

**MINUTES**

**MONTANA SENATE  
59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN MIKE WHEAT**, on February 9, 2005 at 8:04 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 355, SB 331, SB 342, 2/7/2005  
Executive Action: SB 342, SB 331, SB 103, SB 264, SB  
282, SB 205, SB 283, SB 330, SB 351

**HEARING ON SB 355****Opening Statement by Sponsor:**

**SEN. JIM SHOCKLEY (R), SD 45**, opened the hearing on **SB 355**, Revise court reporter salaries.

**SEN. SHOCKLEY** provided a history of the process of court reporters becoming court employees, rather than contractors. He discussed different options in how court reporters could be compensated. He stated that the intent of this bill is to put this law back the way it was in 2001. The court reporters agree to their contract and agree to be an employee of the State. He provided a letter from the three First District Judges: 1) Hon. Thomas C. Honzel, 2) Hon. Dorothy McCarter, and 3) Hon. Jeffrey M. Sherlock.

**EXHIBIT(jus32a01)**

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 6.3}*

**Proponents' Testimony:**

**Leo Gallagher, Lewis & Clark County Attorney**, attested that this is a matter of fairness. He added that this is good government. He urges a do pass. He wished to stand in support for Cascade County as well.

**Laurie Crutcher, Court Reporter**, stated that she works as a freelance reporter and fills in for individuals when they are ill or on vacation. She stated that her costs are different from the courts because she works out of her home. It is important that prices are consistent; if she does not make money she will be unable to work for the courts. She urged a do pass. She provided written testimony.

**EXHIBIT(jus32a02)**

**Glenda Travitz, Court Reporter, 21st Judicial District, Hamilton**, discussed problems with the system. One problem is a possible delay in transcripts, especially to county attorneys. She stated that there are many overtime hours; her day does not end at 5:00.

**Sharon Gaughan, Court Reporter, 13th Judicial District, Billings**, provided written testimony to the Committee.

**EXHIBIT(jus32a03)**

*{Tape: 1; Side: A; Approx. Time Counter: 6.3 - 17.3}*

**Stephanie Ahrens, 4th Judicial District, Missoula,** provided written testimony to the Committee.

**EXHIBIT(jus32a04)**

**Vicki Pratt, 1st Judicial District, Helena,** stands in support of SB 355 and urges a do pass.

**Penny Martin, 1st Judicial District, Helena,** urges support of SB 355 and agrees with the previous testimony.

**Gordon Morris, Director, Association of Montana Counties,** attested that he believes the effective date should be July 1, 2005 rather than on passage and approval.

**SEN. CROMLEY** discussed the skills required to be a court reporter. He stated that many people do not realize how difficult it is to be a court reporter; they deserve proper compensation.

*{Tape: 1; Side: A; Approx. Time Counter: 17.3 - 20.8}*

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. PERRY** wondered if the figure of \$2.5025 is an adequate amount.

**Ms. Ahrens** claimed that the statute is over 20 years old. However, at this point she feels that is the most fair compensation.

**SEN. PERRY** expressed some concerns with a flat rate. He inquired if adding a consumer price index (cpi) rate would help.

**Ms. Ahrens** stated she was not real familiar with the cpi rate and how that would affect the compensation.

**SEN. MANGAN** asked **SEN. SHOCKLEY** if there is a fiscal note with this bill.

**SEN. SHOCKLEY** reiterated that he did not have one at that time. However, they will be receiving one shortly.

**Closing by Sponsor:**

**SEN. SHOCKLEY** closed by stating that they entered into a contract; this bill is simply a matter of fairness.

*{Tape: 1; Side: A; Approx. Time Counter: 20.8 - 24.9}*

**HEARING ON SB 331****Opening Statement by Sponsor:**

**SEN. SAM KITZENBERG (R), SD 18**, opened the hearing on **SB 331**, Revise fees for contracts with rural fire districts.

**SEN. KITZENBERG** provided some background information on rural fire districts. He spoke about issues involved with taxing districts and independent contracts. He claimed that individuals with independent contracts are unable to vote for the possible tax increase. Therefore, they do not feel that they should have to pay for the increase. They feel it is taxation without representation.

*{Tape: 1; Side: A; Approx. Time Counter: 24.9 - 28.5}*

**Proponents' Testimony:** None.

**Opponents' Testimony:**

**Jim Dusenberg, Montana Fire Districts**, expressed problems with insurance costs. He stated that it looks like once someone enters into a contract, they cannot change it. He stated that this hamstring a fire department. He expressed the need to negotiate terms. This needs to remain a local issue.

**Gilbert Moore, Trustee, Belgrade Rural Fire District**, opposes this bill in regard to the restrictions on funding. They have contracts with the City of Belgrade and Gallatin County Airport. Both of these contracts allow for renegotiation. This bill would restrict them from being able to do this.

**John Semple, Montana Fire Alliance**, stated that they are the umbrella for all the volunteer fire service organizations. They echo the sentiments of the last two opponents.

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 6.9}*

**Informational Testimony:**

**Gordon Morris, Director, Montana Association of Counties**, stated he is available for questions.

**Questions from Committee Members and Responses:**

**SEN. McGEE** inquired where the language is in the bill that restricts the renegotiation of contracts.

**Mr. Moore** stated that it is in Line 29. He read the language and discussed it with the Committee.

**SEN. McGEE** clarified that he believed it stated that they cannot increase the contract. However, it does not say that renegotiations are restricted.

**Mr. Moore** attested that it is open to interpretation.

**SEN. McGEE** stated that is the problem.

**SEN. MANGAN** claimed that the language does not make sense to him. He explained how Line 29 reads to him.

**SEN. KITZENBERG** confirmed that they were on the same page in regard to the language he referred to.

*{Tape: 1; Side: B; Approx. Time Counter: 6.9 - 9.6}*

**Closing by Sponsor:**

**SEN. KITZENBERG** reiterated that the issue here is that the citizens are unable to vote on the mill levies. They feel that it is taxation without representation. He stated that this is a local issue in some respects.

*{Tape: 1; Side: B; Approx. Time Counter: 9.6 - 12.5}*

**HEARING ON SB 342**

**Opening Statement by Sponsor:**

**SEN. JESSE LASLOVICH (D), SD 43**, opened the hearing on **SB 342**, Alternative project delivery contract process for construction projects.

**SEN. LASLOVICH** explained the intent of this bill. He directed the Committee to Section 4. He discussed the process of awarding contracts. He discussed court cases that adhere to this bill. He said that individuals entering into contracts presently have no statutory guidelines. This bill seeks to find a balance and define acceptable methods. He continued by walking the Committee through the bill.

*{Tape: 1; Side: B; Approx. Time Counter: 12.5 - 18.6}*

**Proponents' Testimony:**

**Cary Hegreberg, Executive Director, Montana Contractors Association**, thanked **SEN. LASLOVICH** for bringing this bill forward. He mentioned HJ 28 and how it relates to this bill. He spoke about a study done to assess the best value of contracting to develop a proposal. He commented that there is a provision in the bill that exempts the Montana Department of Transportation. He added that this bill works toward solving problems.

**Dick Anderson, Dick Anderson Construction**, attested that it is important to pass this bill. He provided some background information on his history of contracting. Important to understand the low-bid criteria; crucial to be fair.

**Carl Schweitzer, American Sub-Contractors Association of Montana**, asked that the Committee fully support this bill. He agrees with Mr. Anderson's comments.

**Russ Katherman, Department of Administration, Architecture & Engineering Division**, explained his duties to the Committee. He discussed the methods that could be utilized under the passage of this bill.

*{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.9}*

**Harold Blatteor, Assistant Director, Montana Association of Counties**, attested that he believes this is a very good piece of legislation. He suggested a guideline change on Page 3, Line 11. He would like to see a guideline for advertising for projects.

**Alec Hanson, League of Cities & Towns**, claimed that they see no problems with this bill. He wished to point out that all the authority in this bill is permissible.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:** None.

*{Tape: 2; Side: A; Approx. Time Counter: 1.9 - 6.9}*

**Closing by Sponsor:**

SEN. LASLOVICH closed.

CHAIRMAN WHEAT called for a five-minute recess.

**EXECUTIVE ACTION ON SB 342**

**Motion:** SEN. LASLOVICH moved that SB 342 DO PASS.

**Motion:** SEN. LASLOVICH moved that AMENDMENT SB034201.av1 BE ADOPTED.

**EXHIBIT** (jus32a05)

**Discussion:**

Valencia Lane, Legislative Services Division, described how she could wordsmith the language to provide for a sufficient definition of "publish". She provided a document to the Committee which outlines her intent.

**EXHIBIT** (jus32a06)

**Vote:** Motion carried 11-0 by voice vote.

**Motion:** SEN. LASLOVICH moved that SB 342 DO PASS AS AMENDED.

**Discussion:**

SEN. MANGAN asked SEN. LASLOVICH if there could be a preference for Montana companies in regard to Section 3.

SEN. LASLOVICH stated that the language is not specific. He directed the Committee to Lines 18-24.

**Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 331

**Motion/Vote:** SEN. MCGEE moved that SB 331 BE TABLED. Motion carried unanimously by voice vote.

*{Tape: 2; Side: A; Approx. Time Counter: 6.9 - 17.2}*

EXECUTIVE ACTION ON SB 103

**Motion:** SEN. CROMLEY moved to RECONSIDER THE MOTION on SB 103.

Discussion:

SEN. CROMLEY explained the intent of this bill and why he wishes to reconsider the previous action.

SEN. SHOCKLEY exclaimed that his belief was that everything being made illegal in the bill was already illegal.

SEN. CROMLEY attested that it is basically true. The question is brought to the Attorney General because of the issue regarding on-line gambling. The Attorney General would like to have a statute that they can point to and relay that the legislature dealt with the issue.

SEN. MANGAN inquired what the purpose of the definition is.

SEN. CROMLEY directed the question to Mr. Huntington.

Mr. Huntington replied that this question deals with personal gambling versus enterprise gambling. He attested that this bill is directed at gambling as a business.

SEN. MANGAN wondered where it states what actually gets directed to the definition. He stated that it doesn't specifically state whether it is personal or enterprise.

Mr. Huntington stated that it is being put into law. He reiterated how it would read.

SEN. MANGAN attested that he will support this motion if they can clean up the language and make it more specific.

SEN. CROMLEY stated that the bill could be broader. However, it was a policy decision not to do that. He read the gambling enterprise definition.

**SEN. MCGEE** commented that there is no distinction between an individual gambling and someone setting up a business. He stated that he does not support gambling of any form in the State of Montana. He added that there is no enforcement provision in this bill. They are walking a fine line of an individual's right of privacy.

**{Tape: 2; Side: A; Approx. Time Counter: 17.2 - 27.1}**

**SEN. CROMLEY** believes that this would make most of the internet gambling laws consistent with regular gambling laws. The Attorney General would not be able to invade someone's home simply for gambling on-line. He stated that this bill makes an important statement about gambling enterprises.

**SEN. ELLINGSON** expressed concern over this bill. He spoke about the issue regarding the intrusion of an individual's rights. He stated that he would support this motion.

**Vote:** Motion carried 8-4 by roll call vote with **SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, and SEN. SHOCKLEY** voting no.

**Motion:** **SEN. CROMLEY** moved that SB 103 DO PASS.

**Discussion:**

**SEN. O'NEIL** spoke about on-line gambling. He reiterated that this seems to be too intrusive into the lives of individuals.

**CHAIRMAN WHEAT** directed **SEN. O'NEIL** to some language that defines gambling. He did not believe "Hearts" would be considered gambling.

**SEN. O'NEIL** attested that there probably is someplace on the internet that one can gamble money playing "Hearts".

**SEN. MANGAN** stated that if **SEN. ELLINGSON's** view on this was correct, he could not support the bill.

**SEN. PERRY** asked if penny ante is legal at his house.

**SEN. CROMLEY** attested that it is not.

**SEN. PERRY** directed him to Page 2, Line 11. The language deals with the legality of betting money in regard to gambling, even if it is in your home.

**SEN. CROMLEY** stated that his impression is that it would be. However, it is also a matter of interpretation.

**SEN. PERRY** provided an example to **SEN. CROMLEY** as it related to gambling.

**SEN. CROMLEY** reiterated that he is not qualified to answer that question.

**SEN. PERRY** redirected the question to Pam Bucey, Office of the Attorney General. She stated that private gambling is provided in the code as well. These include games you would play in the privacy of your home. **SEN. PERRY** asked where in the code that is located. **Ms. Bucey** attested that she did not have her code book with her at the time.

*{Tape: 2; Side: B; Approx. Time Counter: 0 - 12.6}*

**SEN. PERRY** spoke about a man in Bozeman arrested for having child pornography on his personal computer. He questioned **SEN. McGEE** about what should be legal and illegal in this sort of situation.

**SEN. McGEE** attested that this bill does not make the statement that this is a compelling State interest. The constitution says that without the State interest, there is a right to privacy. He stated that if they can find a compelling State interest in this issue, he will support it.

**SEN. PERRY** stated that he was looking for a definition of internet gambling in the bill. He spoke about technology and the internet.

**SEN. CROMLEY** directed the Committee to Page 5, Line 6. He stated what he believes the definition of internet gambling to be.

**SEN. CURTISS** asked Ms. Bucey, "If you amended the bill to address **SEN. McGEE's** concerns, would that diffuse the purpose of the bill?"

**Ms. Bucey** stated that she believed **SEN. McGEE's** concerns were addressed in the bill. She explained this to the Committee.

**SEN. McGEE** asked Ms. Bucey to show him in the bill where it differentiates public gambling from personal gambling in the privacy of the home.

**Ms. Bucey** asserted that if an individual sets up a business in their home, it would fall under this statute.

**SEN. MCGEE** wondered where they draw the line on establishing a business in the home. He inquired if it would still be considered a business if he establishes a business in the home without charging.

**Ms. Bucey** attested that in that instance, an individual would not fall under the purvey of the statute.

**SEN. MCGEE** clarified that he does not believe this definition has a compelling state interest as per the constitution. He wondered where that was in the bill.

**Ms. Busey** stated that they don't usually point that out specifically.

**CHAIRMAN WHEAT** asked **SEN. MCGEE** to bring his argument to a close.

**SEN. MCGEE** asked for a point of personal privilege. He argued that the legislature's job is to debate these issues and vote on them. However, as the chairman, **SEN. WHEAT** has the ability to limit that discussion. He continued by stating that if they do not argue this, the courts will have to make a decision.

**CHAIRMAN WHEAT** asserted that he believes that **Ms. Bucey** answered his question. He believes that this issue has had rigorous discussion. He does not wish to cut anybody off. However, this discussion is becoming redundant.

**Vote:** Motion carried 7-5 by roll call vote with **SEN. CURTISS**, **SEN. MANGAN**, **SEN. MCGEE**, **SEN. O'NEIL**, and **SEN. SHOCKLEY** voting no.

**CHAIRMAN WHEAT** called for a short recess.

*{Tape: 3; Side: A; Approx. Time Counter: 0 - 0.1}*

#### EXECUTIVE ACTION ON SB 264

**Motion:** **SEN. MCGEE** moved that SB 264 DO PASS.

#### Discussion:

**CHAIRMAN WHEAT** spoke about a letter that was distributed to the Committee members from Col. Grimstead.

**SEN. MCGEE** asserted that this is an important policy decision that they are making. He encouraged a do pass on the bill.

**SEN. MANGAN** stated that he is not sure he would support this bill. There is a distinct difference between quotas and goals. He added that if this passes, he may request an addition of a definition of quota.

**Vote:** Motion carried 11-1 by voice vote with **SEN. MANGAN** voting no.

**EXECUTIVE ACTION ON SB 282**

**Motion:** **SEN. MANGAN** moved that SB 282 DO PASS.

**Discussion:**

**SEN. MANGAN** spoke about proposed amendments to the bill.

**Ms. Lane** provided a copy of this to the Committee and explained that Parts 2, 4 and 5 have been adopted. She commented on Parts 1 and 3, and discussed what those amendments would do to the bill.

**EXHIBIT** (jus32a07)

**Motion:** **SEN. SHOCKLEY** moved that AMENDMENT SB028201.av1 PARTS 1 AND 3 BE ADOPTED.

**Discussion:**

**CHAIRMAN WHEAT** stated that it doesn't appear that this amendment would change much in the bill. He inquired if Ms. Bucey felt the same way.

**Ms. Bucey** agreed with **CHAIRMAN WHEAT**.

**Vote:** Motion carried unanimously by voice vote.

**Motion/Vote:** **SEN. MANGAN** moved that SB 282 DO PASS AS AMENDED. Motion carried 10-2 by voice vote with **SEN. CURTISS** and **SEN. MCGEE** voting no.

*{Tape: 3; Side: A; Approx. Time Counter: 0.1 - 14.2}*

**EXECUTIVE ACTION ON SB 205**

**Motion:** **SEN. SHOCKLEY** moved that SB 205 DO PASS.

**Discussion:**

**SEN. SHOCKLEY** explained to the Committee what this bill is intended to do.

**SEN. MANGAN** inquired about the new language on Page 2, Lines 6 and 7. He wished to clarify that an insurance company is not able to simply cancel a policy.

**SEN. SHOCKLEY** stated that they pay the premium up front and do not get it back. The goal of this bill is to protect the public from bad drivers.

**SEN. MANGAN** wished for more clarification on whether or not that policy can be cancelled if there is an infringement within the six month period.

**SEN. SHOCKLEY** asserted that the insurance companies have an obligation to cover that individual for six months; they paid the premium up front.

**SEN. O'NEIL** suggested that they wordsmith the language. It states, "...at the drivers request...."

**Vote: Motion carried unanimously.**

*{Tape: 3; Side: A; Approx. Time Counter: 14.2 - 20.5}*

**EXECUTIVE ACTION ON SB 283**

**Motion: SEN. LASLOVICH moved that SB 283 DO PASS.**

**Motion/Vote: SEN. CROMLEY moved that AMENDMENT SB02801.av1 BE ADOPTED. Motion carried unanimously.**

**EXHIBIT** (jus32a08)

**Motion: SEN. CROMLEY moved that SB 283 DO PASS AS AMENDED.**

**Discussion:**

**SEN. MCGEE** reiterated that he has a problem with the concept related to sexual orientation. He expressed concerns in regard to the term "partner". He will oppose this bill.

**SEN. MANGAN** discussed the fiscal note in relation to the issue of strangling. He stated why this needs to be in the bill.

**SEN. SHOCKLEY** apologized for his absence during the debate. He provided the Committee with a sermon on the penal code. He does not believe that the issue of strangling needs to be included in the bill.

**SEN. O'NEIL** expressed that there is potential for confusion in the relationship of individuals living together. He stated that it can make the issue more confusing rather than simpler in the long run.

**SEN. LASLOVICH** has a problem with the fact that many of these bills are referred to as being part of a gay agenda. He attested the problem he has with the bill is the fiscal note. He believes it is a good bill. However, he is not sure they can afford it.

**SEN. PERRY** stated that he agrees with **SEN. MCGEE** and **SEN. SHOCKLEY**. He cannot support this bill for the reasons stated by them as well as the fiscal note.

**SEN. MOSS** asserted that the Montana Coalition Against Sexual & Domestic Violence would like to take a look at some additional numbers. They are afraid the figures have become inflated. She believes that the number is not accurate and it will be reduced significantly.

**SEN. SHOCKLEY** stated, "I don't think this has anything to do at all with the gay agenda." However, it is bad public policy.

**SEN. O'NEIL** attested that he doesn't understand why it is a felony to put one's hands around another's neck, but not a felony to point a gun at someone.

**SEN. CROMLEY** stated that he believes the amendment clears that up. He explained this.

**Vote:** Motion failed 6-6 by roll call vote with **SEN. CROMLEY**, **SEN. ELLINGSON**, **SEN. LASLOVICH**, **SEN. MANGAN**, **SEN. MOSS**, and **SEN. WHEAT** voting aye.

*{Tape: 3; Side: B; Approx. Time Counter: 0 - 9.4}*

**EXECUTIVE ACTION ON SB 344**

**Motion:** **SEN. WHEAT** moved that SB 344 DO PASS.

**Discussion:**

**SEN. ELLINGSON** stated how he believes the bill to read. He wondered if that is in fact what the intent is.

**CHAIRMAN WHEAT** attested that the intent is to make the individual under the influence of drugs and/or alcohol to be responsible for their actions.

**SEN. CROMLEY** stated that he is not sure this needs to be amended.

**SEN. ELLINGSON** asserted that he agrees with that. He commented that this does not remove the cap from the liability of punitive damages of the trucking companies. He attested that he feels that they are protected under this current language.

**SEN. SHOCKLEY** claimed that he agrees with the plain reading of what **CHAIRMAN WHEAT** said. He provided an example of a tape recording that did not work out. He added that plain readings mean different things to different people.

**SEN. O'NEIL** spoke about different kinds of liability. **CHAIRMAN WHEAT** clarified the language of the bill in regard to **SEN. O'NEIL's** question.

**CHAIRMAN WHEAT** asked Ms. Lane if she disagreed with his interpretation of the bill.

**Ms. Lane** asserted that she tends to disagree. She explained her reasons in terms of the language.

**SEN. CROMLEY** proposed a conceptual amendment and explained it to the Committee.

**Ms. Lane** cited that there is still ambiguity in the intent.

**CHAIRMAN WHEAT** withdrew his motion without objection.

**SEN. PERRY** implored that when drafting an amendment to this bill, they not make it specific to trucking companies only.

***{Tape: 3; Side: B; Approx. Time Counter: 9.4 - 18.7}***

EXECUTIVE ACTION ON SB 330

**Motion/Vote:** SEN. PERRY moved that SB 330 DO PASS. Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting aye.

**Motion/Vote:** SEN. LASLOVICH moved that SB 330 BE TABLED AND THE VOTE REVERSED. Motion carried 10-2 by voice vote with SEN. MCGEE and SEN. PERRY voting no.

SEN. MCGEE asked for clarification on the motion. Ms. Lane stated that the motion to table and reverse the vote is one action, not two.

*{Tape: 3; Side: B; Approx. Time Counter: 18.7 - 21.5}*

CHAIRMAN WHEAT explained that executive action on SB 146 would take place Monday morning at 8:00 A.M. He also discussed future meeting plans.

EXECUTIVE ACTION ON SB 351

**Motion:** SEN. PERRY moved that SB 351 DO PASS.

**Discussion:**

SEN. PERRY spoke about the constitutionality of this bill. He also spoke about this bill in regard to the other 49 states.

SEN. SHOCKLEY wished to respond to SEN. PERRY's question. He asserted that the movement started in Montana and failed to go anywhere else.

**Vote:** Motion failed 6-6 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PEASE, SEN. PERRY, and SEN. SHOCKLEY voting aye.

*{Tape: 4; Side: A; Approx. Time Counter: 0 - 4.4}*

**ADJOURNMENT**

Adjournment: 11:16 A.M.

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SEN. MIKE WHEAT, Chairman

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MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

**EXHIBIT ([jus32aad0.PDF](#))**