zoning change to allow them to make this commercial property.

SEN. HALLIGAN questioned whether HB 559 applied to local governments. **Ms. Baker** replied that it did not.

SEN. HALLIGAN asked for any examples of where this bill may apply. **REP. CURTISS** remarked that this would take place after an allegation had been made.

SEN. HALLIGAN asked why the bill did not have a fiscal note? **REP. CURTISS** explained that the fiscal note last session was so escalated that it was of no value. The Congressional Budget Office addressed this by stating that the fears expressed about the lack of a fiscal note should be put to rest by a report done at the national level by the Congressional Budget Office on the Omnibus Property Act, S 605. This analysis predicted that relatively few claims would result in payment because of requirements that compensation payments be made from agency appropriations would cause the agencies to try to resolve as many claims as possible without paying compensation by reversing or modifying permit decisions or enforcement actions, by processing applications more quickly and by working more closely with landowners to negotiate permit conditions.

SEN. GRIMES asked if legislation from other states was considered in the development of this legislation. **REP. CURTISS** stated that she is aware of several U.S. Supreme Court decisions. These include Nolan v. California Coastal Commission, Lucas v. South Carolina Coastal Council, and Galt v. State Department of Fish, Wildlife and Parks.

SEN. GRIMES remarked that at the bottom of page 2 of the bill it stated that real property had been taken or damaged for public use. **REP. CURTISS** remarked that part of one's property could be taken by a right-of-way which would limit the access to and from one's property.

SEN. GRIMES maintained that a property owner could decide to subdivide and a neighbor could allege that a state agency either approved the subdivision or the sanitary restrictions were lifted, etc. How would charges by an adjoining property owner be addressed? **REP. CURTISS** remarked that this bill addressed actions before the legislation was enacted. The agencies would be aware of the situation previous to the time of the action. The threshold in the bill is 20% loss of value.

CHAIRMAN GROSFIELD asked what was wrong with the sentiment expressed in Section 6, page 3, lines 20-22. **Mr. North** commented that he understood the section to maintain that an applicant could not be required to waive any rights to compensation.

CHAIRMAN GROSFIELD further questioned what was wrong with the sentiment expressed if this were limited to only the constitutional protection rather than the bill. **Mr. North** responded that an agency would not have the ability to require people to waive their constitutional rights to just compensation.

{Tape : 1; Side : B; Approx. Time Counter : 10.51}

Closing by Sponsor:

REP. CURTISS remarked that under Montana's Private Property Assessment Act, state agencies should consider the following obligations imposed by the Fifth and Fourteenth Amendments to the Constitution of the United States in Article II, Section 29 of the Montana Constitution as construed by the U. S. Supreme Court and the Montana Supreme Court when considering and implementing an action with taking or damaging implications in order to avoid unanticipated and undue burdens on the state treasury. She further remarked that the **Society of American Foresters** have made the statement that regulations imposed on private forest landowners in some circumstances discourage cooperative efforts to provide increased forest resource benefits for all people. There are instances where regulations affecting private forest landowners justify compensation under the Fifth Amendment of the U.S. Constitution.

She added that the situation which **Ms. Baker** referred to in Missoula occurred before this bill was drafted. However, when a property owner loses use in value of his property because of regulations, he is not compensated. It is only fair that all landowners be compensated when a property is converted to public use.

EXECUTIVE ACTION ON HB 27

Motion: **SEN. BISHOP** moved that **HB 27 BE CONCURRED IN.**

Discussion:

SEN. BISHOP related that in unlawful detainer actions there are many different time lines which need to be followed. This provides that all time lines be consistent.

Vote: Motion **carried unanimously - 8-0.**

EXECUTIVE ACTION ON HB 53

Discussion:

CHAIRMAN GROSFIELD called attention to line 25 on page 1. There was some concern about a deputy coroner standing in place of a coroner in his absence. He added that the term "deputy coroner" is defined in a separate section of statute. He suggested that after the word "coroner" the wording "or deputy coroner" be added.

Motion/Vote: **SEN. BARTLETT** moved that **HB 53 BE AMENDED TO ADD THE TERM "DEPUTY CORONER" FOLLOWING THE WORD "CORONER". Motion carried 8-0.**

CHAIRMAN GROSFIELD further called attention to page 2, line 11, which addressed no more than 12 witnesses being present. The wording "excluding Department of Corrections staff" was stricken. The concern is that a guard for the department who was present may be an issue on appeal. He suggested that this be reinstated in the bill.

SEN. BARTLETT suggested that this state "Department of Corrections staff required to carry out the execution". There is also provision for witnesses from the department.

Motion: **SEN. HALLIGAN** moved that **HB 53 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. DOHERTY remarked that if the proposed witnesses are subject to rejection by the Department of Corrections, this could open up the possibility of an arbitrary or capricious decision to deny a witness which could open up the appeal.

Ms. Baker remarked that in death penalty cases, any grounds available are used on appeal. She added that in regard to the last execution, there was a witness excluded by the Department. The Department found that a media representative hadn't complied with the pre-briefing requirements. The person was excluded. The Department may have the discretion to do this now.

CHAIRMAN GROSFIELD remarked that by having witnesses for the victim and the offender together would provide for a tremendously emotionally charged situation. He questioned whether there were two separate rooms available. **Ms. Baker** responded that in the instance of the two executions which have been held, she was not aware of any witnesses present on behalf of the offender, except their lawyers. She added that the Department would have the authority to maintain order at the prison. She didn't believe it was necessary to provide language in statute to allow them to do so.

SEN. MCNUTT added that when he visited the prison, he noticed that there was no separation for the witnesses. The execution takes place in front of the group in an open area.

SEN. BARTLETT contended that it was her understanding that the intent of the House amendments was to limit the grounds on which

the Department could exercise that discretion. She added that the execution process is so difficult on all of the people who are involved that it is an area in which the Department would be restrained in their exercise of their discretion to reject a witness and have good grounds for doing it.

SEN. MCNUTT questioned how the Department would determine who is likely to disrupt the process.

Ms. Baker suggested adding a sentence to the effect that the Department's rejection of a witness may not be grounds for stay of the execution. At the Langford execution, the reporter was quite upset that she was excluded. She had gone to the prison to make sure that she knew where she was going, but she had a gun in her car which she always carried with her. Due to a security concern, the Department told her she would not be allowed into the prison and told her not to come back. She called the Attorney General's Office approximately an hour and a half before the scheduled execution. They told her this was a security issue and it was the Department's call.

Ms. Baker added that she could see the potential for someone going to the district court an hour in advance asking for a ruling. She further suggested that a sentence be added stating that this could not be used to stay the execution.

SEN. HALLIGAN withdrew his motion to concur.

Motion/Vote: **SEN. DOHERTY** moved that **HB 53 BE AMENDED BY ADDING THE LANGUAGE THAT THE EXCLUSION OF A PARTICULAR WITNESS IS NOT GROUNDS FOR STAY OF THE EXECUTION.** Motion **carried 8-0** with **SEN. BISHOP** being excused.

Motion/Vote: **SEN. HALLIGAN** moved that **HB 53 BE CONCURRED IN AS AMENDED. Motion carried 8-0.**

EXECUTIVE ACTION ON HB 65

Discussion:

SEN. BARTLETT explained that both **Judge Larson** and the **Department of Corrections** personnel have told her that they have worked out arrangements to meet **Judge Larson's** objectives.

Motion/Vote: **SEN. BARTLETT** moved that **HB 65 BE CONCURRED IN. Motion carried 8-0.**

EXECUTIVE ACTION ON HB 310

Motion: **SEN. HOLDEN** moved that **HB 310 BE AMENDED - HB031001.avl, EXHIBIT(jus59a07).**

Discussion:

SEN. HOLDEN remarked that during the hearing it was mentioned that the word "reasonable" was not clear to people who handle these types of cases. They stated that the word "probable" would work better since it was defined and there was case law addressing the same.

CHAIRMAN GROSFIELD explained that the amendments suggested by **Lance Melton, School Boards Association,** completely changed (3) and did not include the term "reasonable".

SEN. HOLDEN withdrew his motion.

Motion: **SEN. GRIMES** moved that **HB 310 BE AMENDED - EXHIBIT(jus59a08).**

Discussion:

Mr. Melton explained that these amendments would provide that the juvenile probation officer be responsible to make the report. The language "reasonable cause" has been changed to reflect that after the investigation, if the juvenile probation officer had reason to believe . . . The only information which would be mandated to be shared would be information that impacts on the safety of children.

SEN. GRIMES remarked that under the old language, his understanding was that schools could receive the investigation report. Apparently this would no longer be the case. Is there a reason for this change? **Mr. Melton** explained that they wanted to know if there is a student in the midst of their other students who poses a threat to the safety of the other children. If this can be accomplished without having the actual report, this is all they need. They are not looking to get into the dirty details of a confidential criminal justice report.

SEN. HALLIGAN contended that peer pressure will never go away. He raised a concern about the innocent child in a crowd who was staying clean. Anyone looking at the crowd would not know that. This child could be swept into this and have criminal activity information being disclosed that really is not present.

Mr. Melton stated that the inter disciplinary child team has free flow of information without any investigation whatsoever. The

very purpose of that team is to share information and there is no obligation in existing law to have any investigation. This bill provides a greater right of due process to the student who is targeted because it can only happen after an investigation and it is only with respect to information that bears on the safety of the other children in the school. The Family Education Rights and Privacy Act dictates what school districts can do with respect to their own employees and trustees on the school board. This requires that the only people eligible to receive information that is confidential are individuals who have a legitimate educational interest in that information. If that information were shared with the superintendent of the district, the superintendent would be violating federal law if he were to tell all the teachers that student "x" might be using drugs.

{Tape : 2; Side : B; Approx. Time Counter : 11.40}

SEN. BARTLETT questioned whether it was typical for school district policies on suspension, admission, or expulsion, to exclude students who may have done some marijuana on a Friday evening but not on school grounds or at a school activity or during school hours.

Mr. Melton explained that there is a wide body of case law dealing with what school districts are allowed to do in regard to non-school hours conduct. There is a case directly on point that states that marijuana use on the weekend does not rise to the level of an offense that is within the gambit of the school district's business. It has to be something that directly impacts on the safe and orderly operation of the school district during the day. The type of off school grounds conduct that is within the jurisdiction of school districts is anything having to do with violence against any other student in the school or against a teacher during non-school hours. It comes down to the situation that if the conduct bears directly upon the safe and orderly operation of the school district, it is within the jurisdiction of the school.

SEN. BARTLETT raised a concern that the amendment did not speak to any of those restrictions. The information that could be transmitted from the probation officer to the school is much broader than the kind of information that the school is likely to act upon.

Mr. Melton responded that school districts have been authorized under a separate section of law to adopt grounds for discipline of students. School districts have that authority under Title 20, Chapter 5. This holds that a school district may adopt policies specifying grounds for disciplinary action including

suspension or expulsion. Without the language in the amendment, the law would operate in the same manner.

SEN. GRIMES understood the concerns to protect the innocent but added that there also needs to be a focus on the families that send the children to our schools so that they can have a safe learning environment.

CHAIRMAN GROSFIELD remarked that the language stated "the juvenile probation officer has reason to believe" and "the youth court shall notify". He questioned whether this would involve a discrepancy. **Mr. Melton** explained that the intent was to provide a separate source of review. There was a concern raised during the hearing about juvenile probation officers labeling someone without an appropriate reason to do so. By placing the notification requirement in the hands of the youth court, the issue would be addressed and also would allow a secondary review mechanism for when those decisions might be made in haste or in error. By placing the notification requirement in the hands of the youth court, he hoped that there may be some discussion and secondary review as a practical matter when those decisions are reached.

CHAIRMAN GROSFIELD suggested the language state "If after an investigation has been completed, a juvenile probation officer and the youth court have reason to believe, then the youth court shall . . ." **Mr. Melton** agreed with the amendment.

Ms. Lane held that the youth court included the juvenile probation officer.

Mr. Melton contended that his intent was to have someone in charge having a review process. If this was set up as the youth court judge, it would create a conflict of interest that would require the judge to recuse himself on each case that the pre adjudication decision is made. He suggested the language remain "the youth court".

SEN. GRIMES questioned whether the language relating to "upon notification" could be removed and not change the intent of the amendment since the school district can apply any policy it wants to apply. **Mr. Melton** agreed that the sentence could be removed, but he would not remove the subsequent sentence which dealt with refusal.

Motion/Vote: **SEN. GRIMES** moved that **HB 310 BE AMENDED BY STRIKING THE SENTENCE "UPON NOTIFICATION, THE SCHOOL DISTRICT MAY APPLY ITS POLICIES REGARDING ADMISSION, SUSPENSION AND EXPULSION TO INFORMATION RECEIVED FROM THE YOUTH COURT." ALSO ON LINE 2,**

FOLLOWING "A JUVENILE PROBATION OFFICER" HE WOULD ADD THE WORDS "AND THE YOUTH COURT". Motion **carried 8-0.**

Motion: SEN. MCNUTT moved that **HB 310 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. HALLIGAN believed there was exposure of civil liability with respect to the criminal activity issue. The language does not state that a youth gets to know what is in his or her file.

SEN. HOLDEN insisted that there are many good children in the school system. Where is the sense of justice for them? Why do we have to pander to the youth who want to do drugs? The good children suffer because we want to be fair to the druggie and give him every opportunity to excel in the world. Are we protecting the 500 youth in the Glendive school system who are obeying the law that we want to protect or the 10 to 20 who cause all the problems?

SEN. HALLIGAN added that 85% of the youth are in and out of the system after one offense. Current law states "the identity of a youth who for a second or subsequent time admits violating or is adjudicated as having violated a statute". He doesn't want the good youth ending up with bad records because they do not deserve it.

Vote: Motion **carried 5-3 with Bartlett, Doherty, and Halligan voting no.**

EXECUTIVE ACTION ON HB 149

Motion: SEN. GRIMES moved that **HB 149 BE AMENDED - HB014902.avl, EXHIBIT(jus59a09).**

Ms. Lane explained that the amendments were requested by **REP. DAVIES.** Amendment no. 4 was requested by the University System. The remainder of the amendments limit the bill to persons who hold a concealed weapons permit. In other words, the state could not regulate persons who hold a concealed weapons permit. The bill states that the state cannot regulate use of firearms by certain individuals. The amendment would limit the limitation to persons who carry concealed weapon permits.

SEN. BARTLETT questioned how the amendment would work with the exceptions in (2). **Ms. Lane** explained that it would not affect (2) which means that the state can still regulate the use of firearms by all of the highly trained individuals.

SEN. BARTLETT remarked that if a probation and parole officer had a concealed weapon permit, then the state could not regulate the possession of that firearm even during the working hours. **Ms. Lane** believed this involved a conflict. Subsection (1) held that the state could not limit the use of a firearm by anyone who holds a concealed weapons permit. Subsection (2) states that (1) does not apply to the following persons.

Bud Clinch, Director of the Department of Natural Resources and Conservation, stated that even with the amendment, he is in opposition to the bill. It is his own personal knowledge that securing of a concealed weapon permit is an extremely easy process to go through. The individual needs to show that he or she has had some sort of firearms training program. The minimal could be the Montana Hunters' Safety Course that his twelve year old daughter is currently attending. Any adult who has completed this course has the necessary credentials to apply for a concealed weapon permit. Following a background check, the permit is issued.

Vote: Motion **carried 7-1 with Bartlett voting no.**

Motion: **SEN. HOLDEN** moved that **HB 149 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. MCNUTT insisted that he did not want his employees carrying guns. He believed that would be the next step in this process.

SEN. GRIMES maintained that the very people who would probably choose to carry a firearm, such as a social worker or investigator, could likely be the ones we wouldn't want to carry a firearm. In a regulatory or enforcement situation, there is a high level of stress involved.

SEN. HOLDEN remarked that conservatives do not support gun control. They do not differentiate between the rights of public employees and private citizens. He added that he had asked **Judy Browning, Governor's Office,** what they used to preempt the Montana and U.S. Constitutions in backing up their gun control policies. **Ms. Browning** stated that they were using the U.S. Supreme Court ruling of 1939, Miller v. United States. This ruling has nothing to do with public or private employees having the right to keep and bear arms. It addresses not having shot guns less than 18 inches in length.

He added that a employee from the Department of Revenue told him that he had stopped at a rest stop and was held up. He had his

gun with him and backed the people into a stall and made the individuals disrobe, set their clothes outside, and left in his state vehicle. This was not reported to his boss because he believed that he would be ostracized for defending himself in that manner.

Vote: Motion **failed on roll call vote.**

Motion/Vote: **SEN. MCNUTT** moved that **HB 149 BE TABLED. Motion carried 8-1 with Holden voting no.**

ADJOURNMENT

Adjournment: 12.23 A.M.

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SEN. LORENTS GROSFIELD, Chairman

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JUDY KEINTZ, Secretary

LG/JK

EXHIBIT(jus59aad)