

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 11, 2005 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jesse Laslovich (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 562, HB 196, HB 520, HB 747, HJ
15, HJ 28, HB 474

Executive Action: None.

CHAIRMAN SEN. MICHAEL WHEAT, SD 32, BOZEMAN announced that there were seven bills to be heard. He indicated that HB 747 would be heard first. He opened the hearing on HB 747.

HEARING ON HB 747

Opening Statement by Sponsor:

REP. ROBYN DRISCOLL (D), HD 51, opened the hearing on **HB 747**, Limit liability for student construction projects.

REP. DRISCOLL handed out a letter from Darrel Rude from the School Administrators of Montana as well as a Billings Gazette article on HB 747.

EXHIBIT(jus54a01)

EXHIBIT(jus54a02)

REP. DRISCOLL claimed that HB 747 was a way to keep children in school. She stated that the bill would limit the liability of a school district for civil damages resulting from student labor. She informed the Committee that HB 747 did not limit liability arising from injuries that might occur from construction of a house. She noted that Billings has the Career Center as part of the curriculum for students that chose to go there. These students take the full English and math curriculum as well as learning jobs skills that will serve them when they graduate. In the Construction Program the students build a house that is placed for sale when completed. She feels that this program must remain as part of School District 2's curriculum. There will be full disclosure to the buyer that the building was constructed as part of a public school education program. She reserved the right to close.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 3}

Proponents' Testimony:

Dan Martin, Operations Officer of the Billings Public Schools, informed the Committee that the program in Billings operated out of the Career Center. He explained the Construction Programs operations and functions. He indicated that long term liability has been a major problem. They build the homes with warranties and up to code with certified instructors. The program provides an opportunity to teach the students a valuable trade. He said that they were currently working with the College of Technology to develop an inter-local agreement whereby students could begin

in the Construction Program and finish at the College of Technology and come out with some form of a two-year degree in the construction trade.

{Tape: 1; Side: A; Approx. Time Counter: 3 - 8.1}

Jeff Hindoien, Legal Council for Helena Public Schools, noted that Helena schools conduct similar programs through the Vocational Education Program. He told the Committee that the liability is the one area, from a risk management standpoint, which the school district has not been able to deal with. The school district takes responsibility for injuries at the job site. He asserted that they have not been able to address the ability to have a general contractor protect the school district from a law suit in the future based on its involvement in the construction process. The general contractor can not receive insurance to back up an agreement or an obligation indemnified in the school district. He thinks that HB 747 would help the school district in Helena and in Billings with these programs.

{Tape: 1; Side: A; Approx. Time Counter: 8.1 - 10.8}

Cathy Warhank, representing the Superintendent of Public Instruction, appealed for support of HB 747. She claimed that HB 747 fairly represents the interest of all parties involved. She indicated that Superintendent McCulloch urged passage of the bill.

{Tape: 1; Side: A; Approx. Time Counter: 10.8 - 11.6}

Stuart Doggett, representing Flathead Community College, Miles Community College and Dawson Community College, indicated that the community colleges support HB 747, in particular the satellite school of Flathead Community College based in Libby Montana. They view this bill as favorable legislation that would protect their interests.

{Tape: 1; Side: A; Approx. Time Counter: 11.6 - 12.1}

SEN. JEFF MANGAN, SD 12, GREAT FALLS, spoke on behalf of Great Falls Public Schools. He stated that the bill was important to his community.

{Tape: 1; Side: A; Approx. Time Counter: 12.1 - 12.6}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS, wanted to know why they needed the release from liability now if they have been building houses for 29 years without it.

Dan Martin replied that they needed it because of the trend in recent years of litigation. He indicated that the Home Builders Association told the school districts that they were not willing to expose themselves to liability alone and are concerned that there could be problems in the future. He said that the difference in the recent years of the liability issues in the housing industry has prompted their concern.

{Tape: 1; Side: A; Approx. Time Counter: 12.6 - 14.3}

SEN. O'NEIL followed up by asking if they had any dissatisfied customers that have wanted things corrected.

Mr. Martin informed the Committee that they have done warranty work. However, he claimed that they have never reached the point where a resolution couldn't be achieved by the instructor going to the home owner and fixing the details in question.

{Tape: 1; Side: A; Approx. Time Counter: 14.3 - 15.1}

SEN. O'NEIL asked if they were worried that a mistake by the students on the building would kill someone.

Mr. Martin responded that they were not worried.

SEN. O'NEIL followed up by asking what liability they were worried about.

Mr. Martin explained that they were just concerned about the unknown.

{Tape: 1; Side: A; Approx. Time Counter: 15.1 - 15.4}

SEN. BRENT CROMLEY, SD 25, BILLINGS, asked **Mr. Hindoien** what problem the bill was addressing. He wanted to know if they were saying that the private contractors were reluctant to get involved because of the liability.

Jeff Hindoien replied that in Helena they have had that precise problem **SEN. CROMLEY** put forth. The general contractors might not be able to get coverage that would recognize that they were involving high school labor on the project. What they are hoping for with this bill is that the contractor could indemnify the

school district so that they would be protected from liability in the future if there was a problem.

{Tape: 1; Side: A; Approx. Time Counter: 15.4 - 18.4}

SEN. CROMLEY followed up by stating that the bill only protected the school district. He inferred that the private contractors would still be relying on their own insurance for their own protection.

Mr. Hindoien affirmed this assumption.

{Tape: 1; Side: A; Approx. Time Counter: 18.4 - 18.7}

SEN. GARY PERRY, SD 35, MANHATTAN, wanted to know what the impact was on the contractor's liability.

Mr. Hindoien replied that it depends on the carrier. He indicated that it would not impact the contractors liability. He informed the Committee that the contractor was still expected to comply in all respects with the codes and built in accordance with professional standards.

{Tape: 1; Side: A; Approx. Time Counter: 18.7 - 20.2}

Closing by Sponsor:

REP. DRISCOLL reported that HB 747 had been strongly supported in the House. She stated that it was a bill which would keep children in schools. She pointed out that no one had shown up as an opponent to the bill. She informed the Committee that **SEN. MANGAN** had agreed to carry it on the Senate Floor if it was passed through Committee.

{Tape: 1; Side: A; Approx. Time Counter: 20.2 - 21.1}

CHAIRMAN WHEAT closed the hearing on HB 747. He opened the hearing on HB 562.

HEARING ON HB 562

Opening Statement by Sponsor:

REP. EVE FRANKLIN (D), HD 24, opened the hearing on **HB 562**, Clarify immunity of comprehensive health association members.

REP. FRANKLIN talked about the Montana Comprehensive Health Care Association (MCHA) briefly. She reported that MCHA was an independent entity that is administratively attached to the State Auditor's Office. MCHA is a high risk pool, designed for individuals who could not purchase insurance on the private market due to preexisting conditions. It is the only entity in the state who, by virtue of preexisting illness, can access health insurance. She stated that the legislation would allow the State to assess up to 1% of all health premiums sold in Montana. These health premiums go into a financial pool where individuals pay in their premiums. This pool is the money that is used to provide health insurance to the participants. There are currently 3600 participants in the state. They are not an insurance company. Blue Cross Blue Shield is the third party administrator presently, but it is a contract. The five largest carriers have a member who sits on the board. There are also two at large members and one consumer member. She asserted that the board is hands-on and manages the bills for all of the participants. The issue of immunity comes in because the members who serve on this board are volunteer members. They are not giving up immunity for malpractice for the administrator. The bill is seeking immunity for the board members. The bottom line she stated was that if there were damages brought against the Board for wrongful denial of claim or denial of eligibility, there is no backup for MCHA. She opened the bill to proponents and opponents.

She addressed the fact that there was an amendment in the House. She said that Section 2 had been stricken. However, she stated that she would be asking the Committee to reinstate that language. She reserved the right to close the bill.

{Tape: 1; Side: A; Approx. Time Counter: 21.1 - 29.1}

Proponents' Testimony:

Erin McGowan-Fincham, from the State Auditor's Office, handed out a written version of her testimony and a handout which provided information about the amendment to restore the language of Section 2.

[EXHIBIT\(jus54a03\)](#)

[EXHIBIT\(jus54a04\)](#)

Ms. McGowan-Fincham stated that HB 562 was a bill to provide immunity to the board members of MCHA, which includes the consumer representative and the insurance commissioner staff members. She reiterated some of **REP. FRANKLIN'S** information on the duties and components of MCHA. She also discussed some of

the financial aspects of the program. She explained the grievance process. She walked the Committee through the handout which dealt with the amendment to reinstate the language of Section 2. The language would allow the insured to sue the association if the Grievance Committee wrongfully denied a claim. However, it would protect the association from punitive or exemplary damage claims that could bankrupt them. She mentioned that immunity language for the high risk pools is included in the National Association of Insurance Commissioners model law for those pools.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 6.6}

Maryetta Bauer, Consumer Representative on the MCHA Board and member of the Grievance Committee, discussed the individuals who have the insurance provided by MCHA. She indicated that the claims these individuals make are often higher than the premiums which they pay in. She mentioned that the pool was a non-profit pool. She noted that everything they do on the Grievance Committee is based on law, although they do have leeway in establishing the benefits which the individuals have. They try to do the most economical actions while providing the needed insurance. She remarked that she represents the people. She does not want to be sued because she has nothing to give and the cost would eventually fall back onto Montana. She praised the individuals on the board and urged the Committee to replace the language of Section 2 into HB 562.

{Tape: 1; Side: B; Approx. Time Counter: 6.6 - 12}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. CROMLEY asked **Ms. McGowan-Fincham** if the MCHA had employees.

Ms. McGowan-Fincham replied that there were two employees for the administrator of MCHA, Blue Cross Blue Shield, that work specifically on the MCHA. She believed that MCHA pays a portion of their salary and the rest is taken care of by Blue Cross Blue Shield.

{Tape: 1; Side: B; Approx. Time Counter: 12 - 13.8}

Carol Ray, Bureau Chief of Policy Holder Services for the State Auditor's Office and Commissioner appointed Board Member for MCHA, informed the Committee that MCHA employs Linda Price at

Blue Cross Blue Shield and Lynn Smiggy who also works at Blue Cross Blue Shield. She told the Committee that the other individual whom the bill would affect was the Executive Director, Cecil Bykirk.

{Tape: 1; Side: B; Approx. Time Counter: 13.8 - 14.9}

SEN. CROMLEY followed up asking about the language which they were requesting to put back into the bill. He wanted to know if the language would exempt the employees for all non-contractual damages. As he understood the language, if any of the employees were to embezzle they would not be liable for damages.

Ms. McGowan-Fincham referred the question to the legal staff.

Christina Goe, Attorney for the Insurance Department, thought that it would be a legal question as to whether the embezzlement was in the scope of their duties. To make the law more clear she suggested referencing language from the model which says that employees and members would still be liable for willful or wanton misconduct.

{Tape: 1; Side: B; Approx. Time Counter: 14.9 - 17}

SEN. O'NEIL wondered if a lawsuit would be allowed if one of the insurance companies, who has members on the Board, did something in such a way that the MCHA could not provide insurance for an individual yet it was possible for other insurance companies, which they represent, to provide insurance and make money.

Ms. McGowan-Fincham believed that they were protecting the Board members themselves, who serve the insurers on a voluntary basis. If the members commit a willful wrongdoing they would still be liable. This bill provides immunity only for the members who serve on a voluntary basis.

SEN. O'NEIL followed up stating that he did not see where there was anything about a willful act.

Ms. Goe stated that they could make the argument that a board member was acting outside of the scope of their duties if they engaged in illegal conduct. She restated that they had taken language from the immunity which is currently in the code for the Guarantee Associations. The language has nothing about willful and wanton misconduct. However, the NEIC model language does add willful and wanton misconduct and she felt that if the Committee was concerned it could be added to the amendments.

Ms. McGowan-Fincham provided a copy of the NEIC model.

EXHIBIT(jus54a05)

{Tape: 1; Side: B; Approx. Time Counter: 17 - 21}

SEN. MANGAN wanted to know if there was going to be a problem if they amended the bill to include the language which was taken out by the House. He wanted to get a sense of how they could work with the bill and not set it up for failure.

REP. FRANKLIN thought if they could make it a better bill she would be willing to amend it and if it went back to the House then they would deal with it at that time.

CHAIRMAN WHEAT asked if there had been any lawsuits since the beginning of MCHA.

REP. FRANKLIN was not aware of any but referred him to the Commissioner's Office.

Ms. McGowan-Fincham reported that there have not been any lawsuits in Montana although there was a lawsuit in Illinois.

CHAIRMAN WHEAT stated that there was an organization that has never had a lawsuit in over 20 years who suddenly wanted immunity. He wanted to know why.

REP. FRANKLIN had asked the same question. She explained that the issue which had arisen was whether there was any opportunity for these volunteers to be defended by the State should such an instance occur.

{Tape: 1; Side: B; Approx. Time Counter: 21 - 25}

CHAIRMAN WHEAT followed up stating that as he understood things the high risk pool hires a third party administrator, who makes all of the eligibility decisions.

REP. FRANKLIN informed the Committee that a third party administrator would not be immune under this statute. She thought that there was some confusion in regard to if the funding sources come from both MCHA and the third party administrator to pay the employees salaries. She did not feel that the purpose of the bill was to protect the third party administrator. She thought that the purpose was to protect the volunteers and employees within the scope of their duties.

{Tape: 1; Side: B; Approx. Time Counter: 25 - 26.5}

CHAIRMAN WHEAT asserted that there was a third party administrator who makes all of the eligibility claims. He wondered what type of claims they were looking at when the eligibility claims were removed.

SEN. LASLOVICH arrived.

REP. FRANKLIN answered that the claims would be based on whether certain services were reimbursed or not under MCHA's process. She explained the process which might lead to a suit against the MCHA board members.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.1}

CHAIRMAN WHEAT thought that the third party administrator was the entity which accepted or denied claims.

REP. FRANKLIN clarified that the third party administrator was involved in the eligibility determination but not the management of the actual claims.

CHAIRMAN WHEAT worked through the process of how a claim was processed.

REP. FRANKLIN understood that after the claim was filed and deemed eligible the claim would go to the Board who assessed what they would be able to cover and then advise Blue Cross Blue Shield.

{Tape: 2; Side: A; Approx. Time Counter: 1.1 - 2.5}

CHAIRMAN WHEAT hoped to find out what exposure the Board actually had.

Ms. McGowan-Fincham explained that Blue Cross Blue Shield determined initial eligibility. If a consumer felt that they were wrongfully denied to enter the program then the Grievance Committee would take over.

CHAIRMAN WHEAT clarified that the determination was first made by Blue Cross Blue Shield and if the consumer is unhappy they file the grievance with the Board. The Board then reviews the decision by Blue Cross Blue Shield. They can then override Blue Cross Blue Shield or uphold their denial of benefits.

Ms. McGowan-Fincham affirmed his interpretation.

{Tape: 2; Side: A; Approx. Time Counter: 2.5 - 3.8}

CHAIRMAN WHEAT continued assuming that Blue Cross Blue Shield would not be immunized by the bill.

Ms. McGowan-Fincham affirmed this as well.

{Tape: 2; Side: A; Approx. Time Counter: 3.8 - 4.1}

SEN. CROMLEY put forth a scenario where a claim was denied by Blue Cross Blue Shield (BC/BS), even though the procedure was covered by policy, and MCHA supported BC/BS's decision. He assumed that there would not be a claim for this type of scenario under this bill.

Ms. McGowan-Fincham replied that they would also have the recourse to work under the Commissioner's Office through their Policy Holder Services Division. If the individual still feels that they were wrongfully denied a claim they could work through the Department of Insurance.

{Tape: 2; Side: A; Approx. Time Counter: 4.1 - 5.6}

SEN. CROMLEY followed up by assuming that the claim was wrongfully denied there was no cause of action as an insured to reclaim the lost money.

Ms. Goe explained that if an individuals claim was denied the first time through by the administrator then they would appeal to the Grievance Committee. If the Committee also denied the claim they would still have the right to sue the Association for wrongfully denying a claim and get the claim paid. She noted that the Association itself was a separate entity. The amendment asked that the Association be protected from punitive and exemplary damages.

{Tape: 2; Side: A; Approx. Time Counter: 5.6 - 7.1}

SEN. CROMLEY followed up stating that the way in which he interpreted the bill the Association would have immunity.

Ms. Goe indicated that the members of the Board and member insurers couldn't be sued for a decision which the Association made, which the members had nothing to do with.

SEN. CROMLEY took this to mean that it would not prevent a cause of action against the Association for a claim.

Ms. Goe responded that they had tried to limit the damages so they would not include exemplary damages.

{Tape: 2; Side: A; Approx. Time Counter: 7.1 - 8}

Closing by Sponsor:

REP. FRANKLIN stated that MCHA filled a gap for hard to insure individuals. She thinks that the bill would provide a sense of comfort in the fact that they can recruit volunteer Board members who feel that they would not have personal exposure in the event of a suit. She asked the Committee to keep the MCHA strong, healthy and functioning with the provisions in HB 562. She requested that the amendment also be accepted.

{Tape: 2; Side: A; Approx. Time Counter: 8 - 9.9}

CHAIRMAN WHEAT closed the hearing on HB 562 and opened the hearing for HB 196.

HEARING ON HB 196

Opening Statement by Sponsor:

REP. JOEY JAYNE (D), HD 15, opened the hearing on **HB 196**, Power of attorney fiduciary notice.

REP. JAYNE noted that the amended bill changed current law, citing the specific changes to the bill. She proclaimed that the statutory form of power of attorney was utilized by the general public, attorneys and by the Department of Public Health and Human Services. The reason why she wanted to amend the bill was that the Department has seen an increase in financial exploitation by powers of attorney. She indicated that the agents acting as powers of attorney will often steal money. There has been problems with prosecuting these instances because of the defense that the principal has authorized the agent to transact his or her assets, even though the principal never authorized that to the agent.

The amendment in the bill would make it clear that the agent must use any benefits derived from the power of attorney for the principal. The amendment tells the agent what their duties are as a power of attorney. The foremost duty put forth by the bill is that the agent is loyal and protects the principal, directing any benefits derived from the power of attorney to the principal and that the agent has the duty to avoid any conflicts of interest. The agent must use ordinary skill and prudence in the exercise of these duties. She reserved the right to close.

{Tape: 2; Side: A; Approx. Time Counter: 9.9 - 15.7}

Proponents' Testimony:

Rick Bartos, from the Department of Public Health and Human Services and Adult Protective Services, talked about the statutory form power of attorney. He explained what a power of attorney was to the Committee and their duties. He noted that there has been an increase in cases where a power of attorney has used their position to take money from the principal and use it for their own. He asked the Committee to delineate within the statutory form power of attorney the actual responsibilities on the part of the agent. He discussed some of the more recent cases they have been investigating.

{Tape: 2; Side: A; Approx. Time Counter: 15.7 - 20.6}

Casey Blumenthal, Montana Hospital Association, urged support of HB 196 to help protect the elderly and the ill.

{Tape: 2; Side: A; Approx. Time Counter: 20.6 - 21.7}

Alex Ward, Associate State Director of the Association for the Advancement of Retired Peoples (AARP), he provided written testimony for his support of HB 196.

EXHIBIT(jus54a06)

{Tape: 2; Side: A; Approx. Time Counter: 21.7 - 23.3}

Betty Beverly, Executive Director of Montana Senior Citizens Association, urged support of HB 196. She indicated that this bill was very important for senior citizens.

{Tape: 2; Side: A; Approx. Time Counter: 22.6 - 25.1}

Harris Himes, Montana Family Coalition Board Member, encouraged the Committee to place language into the bill that there is reputable presumption for all powers of attorney that it would only be for the benefit of the principal and that the reputable presumption must be overcome by competent evidence for it to be otherwise done.

{Tape: 2; Side: A; Approx. Time Counter: 25.1 - 27.1}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. CROMLEY commented that this was only a recommended form that would not have to be used. Because of this an unscrupulous individual could still handwrite the power of attorney and use it towards their own end. He suggested that AARP come back in a future session with a suggestion that this type of notification be required for all powers of attorney.

Mr. Ward responded that they would consider his recommendation.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 1.3}

Closing by Sponsor:

REP. JAYNE added to the testimony of the proponents that although this bill would not get the amoral individual it would give notice to the person if they use one of these forms. She asked for favorable consideration of the bill.

{Tape: 2; Side: B; Approx. Time Counter: 1.3 - 2}

CHAIRMAN WHEAT closed the hearing on HB 196.

At this time **CHAIRMAN WHEAT** left the Committee and **SEN. CROMLEY** assumed the chair.

VICE CHAIR CROMLEY opened the hearing on HB 520.

{Tape: 2; Side: B; Approx. Time Counter: 2 - 2.7}

At this time **SEN. O'NEIL**, **SEN. SHOCKLEY**, **SEN. ELLINGSON**, and **SEN. MANGAN** left the hearing.

HEARING ON HB 520**Opening Statement by Sponsor:**

REP. KEVIN FUREY (D), **HD 91**, opened the hearing on **HB 520**, Exemption from minor in possession when reporting a sexual related offense.

REP. FUREY stated that the original intent of the bill was to protect minors who were victims of sexual assault or rape. The bill would exempt minors from being charged with a minor in possession of alcohol when filing a report. They included all of Title 45, Chapter 5 on the recommendation of John Conner from the Attorney General's Office. This includes not only sexual assault and rape but also other assaults against the person. He

addressed the added language from the House Judiciary Committee. He then discussed rape statistics and surveys in the United States. He feels that as many barriers as possible need to be removed so that victims will feel comfortable coming forward and reporting their assaults. He thinks that this bill would not solve all of the problems it would solve this one barrier.

{Tape: 2; Side: B; Approx. Time Counter: 2.7 - 9.5}

Proponents' Testimony:

Jessica Grennan, Associated Students of the University of Montana, strongly supported the bill. She noted that the bill passed out of the UM Senate unanimously. She provided a couple of reasons as to why the bill should pass. She expressed that anything that could be done to ensure victims report their attacks would be a benefit.

{Tape: 2; Side: B; Approx. Time Counter: 9.5 - 11.5}

Terri Kendrick, Montana Coalition Against Domestic and Sexual Violence and the YWCA of Missoula, reiterated the statistics on rape. She agreed that removing barriers to reporting rapes would be a step in the right direction. The Coalition would do everything it could to spread the word if this bill went through. She urged a due pass.

{Tape: 2; Side: B; Approx. Time Counter: 11.5 - 12.6}

Ali Bovington, Attorney General's Office, supported the statistics of rape. She urged support of HB 520.

{Tape: 2; Side: B; Approx. Time Counter: 12.6 - 13.6}

Josh Crismore, Student of the University of Montana (UM), supported HB 520.

{Tape: 2; Side: B; Approx. Time Counter: 13.6 - 14.2}

Denver Henderson, Student at UM, stated that rape was a growing issue at the University. The largest problem was that rapes are not reported. He urged the Committee to support the bill.

{Tape: 2; Side: B; Approx. Time Counter: 14.2 - 15.1}

Matthew Singer, Student at UM, added that the current message being sent is that it is ok to commit violent crimes. He urged support of the bill.

{Tape: 2; Side: B; Approx. Time Counter: 15.1 - 15.9}

Alex Roberts, President of Sigma Nu Fraternity, stated his support for the bill.

{Tape: 2; Side: B; Approx. Time Counter: 15.9 - 16.5}

Suzanne Smith, Student of UM, professed that she had been a victim of sexual assault. She spoke of her experience reporting the details of her assault. She stood in strong support of HB 520.

{Tape: 2; Side: B; Approx. Time Counter: 16.5 - 17.5}

Craig Gordon, Student at UM, talked about the importance of early intervention in recovering from rape, trauma and substance abuse.

{Tape: 2; Side: B; Approx. Time Counter: 17.5 - 18.1}

Jace Christensen, Student at University of Montana, encouraged the Committee to reject the amendments and accept it as it was originally written to include assault and related offenses. He told a story from his life depicting the consequences of Montana's current stance on reporting incidences.

{Tape: 2; Side: B; Approx. Time Counter: 18.1 - 20.7}

Nicole Lynchard, Student at UM and Resident Assistant for Residence Life, spoke of the benefits to this bill.

{Tape: 2; Side: B; Approx. Time Counter: 20.7 - 21.3}

Nancy Mortine shared a story of a young woman who was raped. She felt that if the young woman had not been afraid to come forward at the time of the assault she could have received the care which she needed immediately. She urged so pass.

{Tape: 2; Side: B; Approx. Time Counter: 21.3 - 22.8}

Sheen Rice, Student from Montana State University, agreed that it was wrong for underage women to drink, yet she thinks that to be able to come forward with a report of sexual assault is brave whether drinking was involved or not. She urged do pass on HB 520.

{Tape: 2; Side: B; Approx. Time Counter: 22.8 - 23.7}

Jim Kembel, Montana Association of Chiefs of Police, supports the legislation for both the Association and for himself.

{Tape: 2; Side: B; Approx. Time Counter: 23.7 - 24.2}

Harris Himes, Montana Family Coalition, asked the Committee to place back into the bill the language that was amended out. He placed the proposed actions of victims as those of a whistle blower. He urged do pass on the bill.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 0.3}

Gale Price, President of the Associated Students of the University of Montana in Missoula, offered support of the Association and from herself as well.

{Tape: 3; Side: A; Approx. Time Counter: 0.3 - 0.7}

Hallie M. Brown, Student from the University of Montana, offered support of the bill.

{Tape: 3; Side: A; Approx. Time Counter: 0.7 - 1.2}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. O'NEIL asked if the information provided on Page 5, Line 9 of HB 520 referred to the visible state of intoxication of the minor reporting an assault.

REP. FUREY thought that because the individual was going to the police to report an incident the visual part would fall under statements made or information provided.

SEN. O'NEIL followed up by presenting a scenario in which a girl might use this bill in order to get out of trouble for drinking.

REP. FUREY claimed that it would not work because the intent of the bill is just for when an individual is coming into a police station or hospital to report an assault to an officer.

{Tape: 3; Side: A; Approx. Time Counter: 1.2 - 5.2}

SEN. O'NEIL followed up by saying that the intent of the bill might not be clear in the language of the bill.

REP. FUREY said that he understood that the language might not reflect the intent and he would be willing to look at it more closely. He suggested that it may need to be amended further to specify that it was intended specifically for those individuals who were going in to report an assault.

{Tape: 3; Side: A; Approx. Time Counter: 5.2 - 6.1}

SEN. DANIEL MCGEE, SD 29, LAUREL, asked that if this bill was to pass and become law would **REP. FUREY** expect people to abide by the law.

REP. FUREY asked if **SEN. MCGEE** meant abide as in the law enforcement agency not charging minors in possession.

SEN. MCGEE clarified by restating that he wanted to know if **REP. FUREY** felt that a law passed by the legislature would be followed by the people.

REP. FUREY agreed that he did expect people to follow the law but he also understood that people break the law.

SEN. MCGEE claimed that there was a law on the books now which states that minors shall not drink. He felt that what HB 520 said is that any criminal prosecution would be waived on the first law for the violation of a second law. He thinks that what is being said by HB 520 is: that since the second violation, an assault on a person, is worse than the first law, no drinking for minors, they would waive the responsibilities that an individual has to uphold the first law. He asked if it did not make sense to **REP. FUREY** that the first law was in place for a reason, that maybe previous legislators understood that people under the influence of alcohol might get into situations which **REP. FUREY** was concerned with.

{Tape: 3; Side: A; Approx. Time Counter: 6.1 - 8.6}

REP. FUREY understood what **SEN. MCGEE** was saying but he felt that it was the responsibilities of legislators to change things when they saw that it was not working. He believed that the bill was saying that prosecution of certain laws would be waived but he believed that the victims have already been punished. He admitted that they were saying that one violation was worse than the other. While both are illegal he thought that they should stop the one which is much worse.

SEN. MCGEE said that the point he was trying to make was that it would be better to focus their efforts on getting individuals to understand that when consuming drugs they are affected. He

thought that it would be better to get individuals to understand that bad things happen when under the influence.

REP. FUREY responded that young people have the feeling that they are superhuman and invincible. They understand that these things happen but believe that they will not happen to them. He asserted that this is a problem that needs to be dealt with.

{Tape: 3; Side: A; Approx. Time Counter: 8.6 - 12}

VICE CHAIR CROMLEY interpreted the bill to mean that the minor was not receiving immunity, only that the information provided by that individual could not be used to prosecute them for a minor in possession.

REP. FUREY agreed with **SEN. CROMLEY'S** interpretation. He mentioned that the bill did not exempt people from all crimes under the minor in possession charge. The intent for the bill is that only information provided when reporting sexual assault is exempt.

{Tape: 3; Side: A; Approx. Time Counter: 12 - 14.1}

Closing by Sponsor:

REP. FUREY closed briefly. He thanked the Committee members and the proponents. He attested that the bill was about weighing which crime is worse. He thought that the results from sexual assault and rape were so horrific on the victims that they need to do everything they can to perpetrate the individuals who are doing these offenses. He feels that if it means not persecuting minors for drinking then it is worth it.

{Tape: 3; Side: A; Approx. Time Counter: 14.1 - 15.3}

VICE CHAIR CROMLEY closed the hearing on HB 520. He opened the hearing for HJ Resolution 15.

HEARING ON HJ 15

Opening Statement by Sponsor:

REP. CAROL JUNEAU (D), HD 16, opened the hearing on **HJ 15**, Study sentencing equity.

REP. JUNEAU stated that she wanted the legislature to designate the appropriate interim committee to determine the reasons why there is a disproportionate number of adults and minority persons

in Montana's Criminal Justice System. She provided a handout to the Committee. She explained the handout which highlighted the population of Montana and the number of American Indians in Montana. She discussed the breakdown of the American Indian population demographics. She shared these demographics because when American Indians are arrested for crimes and sentenced to State institutions they are arrested for crimes committed on reservations. She provided percentages of American Indians in the Montana Prison System and juvenile system. Her purpose of sharing these statistics was to show the disproportionate amount of American Indians in the States correctional systems. She hopes that the study could provide reasons and solutions to this problem. She reserved the right to close.

EXHIBIT(jus54a07)

{Tape: 3; Side: A; Approx. Time Counter: 15.3 - 21.4}

Proponents' Testimony:

James Mason, Native American Liaison for the Department of Corrections, strongly supports the study.

{Tape: 3; Side: A; Approx. Time Counter: 21.4 - 21.7}

Steve Gibson, Administrator of Youth Services Department at Corrections, supports the resolution. He added that there was only one tribe, the Salish Kootenai, which goes through district court and are the only tribe who is on the statistics provided. He believed that **SEN. MCGEE'S** bill on the Statewide Public Defender would also go a long way in helping this issue.

{Tape: 3; Side: A; Approx. Time Counter: 21.7 - 22.7}

Ali Bovington, Attorney General's Office, supports HJ 15. She told some of the advances the Department of Justice has done at the law enforcement level to address these issues. She indicated that these measures address the initial contact law enforcement has with individual citizens when out on the street. She claimed that HJ 15 would provide the picture of what happened to an individual after they entered the criminal justice system. She urged support for HJ Resolution 15.

{Tape: 3; Side: A; Approx. Time Counter: 22.7 - 25.4}

Opponents' Testimony: None.

Informational Testimony:

Cil Robinson, Juvenile Justice Planner for the Montana Board of Crime Control, spoke solely to the issue of disproportionate minority content within the Juvenile Justice System. She handed out an informational package and explained the contents. The first page was a statistical analysis. The next three pages were an appendix, talking about data sources and limitations. The rest of the packet contains charts representing data and interpretations of this data. She also provided the latest Prevention Youth Assessment Survey in Montana's schools.

EXHIBIT(jus54a08)

{Tape: 3; Side: B; Approx. Time Counter: 0 - 9.6}

Questions from Committee Members and Responses:

SEN. MCGEE asked if **REP. JUNEAU** had carried a bill exactly like HJ 15 two or four years ago, asking for the same information.

REP. JUNEAU replied that she had carried a bill for the pre-release centers for a study to see if there was a need for a study of pre-release centers on reservations. She remembered that she also carried a bill last session on parole boards.

SEN. MCGEE remembered in the Law, Justice and Indian Affairs Committee, going through this exact rumination. He claimed that they had discovered that there was a high rate of alcoholism, unemployment, student drop out, among others. He sis not understand why this issue needed to be reviewed when there had already been a study done.

REP. JUNEAU explained that the study intended to look at sentencing patterns. She asserted that she had not carried a request for sentencing equity but for pre-release centers which had been carried out.

SEN. MCGEE disagreed. He specifically recalled that the Law and Justice Interim Committee dealt with these exact issues. He professed that the study had already been completed. He followed up by saying that there was a relatively high unemployment rate on reservations when compared with the rest of Montana.

REP. JUNEAU agreed that there was high unemployment rates on reservations and professed that it was an issue she had been raising with the legislature for many sessions. She added that she has run into difficulty with the Department of Labor recognizing the issue of unemployment rates.

{Tape: 3; Side: B; Approx. Time Counter: 9.6 - 13.7}

SEN. MCGEE followed up asking if there was not a higher rate of alcoholism and drug addiction on Indian reservations than there is in the rest of the state.

REP. JUNEAU did not know the answer to that, being without data.

SEN. MCGEE asked if there was a higher rate of student drop out in the school system on the reservations then there is in the rest of the state.

REP. JUNEAU responded that in terms of graduation rates among Indian students in the public school system there is no distinction in the number of Indian students graduating from high school.

{Tape: 3; Side: B; Approx. Time Counter: 13.7 - 14.9}

SEN. MANGAN noted that the responses to **SEN. MCGEE'S** questions were not included in the resolution. He wanted to know if **REP. JUNEAU** thought it might be more appropriate if they took a look at the where as statements and specify what they want the study to determine rather than just giving a reason. He thought that if they were able to do this they might have a more substantive report.

REP. JUNEAU thought that the where as statements were an important part of the resolution. Her understanding of resolutions and why explicit where as statements is to express the legislative intent of whatever they wanted to codify into law. She felt that the where as statements would drive the study. She was fine with the idea of making more specific language to give guidance to the study.

{Tape: 3; Side: B; Approx. Time Counter: 14 - 17.3}

SEN. MANGAN knew where **REP. JUNEAU** was going with the resolution and thought that perhaps to avoid problems in the future they should give more specific direction.

REP. JUNEAU reiterated that it would be fine with her.

{Tape: 3; Side: B; Approx. Time Counter: 17.3 - 18.5}

SEN. O'NEIL asked how many Indians were incarcerated in the federal system as compared to the state system.

REP. JUNEAU did not have that data with her. She knew that at the adult level it was about 17% of the individuals incarcerated in the federal system are American Indian. She referred the question to the Department of Corrections.

Steve Gibson informed the Committee that there was a private juvenile facility in Montana called Rio and he estimated that 90% of the inmates are Indian. These are federal children from the reservations.

{Tape: 3; Side: B; Approx. Time Counter: 18.5 - 20.1}

SEN. O'NEIL followed up asking if there were as many Indians incarcerated in the federal system as there are in the state system.

Mr. Gibson did not have that information. He clarified that there were no youth at Pine Hills or Riverside that are federal kids. There are no kids that are charged on the reservations in the state facilities. He could not give the statistics for all of the federal prisons.

SEN. O'NEIL asked where he might find that information.

Mr. Gibson answered that he would provide that information to the Committee.

SEN. O'NEIL inquired of **REP. JUNEAU** if there would be any objection to having the results of the study be reported back to the Indian Nations of Montana as well as to the 60th Legislature.

REP. JUNEAU agreed that it would be necessary to report back to the Indian Nations.

{Tape: 3; Side: B; Approx. Time Counter: 20 - 21.9}

VICE CHAIR CROMLEY referenced the Report for Native Americans, included with the material from the Board of Crime Control. He wondered of the resolution as presented was taking a step backwards. He wanted to know if **REP. JUNEAU** was aware of any resolutions or measures which would take a look at how the risks identified should be addressed.

REP. JUNEAU thought that it would be beyond the title of the resolution. She referred the discussion of addressing the issues to Ms. Robinson from the Montana Board of Crime Control. She was not familiar with any particular legislation for addressing at risk factors.

Ms. Robinson gave a history of what has happened with the impacted juveniles. Past federal policy of removing Indian children from their homes created ongoing issues. She attributed the substance issues to historical grief, caused by the past federal policies. She noted that youth that have parents who have been in prison have a higher risk of entering the criminal justice system. She insisted that there needs to be a number of issues which would be helped by looking at why there is disproportionate minority confinement and ways in which to address these issues.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 2.6}

VICE CHAIR CROMLEY followed up stating that in the report presented to the Committee, there were a number of risks identified that are present in the Native American population. He noted that there was already one study and they were asking for another study. He wanted to know if the State was doing anything to reduce the risks that have been identified.

Ms. Robinson submitted that the State was doing something to address these issues. She mentioned that the report was over a three year comparison. She referred to Page 8. There was a trend in terms of alcohol use, which was an area which the State has been addressing.

VICE CHAIR CROMLEY asked how the State was addressing the reduction in alcohol.

Ms. Robinson explained that they have been using alcohol and tobacco prevention programs. She feels that more is needed to address these problems.

{Tape: 4; Side: A; Approx. Time Counter: 2.6 - 4.6}

VICE CHAIR CROMLEY followed up by asking if these programs have been put into place as a result of the study.

Ms. Robinson replied that they had been put into place as a result of the study and a federal mandate. One of the things which she was concerned with is that they do not have many culturally appropriate intervention plans.

SEN. AUBYN CURTISS, SD 1, FORTINE referred to the handout which **REP. JUNEAU** provided at the opening of HJ 15. She wanted to know what the distinction of the 280 reservations that was made on the chart.

REP. JUNEAU explained that the 280 tribe accepts State jurisdiction in a number of areas. She referred the question to the Attorney General's Office.

{Tape: 4; Side: A; Approx. Time Counter: 4.6 - 6.8}

Ali Bovington does not practice Indian Law so was not sure of any more than what **REP. JUNEAU** had explained. She agreed to provide more information about the issue.

Closing by Sponsor:

REP. JUNEAU thanked the Committee. She welcomed any friendly amendments and promised to provide the federal information data to **SEN. O'NEIL**. She expanded her answer to **SEN. CURTISS** regarding the 280 tribe. She suggested referring the results of the study to the new governor's Office on Substance Abuse and Prevention. At this point she did not have anyone to carry the bill on the Senate floor. However, **SEN. PEASE** offered during the hearing.

{Tape: 4; Side: A; Approx. Time Counter: 6.8 - 10.4}

VICE CHAIR CROMLEY closed the hearing on HJ 15 and opened the hearing on HJ 28.

HEARING ON HJ 28

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, opened the hearing on **HJ 28**, Study timely recording of easements.

REP. LANGE informed the Committee that HJ 28 asks for an interim study on the recording of easements. He pointed out that the first candidate for an amendment to the bill was in the title of the bill because it has 'filing' and it should be 'recording' on Line 6. He related the story of how he came to carry the resolution. The study which he was requesting an appropriate interim Committee to decide which method might best resolve the issue.

{Tape: 4; Side: A; Approx. Time Counter: 10.4 - 13.6}

Questions from Committee Members and Responses:

VICE CHAIR CROMLEY commented that he has seen reports coming out of the Supreme Court on such a basis that it seemed to him that

there needed to be an intermediate court just to handle easement cases. He noted that **REP. LANGE** might want to check the language on Line 6 again before changing it because there is sometimes a technical distinction.

{Tape: 4; Side: A; Approx. Time Counter: 13.6 - 15.1}

Closing by Sponsor:

REP. LANGE thought that this issue needed to be scrutinized closely. He related how important he thought that it was and how useful.

{Tape: 4; Side: A; Approx. Time Counter: 15.1 - 16.6}

SEN. CURTISS stood in strong support of the resolution. She discussed a resolution she was carrying which was concerned with easements.

VICE CHAIR CROMLEY closed the hearing on HJ 28. He reopened the hearing on HB 474.

{Tape: 4; Side: A; Approx. Time Counter: 16.6 - 18.4}

HEARING ON HB 474

Opening Statement by Sponsor:

REP. ROSALIE (ROSIE) BUZZAS (D), HD 93, opened the hearing on **HB 474**, Revise county legal notice requirements.

REP. BUZZAS sponsored HB 474 on behalf of the Montana Association of Counties. The bill would eliminate the requirement that a county legal notice must be published in a newspaper with paid circulation and periodical mailing permits. The change of current statute occurs on Line 19 of HB 474. The bill would not eliminate the requirement for counties to publish legal notices but allows them to do so in a competitive manner with newspapers that do not have paid circulation and periodical mailing permits. Publication of notices under current law represent a significant cost to county governments. She reserved the right to close.

{Tape: 4; Side: A; Approx. Time Counter: 18.4 - 22}

VICE CHAIR CROMLEY requested that **REP. BUZZAS** explain what a periodicals mailing permit is.

REP. BUZZAS thought that it would be explained during testimony.

Proponents' Testimony:

Matt Gibson, Owner and Publisher of the Missoula Independent, provided a copy of the Independent to the Committee. On Page 49 of the Independent there were legal notices placed by private parties. However, there were no notices placed there by any government entities. He provided a written testimony as well. He claimed that the requirements in current law were superfluous. He estimated that the Independent had 46,500 readers weekly, making it the fourth largest newspaper in the state measured by single issue readership. He claimed that the opponents were going to argue that by eliminating the criteria for paid circulation and a periodicals mailing permit would undermine the substance of the statute and allow unworthy publications be validated. This in turn would undermine the people's constitutional right to know. He argued that their objections had no legal foundation.

He expressed that the Supreme Court has given guidelines on what constitutes a newspaper of general circulation. In 1938 the Montana Supreme Court ruled that a newspaper of general circulation had news of a general character and interest to the community. In 1939 they decided that a newspaper of general circulation also had to have a diversity of readers. He also discussed the Adit and the Mini Nickel, both of which under Montana law are not considered newspapers.

He indicated that publications that would be affected were the Butte Weekly, Queen City News and the Billings Outpost. He claimed that all of these were legitimate newspapers with substantial readers in their community. They are all kept from having county notices because they do not have paid circulation or a periodicals mailing permit.

Mr. Gibson explained that a periodicals mailing permit is a publication which is qualified for a postal discount. The criteria established by the postal service is that at least half of the issues have no more than 75% advertising. It has nothing else about the content. He informed the Committee that free publications can get periodical mailing permits but it is difficult. He included a memo from his national trade association explaining some of the difficulties.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 2.3}

Mr. Gibson pronounced that the practical impact of the bill would be that a handful of newspapers would be able to competitively bid for county legal notices in the state of Montana. There is

no threat to erode the rights of Montanans. He reiterated that the current criteria is useless. He assumed that the opposition would try to state that free papers could not count their circulation very accurately. He claimed this as false, when they distribute the Independent they count every paper out and every paper that remains. They also have an outside audit of their distribution claims. He added that the bill could be significantly improved by amending it to make it consistent with the statute that governs legal notices placed by municipalities, MCA-71-41-27. He concluded that the opposition had no legal foundation and that the current criteria do nothing except exclude legitimate papers from the competitive process.

EXHIBIT(jus54a09)

{Tape: 4; Side: B; Approx. Time Counter: 2.3 - 5.6}

VICE CHAIR CROMLEY determined parameters on time for the following proponents and opponents.

Gordon Morris, Director of the Montana Association of Counties, spoke to the bill and urged do pass for the bill.

{Tape: 4; Side: B; Approx. Time Counter: 5.6 - 6.6}

Opponents Testimony:

Collin Stevens, Montana Newspaper Association, spoke on behalf of Executive Director Jim Fall. He expressed that the members of the Montana Newspaper Association were concerned about this bill. He indicated that it weakened the public's right to know and be informed about meetings and actions taken at those meetings. He was worried that under this bill notices to the public about county government actions would not be available to the general public. He discussed some potential misconceptions. He expressed that it should not be considered from an economic standpoint. In this vein he explained what an established rate was. He provided a written version of his testimony.

EXHIBIT(jus54a10)

{Tape: 4; Side: B; Approx. Time Counter: 6.6 - 9.3}

Milton Wester, Member of the Montana Newspaper Association Board of Directors and President of Montana Newspapers Association Advertising Service, has published both free and paid publications. He stated that there were publications which are free and would qualify for notices but he challenged Mr. Gibson to find more than four throughout the state. He owns two free

publications which he does not feel qualify for legal advertising although both contain news content and are circulated through a wide area. The periodical rate is a postal rate and is not a privilege. He also thought that the periodical permit was the best way to determine readership. He said that they negotiate a printing rate to save money for the cities and counties. He believed that there was already a competitive process in place that works.

{Tape: 4; Side: B; Approx. Time Counter: 9.3 - 18.4}

Andy Malby, Editor of the Belgrade News, urged the Committee to decline HB 474. It has been his experience that legal notices are contentious. He proclaimed that HB 474 would reverse the progress that was made by SB 187 by effectively removing the definition of what a newspaper really is and open the door for anyone to publish a circulate a newspaper of general circulation. He informed the Committee that his paper was applying for a second class postal permit, or a periodicals postal permit not to carry notices but because it would legitimize the newspaper. The United States Postal Service has a process for applying for a permit which is difficult in terms of the cost and time requirement. He urged the Committee to defeat HB 474.

{Tape: 4; Side: B; Approx. Time Counter: 18.4 - 23.5}

Jan Anderson, Publisher of the Boulder Monitor and the Jefferson County Currier, mentioned that they had obtained the periodicals postal permit. She reported on a few different periodicals which they have seen come and go. She feels that doing away with the requirements for a periodicals permit does away with independent verification of circulation which the post office does and requires on a regular basis. She provided the Committee with a written record of her testimony. She feels that there should be something in the law which assures Montana citizens that county legal notices would be available in a publication that is stable.

EXHIBIT(jus54a11)

{Tape: 4; Side: B; Approx. Time Counter: 23.5 - 27.5}

Dick Crockford, Publisher and Editor of the Bighorn County News, wanted to emphasize the point that there are many capable weekly newspapers in Montana that represent their county populations with their readership which means that legal notices do not have to be published by major newspapers to be read by small town people. He wanted to make it clear that this issue was not a David and Goliath issue.

{Tape: 5; Side: A; Approx. Time Counter: 0 - 1.2}

Katie Kuntz, representing the Great Falls Tribune, commented that the public expects these notices to be in paid circulation newspapers. By going forward with the bill the legal notices would be too fragmented and it would be a disservice to the public.

{Tape: 5; Side: A; Approx. Time Counter: 1.2 - 1.9}

Pat Schlauch, Publisher of the Independent Record and representing the Billings Gazette, the Missoulian, the Ravalli Republic, and the Standard, reinforced the idea that more individuals read the paid circulations than any other type of publication. He provided a handout and a copy of his testimony in written form. If legal notices were allowed in a publication per the definition of HB 474 there would be no meaningful benefit to the citizens of Montana.

[EXHIBIT\(jus54a12\)](#)

[EXHIBIT\(jus54a13\)](#)

{Tape: 5; Side: A; Approx. Time Counter: 1.9 - 4.7}

John Shontz, representing Lee Enterprises, passed out a packet which contained the requirements federal periodicals permits. He referred to another handout in the packet which dealt with the definition of a generally circulated newspaper. He cited two critical pieces of information from a Supreme Court case. He discussed the use of the term diversity in the identification of a newspaper.

[EXHIBIT\(jus54a14\)](#)

{Tape: 5; Side: A; Approx. Time Counter: 4.7 - 10.1}

Informational Testimony: None.

Questions from Committee Members and Responses:

VICE CHAIR CROMLEY assumed that there was a vote on the bill in the Association. He supposed that the ones who stood to gain from the bill voted for it and those who would lose out because of the bill voted against it.

Mr. Stevens denied **SEN. CROMLEY'S** assumption. He presented that it was a general consensus that HB 474 would harm the people of Montana.

VICE CHAIR CROMLEY felt that it was an economic issue. He wanted to know if Mr. Stevens had heard from any other groups who were worried about not getting notice of had received any support from these other agencies.

Mr. Stevens replied that he had not but felt that it was a preemptive issue. He claimed that the industry was being proactive trying to prevent potential notice litigation.

{Tape: 5; Side: A; Approx. Time Counter: 10.1 - 13.1}

VICE CHAIR CROMLEY stated that it was not the responsibility of the newspapers to deal with the fact that county commissioners might have to go back and redo meetings if someone did not receive notice from a free weekly.

SEN. MANGAN asked if Mr. Morris would pay someone to but a legal notice in the handwritten 'newspaper' provided in the packet by Mr. Shontz.

Mr. Morris replied that he would absolutely not.

{Tape: 5; Side: A; Approx. Time Counter: 13.1 - 13.8}

SEN. MANGAN wanted to know if he would pay someone to put a legal notice in a typed version of the handout.

Mr. Morris thought that he would not. He stated that the commissioners would meet the requirements of the law appropriately.

SEN. MANGAN wondered what currently happened when an individual felt that proper notice wasn't given at the local level.

Mr. Morris replied if there is a problem with notice giving the commissioners would move to re-notice and start over again.

SEN. MANGAN followed up by asking if problems happened when a legal notice was placed in a general circulation publication.

Mr. Morris responded that it did.

{Tape: 5; Side: A; Approx. Time Counter: 13.8 - 15.6}

SEN. MANGAN asked if they were to add an amendment that would allow for independent verification would Ms. Anderson support the bill.

Ms. Anderson would not support it with only this addition.

{Tape: 5; Side: A; Approx. Time Counter: 15.6 - 16.2}

SEN. MANGAN proposed an amendment that would allow for independent verification and striking on Page 1, Line 12 'other than a municipality' as a friendly amendment.

REP. BUZZAS explained that the reason she had not included municipalities was because the Montana Association of Counties came to her and she had not had a chance to ask the cities if they would support the bill. Her only reservation would be wanting to check with the cities. She was also unsure if they would be able to make those amendments based on the title of the bill.

{Tape: 5; Side: A; Approx. Time Counter: 16.2 - 17.6}

SEN. JON ELLINGSON, SD 49, MISSOULA was concerned with the periodicals mailing permit. He wanted to know if it was hard to get.

Mr. Gibson responded that it was his understanding and that of his peers that it was difficult for free weekly newspapers to obtain periodicals mailing permits. The reason he gave for that is that the postal service rules are not set up to accommodate what is manifestly an editorial product that people don't pay for. The rule that 50% of the people request the publication causes problems because the postal service isn't sure how to gauge if 50% of those who receive it want it since it is free. However he has never attempted to receive a periodicals mailing permit.

{Tape: 5; Side: A; Approx. Time Counter: 17.6 - 20.9}

SEN. ELLINGSON followed up by asking if Mr. Gibson would have any requirements if they were to amend this law to provide that there be independent verification.

Mr. Gibson indicated that he would be opposed to the proposed amendment. He felt that for most of the small papers in Montana it could be cost prohibitive and not entirely necessary.

SEN. ELLINGSON was inclined to believe that there was some validity to the concern that had been expressed by the opponents. He was trying to think of ways to address the concerns as well as open the publications up to free publications. He asked for a solution that would address the concerns of the opponents but allow the market to open to free publications.

Mr. Gibson stated that the current statute was no guarantee of broad circulation only a guarantee that 50% of the readers have requested the periodical. He felt that if they wanted to protect the public's interest they would need to have a line for distribution or leadership. He did not advise this however because it would be different for every county.

{Tape: 5; Side: A; Approx. Time Counter: 20.9 - 25.2}

SEN. MCGEE asked how much money was being talked about.

Mr. Morris did not have an answer. He promised to get information out of the counties for the total value over the course of the year would be.

SEN. MCGEE followed up by asking Mr. Wester the same question.

Mr. Wester deemed it to be zero. He explained that it was already a competitive bidding process.

SEN. MCGEE reiterated that he was asking about the amount of money over the year.

Mr. Wester offered to find the information for the Committee.

{Tape: 5; Side: A; Approx. Time Counter: 25.2 - 26.8}

SEN. MCGEE felt that all copies of a free paper are not necessarily read so they can not properly be tracked.

REP. BUZZAS commented that she reads the Independent for news and also subscribes to the Missoulian for news. Just because she pays for her subscription doesn't mean that she always reads it. She reiterated that it was possible to audit who is reading and how many newspapers are being read.

{Tape: 5; Side: B; Approx. Time Counter: 0 - 1.8}

SEN. GARY PERRY, SD 35, MANHATTAN asked if the county is charged for a legal notice placed in a paid circulation newspaper.

Mr. Morris replied that they are.

SEN. PERRY followed up by asking if a county were to place a notice in a free circulation newspaper would they be charged.

Mr. Morris speculated that if it was legal to place a legal notice in a non-paid circulation the county would be charged.

Mr. Shontz answered that in either case the ad would have to be paid for. The rate for a legal would be nine dollars per hundred words.

SEN. PERRY cited Line 19 of the bill. He wanted to know if 'paid' could be stricken without striking 'with a periodical mailing permit.'

Mr. Shontz agreed that it could be worded this way.

{Tape: 5; Side: B; Approx. Time Counter: 1.8 - 5.3}

SEN. PERRY wanted to know which was the greatest concern of the opposition; that 'paid' was stricken or that 'with a periodicals mailing permit' was stricken.

Mr. Shontz asserted that the correlation was that people care if they receive their paid subscription newspapers and do not care if they do or don't receive the free circulation newspapers. He argued that the periodicals mailing permit is there to make sure from a public right to know standpoint that the law says individuals want the newspaper, will pay for it and will actually read it. He claimed that they had offered to the proponents to discuss the issue during the interim to come up with a solution that would work for both sides.

{Tape: 5; Side: B; Approx. Time Counter: 5.3 - 8}

SEN. PERRY personally relied upon his paid circulation newspaper. He referred to Page 5 of Mr. Shontz' letter and his use of the public's right to know. It occurred to him that a purchase is required to receive notice. He requested Mr. Shontz to clarify how that worked with the statement from his letter which stated that 'people are not obligated to search the government to find out what government is up to.'

Mr. Shontz explained that the quote from his letter came from the Montana Freedom of Information Desk Book. He stressed that democracy costs money. If the purpose of the bill is to save money then the consequence would be allowing notices to be published in free circulation newspapers which might not be read by everyone.

{Tape: 5; Side: B; Approx. Time Counter: 8 - 13.5}

SEN. PERRY interjected that while the government might have an obligation to publish the information would the public have an obligation to purchase that information.

Mr. Shontz responded that the public did not have the obligation to purchase the information.

VICE CHAIR CROMLEY asked if the Billings Times was allowed to purchase county notices.

Mr. Wester replied that they had a periodical rate and were allowed to purchase notices.

VICE CHAIR CROMLEY followed up asking about the Billings Times circulation.

Mr. Wester explained that it was far below the Billings Gazette and the Billings Outpost.

VICE CHAIR CROMLEY wondered if there were similar newspapers around the state that purely publish legal notices.

Mr. Wester believed that there were not many remaining newspapers that published only legal information.

Closing by Sponsor:

REP. BUZZAS was compelled to respond to Mr. Wester's comment that his free newspapers publications discuss entertainment and are distributed in hotels and motels. She felt that a county would not chose to publish their legal notices in a newspaper such as that. Conversely the Independent has a different focus with a wide circulation. She referred the Committee to the handout by Mr. Gibson. On the front page there was a definition of a general publication newspaper. She also confirmed that periodical mailing permits are expensive and difficult to receive. In closing she explained that public and private legal notices would be allowed in free circulation newspapers instead of just private. This bill, she attested, was about competition in the marketplace. She expressed that Montana Association of Counties had requested that the statute be changed to allow free circulation newspapers the ability to compete for legal notices. She asked the Committee to look favorably upon the bill because it would open up the free market system to some reputable newspapers in Montana.

{Tape: 5; Side: B; Approx. Time Counter: 13.5 - 19.6}

VICE CHAIR CROMLEY closed the hearing on HB 474. Without objection the hearing was adjourned.

{Tape: 5; Side: B; Approx. Time Counter: 19.5 - 19.8}

ADJOURNMENT

Adjournment: 12:00 P.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

BRITT NELSON, Transcriber

MW/mp/bn

Additional Exhibits:

EXHIBIT ([jus54aad0.PDF](#))