MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 13, 2005 at 9:00 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. Jesse Laslovich (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: None.

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: SB 181, SJ 5, SB 172, SB 166
SB 187, 1/10/2005
Executive Action: None.

HEARING ON SB 181

Opening Statement by Sponsor:

SEN. DONALD STEINBEISSER, SD 19, SIDNEY, opened the hearing on **SB 181**, Revise agisters, service, towing, storage lien law. **SEN. STEINBEISSER** advised the Committee that this bill would simply clarify the language regarding personal property left in vehicles when they are towed. He then discussed the lists of what would be considered essential and non-essential personal property.

Proponents' Testimony:

Bob Gilbert, Montana Tow Truck Association, discussed the Agister's Lien Law and the incongruity between the counties regarding interpretation of that law. He then discussed what they considered to be essential and non-essential personal property. **Mr. Gilbert** talked about a proposed amendment to SB 181 and provided a copy of this amendment to the Committee for their consideration and is attached as Exhibit 1.

EXHIBIT(jus09a01)

Jim Dusenberry, President, Montana Tow Truck Association, stated they feel that SB 181 is critical to the operation of their organization throughout the State. He went on to discuss the discrepancy between counties as to the interpretation of the Agister's Lien law and the problems this creates for everyone involved. **Mr. Dusenberry** submitted a packet of supporting information to the Committee which is attached as Exhibit 2. He pointed out some areas of information from the packet to the members of the Committee. **Mr. Dusenberry** concluded his testimony by citing some statistical information he had prepared. **Mr. Dusenberry** distributed a letter from the Great Falls Tow Truck Association in support of SB 181 which is attached hereto as Exhibit 3.

EXHIBIT(jus09a02)
EXHIBIT(jus09a03)

Tom McGree, Owner, Milo's Towing, Butte, Montana, stated that he was there to support SB 181. He then touched base on two points; one being the charges discussed were legitimate charges and it would help them to collect those charges. Two, the passage of SB 181 would clarify the law and help law enforcement to collect unpaid bills.

LeRoy Matthews, Crash Repair Center, Livingston, Montana, informed the Committee that they had not had a problem but had submitted the old lien law to their County Attorney for an opinion and she had declined to do so. He went on to say that he felt it should be clarified so that everyone in the State would be doing the same thing.

Don Cerouski, Cero Brothers, Belgrade, Montana, stated that the Gallatin County Attorney would not rule on the meaning of the lien law. He went on to say that it left law enforcement with a problem in how to handle occurrences which do arise. He concluded by asking the Committee to support the bill.

Bruce Spencer, Montana Automobile Dealer's Association, discussed the fact that the Agister's Lien problem did not just affect tow operators, it would effect anyone that does any service to personal property. He then listed the various persons and companies that would be affected by the bill. **Mr. Spencer** stated that passage of SB 181 would clarify the problem which would solve and prevent many lawsuits. He concluded by encouraging support for the bill.

Opponents' Testimony: None.

Informational Testimony:

Ali Bovingdon, Department of Justice, stated that she was there to inform and confirm the testimony that there was confusion in the State in varying interpretations of the law. She went on to say that the issue was how to define an article of personal property.

Questions from Committee Members and Responses:

SEN. MANGAN asked **Mr. Gilbert** if they would be agreeable to an amendment that leased equipment would not be subject to this bill. **Mr. Gilbert** deferred to **Mr. Dusenberry** for a response. **Mr. Dusenberry** stated that if the equipment was attached, it would become part of the vehicle.

SEN. MANGAN asked if they would consider an exemption for an interlock system. **Mr. Dusenberry** replied that he had no problem if the exception was for a specific item.

SEN. SHOCKLEY asked **Mr. Dusenberry** if personal items such as firearms and expensive tools would be subject to the lien because they were in the vehicle. **Mr. Dusenberry** responded that they would be.

SEN. SHOCKLEY asked **Mr. Dusenberry** if items that belonged to another party would be subject to the lien. **Mr. Dusenberry** replied that they would also be subject to the lien.

SEN. SHOCKLEY asked **Mr. Dusenberry** what the cost of storage was per day. **Mr. Dusenberry** stated that it was $10 to $15 per day.

SEN. CROMLEY inquired of **Mr. Gilbert** if he saw a problem with the lien being on property belonging to the vehicle owner. **Mr. Gilbert** answered that they do see a problem and that is why he had proposed the amendment. He went on to say that in this way it would induce the owner to pay his bill.

CHAIRMAN WHEAT asked **Mr. Gilbert** what would happen if the property in the vehicle was determined to be stolen property. **Mr. Gilbert** responded that if the property were stolen, law enforcement would have the right to confiscate that property and put it into protective custody until charges could be filed.

CHAIRMAN WHEAT inquired of **Mr. Gilbert** if they would object to an amendment that would clarify the meaning of essential personal property being related to health or hygiene. **Mr. Gilbert** replied that it would be possible.

CHAIRMAN WHEAT asked **Mr. Gilbert** if they would have a problem with an amendment which would expand it beyond just health and hygiene to include personal financial property. **Mr. Gilbert** stated that they would be willing to work with the Committee to make the bill work. He went on to say that they did not have the answer and that was why they were there to ask the Committee to help resolve the dilemma.

CHAIRMAN WHEAT asked **Mr. Gilbert** if he would talk to his members to see if there was something that could be done. **Mr. Gilbert** indicated he would.

SEN. ELLINGSON asked **Mr. Gilbert** if his members found that when towing vehicles in, that the valuable items in the vehicles were attached to the vehicle and, therefore, not subject to the claim of the owner that these articles belonged to someone else. He then asked if it was their experience that most of the property of value in the vehicles was loose and then could wrongfully be claimed by the owner to belong to someone else. **Mr. Gilbert** stated that anything bolted to the vehicle would be considered part of the vehicle, therefore, it would not fall into the nonessential personal property. He went on to say that personal property such as firearms, tools, fishing poles and golf clubs were the items in a most cases that were more valuable than the

vehicle. **Mr. Gilbert** went on to say that in most cases the people they were talking about were those individuals that were not insured and driving junk cars were the individuals that would never pay their bill if they could remove their personal items from the vehicle.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 34.1}

Mr. Gilbert then talked about the amount of insurance that towers were required to carry, the fact they were required to stow vehicles in secured areas, and that they would be held responsible if a vehicle were vandalized, damaged or had contents stolen.

SEN. ELLINGSON asked **Mr. Gilbert** what sort of degree of proof they would be comfortable with regarding someone who claimed ownership of personal property in the vehicle. **Mr. Gilbert** indicated that if the Committee could come up with something they could use in that regard, they would be willing to consider it.

SEN. MCGEE asked **Mr. McGree** if this would apply when a lending institution had requested that a vehicle be towed because the borrower had not paid his payments. **Mr. McGree** responded that the contents could be held.

SEN. MCGEE further asked **Mr. McGree** if it would also apply to a situation where a car had been towed away from a No Parking Zone. **Mr. McGree** answered that it would because they would have it in their yard and the customer would have to pay the bill before the vehicle would be returned to them.

SEN. MCGEE asked **Mr. McGree** whether the lender would pay for the towing if they were the ones that requested the vehicle be towed. **Mr. McGree** replied that it could be done either way.

Closing by Sponsor:

SEN. STEINBEISSER stated that he felt the things that had been talked about regarding the bill could be fixed. He went on to say that he hoped the Committee would work to amend the bill and hopefully then be able to pass it. **SEN. STEINBEISSER** informed **SEN. MCGEE** that when a lender has a vehicle towed the bank pays the fee charged.

HEARING ON SJ 5

Opening Statement by Sponsor:

SEN. TRUDI SCHMIDT, SD 11, GREAT FALLS, opened the hearing on **SJ 5,** Resolution to study truancy in public schools. **SEN. SCHMIDT** stated that this Joint Resolution dealt with the issue of truancy. She went on to say that originally it had been intended to be a bill, then they had met with folks dealing with the issue and it was decided to turn it into a resolution. She then talked about the Whereas clauses. **SEN. SCHMIDT** read an excerpt from a briefing that had been sent out regarding serious delinquency issues and future crime situations.

Proponents' Testimony:

Richard Meeker, Chief Juvenile Probation Officer, First Judicial District, Helena, representing members of the **Montana Juvenile Probation Officers Association,** talked about the problems encountered as a result of truancy. He went on to say that they believed the citizens of the State of Montana needed to make a thorough review of the causes of truancy and thereafter determine how best they needed to respond to resolve the problem and provide an effective remedy.

Sharon Patton-Griffin, Associate Principal, North Middle School, Great Falls, spoke in favor of SJ 5. **Ms. Patton-Griffin** provided the Committee with some materials related to the resolution. She then walked the Committee through the first handout which is attached as Exhibit 4. **Ms. Patton-Griffin** then discussed the graph that she had presented and pointed out the improvement when authority was involved. This graph is attached as Exhibit 5. Finally, **Ms. Patton-Griffin** referred to the Power Point, talked about the graph, and pointed out the drop in grades when students had 10 or more unexcused absences. The Power Point illustration is attached as Exhibit 6. She concluded by saying that she stood in full support of the resolution.

EXHIBIT(jus09a04)
EXHIBIT(jus09a05)
EXHIBIT(jus09a06)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 25.9}

Detective James Kizer, Great Falls Police Department, informed the Committee about how they had treated truancies in the past and how they were presently treated. He said that because of the change there was a false indication on the graphs that the truancy problem had gotten better, when actuality it had not.

Det. Kizer stated that there was a great need to put some meat in the law. He went on to cite several specific examples. He concluded by indicating that they needed to make sure there was a system in place to handle the growing truancy problem and urged the Committee to give SJ 5 favorable consideration.

Thelma Aldridge, Indian Education Coordinator for Great Falls School District, expressed her support for the bill. **Ms. Aldridge** discussed the fact that so many kids are getting into trouble because of the truancy issue and stated that something needed to be done to help them.

Georgianne Fish, Indian Education Coordinator, Great Falls School District, gave an example of a truancy issue wherein the student had missed 25 days. She went on to say that she hoped they would pass the bill thereby holding parents accountable for their children.

Elaine Schoyen, Counsel, East Middle School, Great Falls, spoke in support of SJ 5. She stated that she was worried about the long term effects of truancy. She then provided examples to the Committee for their information. **Ms. Schoyen** indicated that she felt there was a need for a more stringent law. She went on to talk about statistical information she had. **Ms. Schoyen** concluded by stating that she felt negative consequences helped to keep people on track.

Jim Smith, Montana County Attorney's Association, stated that they stood in support of SJ 5. **Mr. Smith** referred to the fact that **SEN. SCHMIDT** had originally proposed a bill. He informed the Committee that he would be willing to be involved in the study.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

CHAIRMAN WHEAT asked **SEN. SCHMIDT** what were they going to study since they already knew what the problem was. **SEN. SCHMIDT** responded that was why she had originally started with a bill to address the number of days that a student would be allowed to be truant. She went on to say that the reason she did not bring the bill forward was because a bill would not be supported by the County Attorneys due to a lack of manpower and money. **SEN. SCHMIDT** further stated that they wanted to work on the problem even if there was no money, because they wanted to do something.

SEN. CROMLEY asked **SEN. SCHMIDT** if there was some information available to beef up the language in the resolution to make it more competitive when it came to competing with other studies. **SEN. SCHMIDT** replied that she would see what she could do.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 26.8}

SEN. PERRY asked **SEN. SCHMIDT** if she would be willing to submit the resolution in bill form so that the Committee could work on it. **SEN. SCHMIDT** responded that when she had tried to bring a bill forward she was informed that there was nothing they could do, as they would not be able to enforce it. She went on to say that maybe it would be worthwhile to try to bring the bill back.

SEN. PERRY asked **SEN. SCHMIDT** to bring a bill forward. **SEN. SCHMIDT** responded that she would.

SEN. CURTISS asked **SEN. SCHMIDT** if they had given any consideration to making curriculum more interesting. **SEN. SCHMIDT** replied that she was not the person to respond to that question and deferred the question to **Ms. Patton-Griffin**. **Ms. Patton-Griffin** responded that they were working to present curriculum that was challenging, engaging and entertaining. She went on to say that she had considerable information on the subject which she would be more than willing to share with the Committee.

SEN. MOSS asked **SEN. SCHMIDT** if they had visited with Indian organizations when she was thinking about the interim study. **SEN. SCHMIDT** stated that they had tried to include everyone.

SEN. MCGEE asked **Detective Kizer** what he would do about truancy. **Detective Kizer** responded that he would entertain a system where they would be able to incarcerate children for truancy violations. He went on to say that they needed to find some way to affect change. He concluded that they needed to do something immediately when the children begin to be truant.

SEN. MCGEE asked **Detective Kizer** if he could see taking truant children on tours of prison facilities as a means of motivating them not to be truant. **Detective Kizer** responded that it could be affective and in some cases he had done that.

SEN. MCGEE then asked **Detective Kizer** how much trouble the parents were in the truancy situations. **Detective Kizer** replied that he did have problems with the parents. He went on to say that he felt that the parents had to be held accountable as well as the kids being held accountable.

SEN. MCGEE asked **Ms. Schoyen** what she would do about truancy. **Ms. Schoyen** stated that she would make the parents accountable and gave examples of how to possibly do so.

SEN. MCGEE further asked **Ms. Schoyen** how long it would take to get the history of the family. **Ms. Schoyen** stated that it would not take long and went on to explain how she would proceed.

SEN. MCGEE asked **Ms. Schoyen** what she would do with the kids and to what extent were the folks in Great Falls dealing with the Native American issue. He further asked if there were a disproportionate number of kids that were Native American that were being truant or was it an issue at all. **Ms. Schoyen** replied that it was an issue. She went on to say that when she was working with the kids she would explain to them that the consequence was a gift and an opportunity for them to change their behavior so that they could be more successful.

SEN. O'NEIL asked **Ms. Gillian** if truancy had a higher or lower rate for single parent families. **Ms. Gillian** replied that it would be a higher rate for single parent families. She went on to say that it was an issue of poverty.

Closing by Sponsor:

SEN. SCHMIDT stated that this was a societal problem. She added that it was an issue of prevention and intervention. She concluded by saying that she would submit the proposed bill.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 18.7}

HEARING ON SB 172

Opening Statement by Sponsor:

SEN. KELLY GEBHARDT, SD 23, ROUNDUP, opened the hearing on **SB 172,** Extend application of "assault with bodily fluid" to emergency responders. **SEN. GEBHARDT** stated that this bill would amend the assault with bodily fluids code to include emergency responders.

Proponents' Testimony:

John Semple, Montana Fire Alliance, stated that his organization had asked **SEN. GEBHARDT** to bring the bill forward because they were concerned about some incidents which occur when they

respond. **Mr. Semple** continued by saying that passage of the bill would give some recourse in those situations.

Ross Fitzgerald, Power Volunteer Fire Department, stated that they encourage passage and support for the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. GEBHARDT asked the Committee for support of the bill.

{Tape: 2; Side: B; Approx. Time Counter: 18.7 - 22.6}

HEARING ON SB 166

Opening Statement by Sponsor:

SEN. JERRY BLACK, SD 14, SHELBY, opened the hearing on **SB 166,** Revise methamphetamine enforcement laws. **SEN. BLACK** distributed two handouts to the Committee which are attached as Exhibit 7 and Exhibit 8. He went on to explain that SB 166 was a simple bill which would make theft and possession of anhydrous ammonia in an amount less than 1,000 gallons a felony. This chemical is used in the manufacture of methamphetamine. He further stated that, at present, possession of anhydrous ammonia was just a misdemeanor. **SEN. BLACK** continued saying that this bill would put more teeth into the law would make people think twice and give the authorities more leverage when individuals are caught possessing or steeling the product. **SEN. BLACK** then informed the Committee that there were amendments to the bill which would exempt those individuals who were in the businesses of farming and agricultural operations and for those handling it as a refrigerant. **SEN. BLACK** then stated that the amendment changed the charge from an absolute liability crime for possessing less than 1,000 gallons of anhydrous ammonia to an intent crime.

EXHIBIT(jus09a07)
EXHIBIT(jus09a08)

Proponents' Testimony:

Jeff Jergens, Deputy Sheriff for Toole County, spoke in support of SB 166 and gave some of his background in dealing with drug enforcement. He then discussed the main chemical used in manufacturing methamphetamine. **Deputy Jergens** continued saying that those individuals involved in these operations did not buy the chemicals needed legally. Mostly they would steal all of the items required. By simply stealing one item at a time they would not be caught with all three of the chemicals needed to manufacture methamphetamine. He then stated that the main problem was that the individuals involved in these operations knew that if they were caught steeling the necessary chemicals they would only be charged with a misdemeanor crime. **Deputy Jergens** informed the Committee of injuries to law enforcement officers when they had inadvertently come in contact with the cloud of fumes of anhydrous ammonia when valves had been left open after someone had stolen some of the chemical. He concluded by stating that making it a felony to possess anhydrous ammonia in smaller quantities would bring the problem to the attention of the Courts, thereby providing law enforcement and courts a valuable tool. He urged the Committee to pass SB 166.

Jim Smith, on behalf of the Montana Sheriff's and Peace Officer's Association, spoke in support of SB 166. **Mr. Smith** then stated that the County Attorneys were also in favor of this bill. He went on to say that they were hoping the fact that it would be a felony conviction would be a deterrent to those individuals involved.

Don Hargrove, Montana Addiction Services Providers, discussed the time frame in which methamphetamine became a problem in the State and the expansion of that problem. He went on to provide information about methamphetamine addiction and its impact on society. He urged the Committee to pass SB 166.

Chris Christiaens, Montana Farmers Union, expressed support for SB 166. He explained that anhydrous ammonia was the main ingredient in the manufacture of methamphetamine. **Mr. Christiaens** discussed the theft of anhydrous ammonia and the fear that the methods used to steal anhydrous ammonia could at some point cause injury and possibly even death to some. He went on to say that he was surprised that there was no Fiscal Note for the bill.

Mary Phippen, resident of Glacier County, stated that as a resident on the High Line, she was aware of the problem, the public safety issues, and, stood in full support of the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MANGAN asked **SEN. BLACK** if there were any other legitimate uses for the substance. **SEN. BLACK** responded that in his research he had not found any other than that it was sometimes used in metallurgy.

SEN. MANGAN asked **SEN. BLACK** if they needed to add an amendment which would include the possible exemptions. **SEN. BLACK** replied that the amendments which would be addressed during Executive Action would include the exemption for use in refrigeration and other uses.

SEN. MCGEE informed **SEN. BLACK** that if the bill passed he would become a felon. He went on to explain that his blueprint machine worked off of anhydrous ammonia. He further stated that any surveyor who had a blueprint machine would become a felon because they purchase anhydrous ammonia in gallon quantities and after about six months the product has to be changed and the used anhydrous ammonia can then be diluted and used as fertilizer. He continued to point out the number of individuals that, under the bill, would become felons and asked **SEN. BLACK** if he would have a problem with amending the bill to include these individuals. **SEN. BLACK** replied that he had no opposition to amending the legislation to exempt those individuals. He pointed out that the title of the bill stated, "with the intent to make methamphetamine" and was also a part of the amendment that would be introduced when Executive Action was taken.

SEN. LASLOVICH asked **Mr. Hargrove** if the prison would be capable of rehabilitating convicted individuals. **Mr. Hargrove** responded that SB 166 was a good bill as it was starting to address the problem. He stated, if it were up to him, he would put all of the money into prevention and went on to discuss the possibility of a facility that would treat methamphetamine addiction.

SEN. LASLOVICH asked **Mike Mahoney, Warden, Montana State Prison,** if there was a program in place at the prison that tries to address the prisoners' addiction. **Mr. Mahoney** replied that there were treatment programs. He went on to say that there were a number of bills being presented this session to address the methamphetamine addiction problem and his department was supporting those bills. **Mr. Mahoney** continued, saying that the bill had the potential of broadening the net and causing the problem of overcrowding in the prison system that is already

taxed to the limit in terms of bed availability. He then stated that it was a complex issue which they were concerned about. He concluded by saying that this was a stand-alone bill and he would have trouble supporting it.

SEN. ELLINGSON referred **SEN. BLACK** to Page 4, Line 2 and asked why criminal possession was defined as possession of less than 1,000 gallons of anhydrous ammonia, why not just say any amount. **SEN. BLACK** responded the reason was that when individuals had been charged with theft of anhydrous ammonia they had not stolen quantities in excess of 1,000 gallons. He went on to say that if a person was stealing less than 1,000 gallons it was quite obvious they were stealing it with the intent to make methamphetamine.

SEN. ELLINGSON asked **SEN. BLACK** if it were conceivable that a large scale operation could steal larger quantities. He stated that his reason was he did not want large scale operations to be able to use the defense that they had possession of more than 1,000 gallons. **SEN. BLACK** stated that it was his belief, if someone did steal over 1,000 gallons and was caught with that quantity, it would not preclude them from being charged with a felony.

SEN. O'NEIL asked **SEN. BLACK** if his amendment made it legal for someone to own a gallon of anhydrous ammonia to use on their yard or flower garden. **SEN. BLACK** replied that if they were possessing it with the intent to make methamphetamine, it would be a felony. He went on to say that if they were caught and charged with possession and their intent was to use it for fertilizer they would not be prosecuted.

SEN. O'NEIL then asked **SEN. BLACK** why they could not say, "the possession of anhydrous ammonia for the intent of manufacturing methamphetamine." **SEN. BLACK** responded that it was put in the bill the way it was specifically because of the concern by agricultural dealers.

SEN. MANGAN asked **SEN. BLACK** whether a person could purchase a small amount of the chemical if their intent was to use it in their garden. **SEN. BLACK** stated that he could not give an answer. He went on to say that he did not believe that an Ag Distributor would sell anhydrous ammonia in that small of a quantity.

CHAIRMAN WHEAT asked **SEN. BLACK** why he had not requested a Fiscal Note since it would impact the prison system and if he could ask for one now. **SEN. BLACK** replied that what he understood about the fiscal impact was that it could not be determined. He stated

that the purpose of the bill was not to incarcerate more individuals but to use it as a tool.

SEN. CROMLEY informed **SEN. BLACK** that there was a Fiscal Note. He then referred to Section 2, Subpart B, and asked if it were the intent that it be a crime even if it was not for the use of the manufacture of dangerous drugs. **SEN. BLACK** indicated that it was. He went on to say that the theft of less than 1,000 gallons of anhydrous ammonia would be a felony.

SEN. CROMLEY asked **SEN. BLACK** if possessing less than 1,000 gallons without the intent to manufacture drugs would be a felony. **SEN. BLACK** replied that the amendment said that it was possession with intent to manufacture methamphetamine.

Closing by Sponsor:

SEN. BLACK indicated that this bill was not the total answer to the problem. He went on to say that it was just one way to add more teeth to the law and to help prevent the theft of anhydrous ammonia. He further stated that it was a very serious problem in all of the rural counties in the State. He concluded by urging the Committee to pass SB 166.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 13.8}

HEARING ON SB 187

Opening Statement by Sponsor:

SEN. JIM SHOCKLEY, SD 45, VICTOR, opened the hearing on **SB 187,** Full faith and credit for S-K tribal fish and game citations. **SEN. SHOCKLEY** stated that this was a simple bill. It would simply make effective an agreement that is already in existence between the Confederated Tribes of Salish and Kootenai Indians to enforce the fish and game laws on the reservation by Indian Game Wardens. **SEN. SHOCKLEY** indicated that under the current agreement the Indian Game Wardens were only able to give civil citations for infractions of the fish and game laws and it was hard to enforce. He went on to say that SB 187 would give the Tribe the ability to enforce fines. He concluded by stating that it was in the best interest of the State and the Tribe to be able to manage the resources and the bill only related to non-tribal members.

Proponents' Testimony:

John Carter, Attorney, Confederated Salish and Kootenai Tribes, provided the Committee with a copy of the agreement with the State of Montana which is attached as Exhibit 9. He then stated that the tribal government requested the bill to plug a couple of gaps. He went on to say that this was simply fine tuning an existing statute that had been on the books for 20 to 25 years. He then indicated that this bill would only apply to one Fish and Game Agreement between the State and the Salish Kootenai Tribes and would only apply on the Flathead Reservation. **Mr. Carter** gave a history of the Agreement in question and explained the system used. He stated that the problem was one of enforcement of Tribal Court judgments outside of reservation boundaries. He concluded by urging the Committee to pass the bill.

EXHIBIT(jus09a09)

Bob Lane, Chief Legal Counsel, Fish, Wildlife and Parks, discussed the Agreement between the Tribe and Fish, Wildlife and Parks and explained how well it had worked. He then indicated that passage of the bill would help the tribes enforce their regulations off of the reservations. He concluded by stating that Fish, Wildlife and Parks stood in full support of the bill.

Ali Bovingdon, Attorney General's Office, stated that they were in full support of SB 187. She then informed the Committee that Sarah Bond had reviewed the bill and would be available as a resource if necessary.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. O'NEIL asked **John Carter** if he were picked up on the south end of Flathead Lake by a tribal game warden if it would go to the Tribal Court. **Mr. Carter** replied that whether it was a Tribal Warden or a State Warden, it would go to the Tribal Court as he would have been on Indian Land.

SEN. O'NEIL then asked **Mr. Carter** where the appeal the judgment would be filed. **Mr. Carter** answered that he would have the right to appeal within the tribal court system, and if dissatisfied with that decision, the individual would have the right to file for federal review.

SEN. ELLINGSON asked **Mr. Carter** where in the bill it indicated that the bill only applied to non-tribal members. **Mr. Carter** stated that the statute they were discussing was one that had

been on the books for a number of years and was the statute that authorized the existing fish and game agreement. He went on to say that the distinction he was asking about came from the agreement itself.

SEN. ELLINGSON then inquired of **Mr. Carter** if there was a separate procedure for tribal members. **Mr. Carter** replied that the issue addressed in the agreement was strictly for non-Indian people on the reservation. He went on to say that non-Indian people did not have treaty rights to hunt or fish on the reservation, whereas the tribal members do and are subject to other sets of regulations that are enforced in the tribal courts.

SEN. MCGEE asked **Mr. Carter** if the provisions of the Act would go away if there was no agreement. **Mr. Carter** replied that the Act itself would not go away, the agreement could go away.

SEN. MCGEE further asked **Mr. Carter** if the State and the Tribe did not have an agreement in place if the statute would be void. **Mr. Carter** responded that he did not believe so. He added that the statute had been on the books for a number of years before the agreement came into being. He then stated that the statute stood alone and the agreement could or could not exist.

SEN. MCGEE then inquired of **Mr. Carter** if there was no agreement if the full faith and credit clause would be void. **Mr. Carter** stated that he did not think so and provided a hypothetical example.

SEN. MCGEE asked **SEN. SHOCKLEY** if it was the intent of the bill that the statute remain in place even if there was no agreement between the Tribe and the State of Montana. **SEN. SHOCKLEY** responded that he agreed with him, if there was no agreement it would be void.

Closing by Sponsor:

SEN. SHOCKLEY stated that he hoped that their questions had been answered and encouraged the Committee to vote yes on the bill. He further stated that the bill simply would allow enforcement of the law against those who would break them. He concluded saying it was in the best interest of the law and of the State.

ADJOURNMENT

Adjournment: 11:50 A.M.

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SEN. MIKE WHEAT, Chairman

_____
MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT(jus09aad0.PDF)