

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 20, 1997, at 7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Boharski was excused until 8:00 AM.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Executive Action: DO PASS:
HB 159, HB 299, HB 571, HB 577
DO PASS AS AMENDED:
HB 276, HB 303, HB 306, HB 453
HB 540, HB 553, HB 572
TABLED:
HB 270, HB 454, HB 528

EXECUTIVE ACTION ON HB 270

Motion: REP. DIANE SANDS moved HB 270 DO PASS.
{Tape: 1; Side: A; Approx. Time Count: 1.5}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 2.8 - 13.8}

Motion/Vote: REP. DAN MC GEE moved to table HB 270. The motion carried 13 - 7; REPS. KOTTEL, PEASE, SANDS, HURDLE, MC CULLOCH, WYATT and ELLINGSON voting no. (REP. BOHARSKI voted aye by proxy.) {Tape: 1; Side: A; Approx. Time Count: 15.0}

EXECUTIVE ACTION ON HB 453

Motion: REP. BRAD MOLNAR moved HB 453 DO PASS.
{Tape: 1; Side: A; Approx. Time Count: 16.4}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 16.5}

Motion: REP. DUANE GRIMES moved to amend HB 453.
{Tape: 1; Side: A; Approx. Time Count: 23.8}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 24.9}

Vote: The motion carried 11 - 9; REPS. ELLINGSON, HURDLE, WYATT, MC CULLOCH, PEASE, SANDS, KOTTEL, ANDERSON, and TASH voting no.

Motion: REP. GRIMES moved HB 453 DO PASS AS AMENDED.
{Tape: 1; Side: A; Approx. Time Count: 27.7}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 33.0-Tape 2; Side B; 0.7}

Vote: The motion carried 11 - 9; REPS. HURDLE, ELLINGSON, WYATT, MC CULLOCH, TASH, PEASE, SANDS, KOTTEL and ANDERSON voting no. (REP. BOHARSKI voted aye by proxy.)

EXECUTIVE ACTION ON HB 454

Motion: REP. MC GEE moved HB 454 DO PASS.
{Tape: 1; Side: B; Approx. Time Count: 2.5}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 3.4 - 8.1}

Motion: REP. KOTTEL moved to amend HB 454 on line 22, page 2, subsection 6.
{Tape: 1; Side: B; Approx. Time Count: 8.2}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 10.8 - 23.4}

Motion: REP. BOHARSKI moved a substitute amendment to return to the old language.

{Tape: 1; Side: B; Approx. Time Count: 23.5; Comments: REP. KOTTEL accepted the substitute amendment as proposed.}

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 24.8 - 26.9}

Vote: The motion failed 9 - 11; REPS. ELLINGSON, HURDLE, BOHARSKI, ANDERSON, HANSON, KOTTEL, SANDS, MC CULLOCH and WYATT voting aye.

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 29.0 - Tape 2; Side A; 5.1; Comments: Return to discussion on the bill.}

Motion/Vote: REP. ANDERSON moved to table HB 454. The motion failed by tie vote. REPS. SOFT, MC CULLOCH, CURTISS, GRIMES, AHNER, BOHARSKI, BERGMAN, MOLNAR, SMITH and CLARK voting no.

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 8.5 - 14.6}

Vote: The motion to pass HB 454 failed by tie vote. REPS. HURDLE, ELLINGSON, WYATT, MC CULLOCH, PEASE, SANDS, KOTTEL, HANSON, ANDERSON and TASH voting no.

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 15.7; Comments: REP. BOHARSKI suggested another amendment to remove the criminal penalty from the bill. REP. HURDLE objected to REP. BOHARSKI speaking out of turn in the order of those requesting time to discuss the bill. REP. GRIMES said he would change his vote to table only for the purposes of moving past the deadlock.}

Motion/Vote: REP. ANDERSON moved to table HB 454. The motion carried 12 - 8; REPS. BOHARSKI, BERGMAN, MOLNAR, AHNER, SMITH, SOFT, CURTISS and CLARK voting no.

{Tape: 2; Side: A; Approx. Time Count: 20.0 - 20.6; Comments: REP. MC GEE also changed his vote to aye for the purposes of moving past the deadlock on HB 454. REP. CURTISS made a point of personal privilege in order to speak on this bill since the opportunity was preempted by the vote to table.}

{Tape: 2; Side: A; Approx. Time Count: 20.7; Comments: REP. MOLNAR made a point of personal privilege regarding HB 454 and the testimony which was presented by former SENATOR CAMPBELL. CHAIRMAN CLARK addressed the concern and the disposition of that testimony. The testimony will remain in the record but will not be regarded or accepted as official testimony.}

EXECUTIVE ACTION ON HB 303

Motion: REP. BOHARSKI moved HB 303 DO PASS.
{Tape: 2; Side: A; Approx. Time Count: 25.5}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 26.5}

Motion: REP. BOHARSKI moved amendments to HB 303. EXHIBIT 1
{Tape: 2; Side: A; Approx. Time Count: 29.3}

Discussion: EXHIBIT 2
{Tape: 2; Side: A; Approx. Time Count: 29.4-Tape 2; Side B; 8.8;
Comments: REP. KOTTEL distributed Exhibit 2.}

Vote: The motion carried 13 - 6; REPS. SANDS, MC CULLOCH, WYATT,
HURDLE, ELLINGSON and KOTTEL voting no. (REP. MOLNAR voted aye by
proxy.)
{Tape: 2; Side: B; Approx. Time Count: 9.0}

Motion: REP. BOHARSKI moved HB 303 DO PASS AS AMENDED.
{Tape: 2; Side: B; Approx. Time Count: 9.9}

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 10 - 15.5}

Vote: The motion carried 13 - 7; REPS. ELLINGSON, HURDLE, WYATT,
MC CULLOCH, PEASE, SANDS and KOTTEL voting no. (REP. MOLNAR
voted aye by proxy.)

EXECUTIVE ACTION ON HB 299

Motion: REP. BOHARSKI moved HB 299 DO PASS.
{Tape: 2; Side: B; Approx. Time Count: 22.1}

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 22.3}

Motion/Vote: REP. KOTTEL moved to strike lines 3 and 4 from
subsection b. The motion failed by voice vote.
{Tape: 2; Side: B; Approx. Time Count: 25.5 - 30.6; Comments:
There was brief discussion prior to the vote.}

Motion/Vote: REP. SANDS moved to strike subsection c.
{Tape: 2; Side: B; Approx. Time Count: 31.2}

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 32.3}

Vote: The motion failed 8 - 12 by roll call vote. EXHIBIT 3
(REPS. HURDLE and MC CULLOCH voted aye by proxy. REP. GRIMES
voted no by proxy.)
{Tape: 2; Side: B; Approx. Time Count: 34.9}

Motion: REP. KOTTEL moved another amendment to HB 299 to change the language on line 24 after the words, "necessary to" insert "a constitutionally protected privacy right."
{Tape: 2; Side: B; Approx. Time Count: 37.5}

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 37.6-Tape 3; Side A; 6.7}

Vote: The motion failed 7 - 13; REPS. KOTTEL, SANDS, PEASE, MC CULLOCH, WYATT, ELLINGSON and HURDLE voting aye. (REP. HURDLE voted aye by proxy and REP. GRIMES voted no by proxy.)
{Tape: 3; Side: A; Approx. Time Count: 7.5}

Vote: The motion to pass HB 299 carried 13 - 7; REPS. KOTTEL, SANDS, PEASE, MC CULLOCH, WYATT, ELLINGSON and HURDLE voting no. (REP. HURDLE voted no by proxy and REP. GRIMES voted aye by proxy.)

EXECUTIVE ACTION ON HB 528

Motion: REP. BOHARSKI moved HB 528 DO PASS.

Motion/Vote: REP. BOHARSKI moved REP. WELLS' EXHIBIT 4 amendment #1. The motion carried 13 - 7; REPS. WYATT, MC CULLOCH, SANDS, ELLINGSON, HURDLE, PEASE and KOTTEL voting no. (REP. HURDLE voted no by proxy.)

Motion/Vote: REP. BOHARSKI moved amendments #2 and #3 EXHIBIT 4 The motion carried 14 - 6; REPS. SANDS, PEASE, KOTTEL, ELLINGSON, WYATT and HURDLE voting no. (REP. HURDLE voted no by proxy.)

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 14.5}

Motion: REP. ANDERSON moved to amend subsection 2, line 26.
{Tape: 3; Side: A; Approx. Time Count: 16.9}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 19.0 - 27.3; Comments: CHAIRMAN CLARK read the amendment as proposed.}

Vote: The motion carried 12 - 8; REPS. MC GEE, WYATT, BERGMAN, SANDS, PEASE, CURTISS, MC CULLOCH and HURDLE voting no. (REP. HURDLE voted no by proxy.)

Motion: REP. MC GEE moved HB 528 DO PASS AS AMENDED.
{Tape: 3; Side: A; Approx. Time Count: 28.1}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 29.0}

Vote: The motion failed by tie vote; REPS. ELLINGSON, HURDLE, SMITH, TASH, ANDERSON, KOTTEL, SANDS, PEASE, MC CULLOCH and WYATT voting no.

Motion/Vote: REP. MC GEE moved to table HB 528. The motion carried 15 - 5; REPS. BOHARSKI, MOLNAR, CURTISS, BERGMAN and CLARK voting no.

EXHIBITS 5 and 6

{Comments: Exhibits 5 and 6 were distributed to the committee prior to executive action.}

EXECUTIVE ACTION ON HB 540

Motion: REP. MC GEE moved HB 540 DO PASS.
{Tape: 3; Side: A; Approx. Time Count: 39.4}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 40.4}

Motion/Vote: REP. KOTTEL moved the amend HB 540 on lines 19 and 20 to strike words following "paid." The motion carried 19 - 0. (REP. BERGMAN was not present for the vote.)

Motion: REP. SANDS moved HB 540 DO PASS AS AMENDED.
{Tape: 3; Side: A; Approx. Time Count: 42.6}

Motion: REP. MOLNAR moved to amend HB 540.

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 0.3}

Vote: The motion failed 2 - 17; REPS. MOLNAR and BOHARSKI voting aye.

Motion/Vote: REP. MC GEE moved HB 540 DO PASS AS AMENDED. The motion carried 19 - 0.

{Tape: 3; Side: B; Approx. Time Count: 4.0; Comments: REP. WYATT made a point of personal privilege regarding the order of the bills being considered.}

EXECUTIVE ACTION ON HB 577

Motion: REP. MC GEE moved HB 577 DO PASS.
{Tape: 3; Side: B; Approx. Time Count: 5.4}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 6.1}

Vote: The motion carried 17 - 3; REPS. GRIMES, ANDERSON and BOHARSKI voting no. (REP. KOTTEL voted aye by proxy.)

EXECUTIVE ACTION ON HB 571

Motion: REP. ANDERSON moved HB 571 DO PASS.
{Tape: 3; Side: B; Approx. Time Count: 8.9}

Motion/Vote: REP. WYATT moved to amend HB 571. EXHIBIT 7
The motion failed by voice vote.
{Tape: 3; Side: B; Approx. Time Count: 10.0-11.1; Comments:
There was brief discussion for clarification before the vote.}

Vote: The motion carried to pass HB 571 13 - 7; REPS. WYATT,
HURDLE, MC CULLOCH, PEASE, SANDS, ELLINGSON and KOTTEL voting no.
{Tape: 3; Side: B; Approx. Time Count: 11.5}

EXECUTIVE ACTION ON HB 572

Motion: REP. ANDERSON moved HB 572 DO PASS.
{Tape: 3; Side: B; Approx. Time Count: 12.6}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 13.1 - 15.7}

Motion: REP. KOTTEL moved to amend HB 572 to include a non-
severability clause.
{Tape: 3; Side: B; Approx. Time Count: 15.8}

Vote: The motion carried 15 - 4; REPS. HANSON, ANDERSON, GRIMES
and CLARK voting no. (REP. MC CULLOCH voted aye by proxy.)

Motion/Vote: REP. ANDERSON moved HB 572 DO PASS AS AMENDED. The
motion carried 15 - 5; REPS. SANDS, WYATT, ELLINGSON, HURDLE and
MC CULLOCH voting no. (REP. MC CULLOCH voted no and REP. TASH
voted aye by proxy.)
{Tape: 3; Side: B; Approx. Time Count: 22.4}

EXECUTIVE ACTION ON HB 553

Motion: REP. AHNER moved HB 553 DO PASS.
{Tape: 3; Side: B; Approx. Time Count: 23.8}

Motion: REP. ANDERSON moved to amend HB 553 by changing "must"
to "may."
{Tape: 3; Side: B; Approx. Time Count: 24.4}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 24.8 - 36.0}

Vote: The motion failed by tie roll call vote. EXHIBIT 8
(REP. SANDS voted no by proxy.)

Motion/Vote: REP. MC GEE moved REP. STOVALL'S amendments to
insert "in the trial or other initial proceeding and to the
prevailing party in any appeal" on line 14, page 1.
The motion carried 17 - 3; REPS. ELLINGSON, HURDLE, and BERGMAN
voting no. (REP. BERGMAN voted no by proxy.)

Motion: REP. MD GEE moved HB 553 DO PASS AS AMENDED.
{Tape: 4; Side: A; Approx. Time Count: 1.7}

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 1.8 - 14.0}

Motion: REP. BOHARSKI moved to amend HB 553 to insert "reasonable" on line 13.

{Tape: 4; Side: A; Approx. Time Count: 14.1}

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 14.5}

Vote: The motion carried 19 - 1; REP. BERGMAN voted no by proxy.

{Tape: 4; Side: A; Approx. Time Count: 14.6}

Motion/Vote: REP. MC GEE moved HB 553 DO PASS AS AMENDED.

The motion carried 14 - 6; REPS. MC CULLOCH, PEASE, SANDS, KOTTEL, ELLINGSON and HURDLE voting no. (REP. SANDS voted no and REP. BERGMAN voted aye by proxy.)

{Tape: 4; Side: A; Approx. Time Count: 16.1 - 17.1}

EXECUTIVE ACTION ON HB 276

Motion/Vote: REP. KOTTEL moved to reconsider HB 276. The motion carried 11 - 9; REPS. WYATT, MC CULLOCH, MOLNAR, PEASE, BOHARSKI, TASH, ANDERSON, MC GEE and BERGMAN voting no. (REP. BERGMAN voted no by proxy.)

{Tape: 4; Side: A; Approx. Time Count: 18.3}

Motion/Vote: REP. KOTTEL moved HB 276 DO PASS AS AMENDED. The motion carried 16 - 4; REPS. WYATT, MC CULLOCH, TASH and BERGMAN voting no. (REP. BERGMAN voted no by proxy.)

{Tape: 4; Side: A; Approx. Time Count: 21.9}

EXECUTIVE ACTION ON HB 163

Discussion: REP. SOFT said that HB 163 was exempt from transmittal requirements and that it would be left on the table.

{Tape: 4; Side: A; Approx. Time Count: 24.1}

EXECUTIVE ACTION ON HB 306

Motion/Vote: REP. MOLNAR moved to reconsider HB 306. The motion carried 12 - 8; REPS. BERGMAN, HURDLE, ELLINGSON, KOTTEL, SANDS, PEASE, MC CULLOCH and WYATT voting no. (REP. BERGMAN voted no by proxy.)

{Tape: 4; Side: A; Approx. Time Count: 25.1}

Motion: REP. MOLNAR moved to amend HB 306.

{Tape: 4; Side: A; Approx. Time Count: 29.0}

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 29.8 - 35.7}

Vote: The motion carried 12 - 8; REPS. BERGMAN, HURDLE, ELLINGSON, KOTTEL, SANDS, PEASE, MC CULLOCH and WYATT voting no. (REP. BERGMAN voted no by proxy and REP. GRIMES voted aye by proxy.) *{Tape: 4; Side: A; Approx. Time Count: 35.8}*

Motion/Vote: REP. BOHARSKI moved HB 306 DO PASS AS AMENDED. The motion carried 12 - 8; REPS. BERGMAN, HURDLE, ELLINGSON, KOTTEL, SANDS, PEASE, MC CULLOCH and WYATT voting no. (REP. BERGMAN voted no by proxy.)
{Tape: 4; Side: A; Approx. Time Count: 36.3}

EXECUTIVE ACTION ON HB 159

Motion: REP. SOFT moved to reconsider HB 159. The motion carried 14 - 6; REPS. MC GEE, TASH, ANDERSON, MOLNAR, BOHARSKI and BERGMAN voting no. (REP. BERGMAN voted no by proxy.)

MOTION/VOTE: REP. BOHARSKI MOVED HB 159 DO PASS. THE MOTION carried 14 - 6; REPS. MC GEE, MOLNAR, BOHARSKI, ANDERSON, TASH and BERGMAN voting no. (REP. BERGMAN voted no by proxy.)
{Tape: 4; Side: A; Approx. Time Count: 40.0}

ADJOURNMENT

Adjournment: The meeting was adjourned at 11:45 AM.

Bob Clark

REP. BOB CLARK, Chairman

Joanne Gunderson

JOANNE GUNDERSON, Secretary

BC/jg