

MINUTES

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

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 27, 1997,
at 8:30 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. Hanson was excused until 10:00 AM.

Members Absent: Rep. Ahner was absent until 12 noon.

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

Committee Business Summary:

Executive Action:

TABLED: SB 178, SB 289, SB 320, SB 382
BE CONCURRED IN: SB 201, SB 329, SB 383
BE CONCURRED IN AS AMENDED: SB 369,
SB 314, SB 263, SB 219, SB 283
SB 110 TO RECONSIDER - FAILED

EXECUTIVE ACTION ON SB 219

Motion: REP. WYATT moved SB 219 BE CONCURRED IN.

{Tape: 1; Side: A; Approx. Time Count: 2.5; Comments: This set of minutes is recorded on 60-minute tapes.}

Motion: REP. CURTISS moved to amend SB 219 on page 1, line 24 and page 2, line 29 to strike "an official capacity" and insert "the course and scope of employment."

{Tape: 1; Side: A; Approx. Time Count: 3.7}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 4.9}

Vote: The motion carried 17 - 0. REPS. AHNER, HANSON and GRIMES were absent for the vote and did not leave proxy votes.

{Tape: 1; Side: A; Approx. Time Count: 7.2}

Motion: REP. BOHARSKI moved SB 219 BE CONCURRED IN AS AMENDED.

{Tape: 1; Side: A; Approx. Time Count: 7.5}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 7.6}

Motion/Vote: REP. BOHARSKI moved to table SB 219. The motion failed by voice vote.

{Tape: 1; Side: A; Approx. Time Count: 17.1}

Vote: The motion to concur in SB 219 as amended carried 15 - 3; REPS. MC GEE, BOHARSKI and CLARK voting no. REPS. AHNER and HANSON were absent for the vote and did not leave proxy votes. REP. HURDLE will carry SB 219.

EXECUTIVE ACTION ON SB 201

Motion/Vote: REP. KOTTEL moved SB 201 BE CONCURRED IN.

The motion carried 13-6. REPS. SANDS, ELLINGSON, SOFT, HURDLE, BOHARSKI and SMITH voting no. REP. HANSON voted aye by proxy. REP. AHNER was absent for the vote.

EXHIBIT 1

{Tape: 1; Side: A; Approx. Time Count: 19.6 - 24.7; Comments: (REP. SMITH changed her original vote from yes to no without objection from the committee and expressed her reasons for the change.)}

EXECUTIVE ACTION ON SB 178

Motion: REP. WYATT moved SB 178 BE CONCURRED IN.

{Tape: 1; Side: A; Approx. Time Count: 26.0}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 26.5-Tape 1; Side B; 14.5}

Motion/Vote: REP. GRIMES moved to table SB 178. The motion carried 13 - 5; REPS. WYATT, SOFT, McCULLOCH, KOTTEL and TASH voting no. REPS. AHNER and HANSON were absent for the vote and did not leave proxy votes.

{Tape: 1; Side: B; Approx. Time Count: 14.8}

EXECUTIVE ACTION ON SB 283

Motion: REP. MOLNAR moved SB 283 BE CONCURRED IN.

{Tape: 1; Side: B; Approx. Time Count: 15.2}

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 15.7}

Motion: REP. BOHARSKI moved to amend SB 283 by reinserting the language on page 2.

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 16-Tape 2; Side A; 8.6}

Motion: REP. CURTISS moved a substitute amendment to restore the bill to its original form.

{Tape: 2; Side: A; Approx. Time Count: 8.7}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 9.1-11.8; Comments: REP. CURTISS said she would include "if they are reasonably available" in the substitute amendment.}

Vote: The motion carried 11 - 7; REPS. SANDS, KOTTEL, PEASE, McCULLOCH, WYATT, ELLINGSON, and HURDLE voting no. REP. AHNER voted aye by proxy. REPS. HANSON and SMITH were absent and did not leave proxy votes.

{Tape: 2; Side: A; Approx. Time Count: 11.9; Comments: REP. BOHARSKI changed his vote without objection from the committee from no to aye.}

Motion/Vote: REP. BOHARSKI moved SB 283 BE CONCURRED IN AS AMENDED. The motion carried 10 - 7; REPS. SANDS, PEASE, KOTTEL, McCULLOCH, HURDLE, ELLINGSON and WYATT voting no. REP. AHNER voted aye by proxy; REPS. HANSON, SMITH and BERGMAN were absent for the vote and did not leave proxy votes. REP. GRINDE will carry SB 283.

EXECUTIVE ACTION ON SB 314

Motion: REP. SOFT moved SB 314 BE CONCURRED IN.

{Tape: 2; Side: A; Approx. Time Count: 16.3}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 17.1; Comments: REP. KOTTEL made a point of personal privilege saying that she was approached in an unethical way concerning the vote on this bill and she removed herself from the room during the action on SB 314. She said she was seeking legal advice about how to proceed concerning this issue.}

Motion: REP. ANDERSON moved the sponsor's amendments.

{Tape: 2; Side: A; Approx. Time Count: 18.9}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 19.7}

Motion/Vote: REP. HURDLE moved to table SB 314. The motion failed by voice vote.

Vote: The motion on the sponsor's amendments carried 12 - 3; REPS. WYATT, HURDLE and MOLNAR voting no. REPS. HANSON, AHNER, KOTTEL, SMITH and BERGMAN were absent for the vote.

{Tape: 2; Side: A; Approx. Time Count: 21.8}

Motion: REP. BOHARSKI moved SB 314 BE CONCURRED IN AS AMENDED.

{Tape: 2; Side: A; Approx. Time Count: 22.0}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 22.1-Tape 2; Side B; 0.7}

Motion: REP. ELLINGSON moved to amend SB 314.

{Tape: 2; Side: B; Approx. Time Count: 0.8}

Discussion:

{Tape: 2; Side: B; Approx. Time Count: 2.5}

Vote: The motion failed 7 - 9. REPS. ELLINGSON, HURDLE, WYATT, SANDS, PEASE, McCULLOCH and CURTISS voting aye. REP. HANSON voted no by proxy. REPS. AHNER, SMITH, BERGMAN and KOTTEL were absent for the vote but did not leave proxy votes.

{Tape: 2; Side: B; Approx. Time Count: 3.7}

Discussion:

{Tape: 2; Side: B; Approx. Time Count: 5.7}

Vote: The motion to concur in SB 314 as amended carried 9 - 8; REPS. MOLNAR, ELLINGSON, HURDLE, PEASE, SANDS, WYATT, McCULLOCH, and CURTISS voting no. REP. HANSON voted aye by proxy. REPS. AHNER, KOTTEL and SMITH were absent for the vote and did not leave proxy votes.

{Tape: 2; Side: B; Approx. Time Count: 9.5}

EXECUTIVE ACTION ON SB 320

Motion: REP. GRIMES moved SB 320 BE NOT CONCURRED IN. EXHIBIT 2
{Tape: 2; Side: B; Approx. Time Count: 12.9}

Motion/Vote: REP. ELLINGSON moved amendments drafted by Greg Petesch to SB 320. The motion carried 18 - 0. REPS. AHNER and SMITH were absent for the vote.
{Tape: 2; Side: B; Approx. Time Count: 16.0}

Motion: REP. ELLINGSON moved amendments dated 3/20/97 to SB 320.
{Tape: 2; Side: B; Approx. Time Count: 18.6}

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 19.4}

Motion/Vote: REP. ANDERSON moved to table SB 320. The motion carried 10 - 8. REPS. ELLINGSON, HURDLE, WYATT, McCULLOCH, PEASE, SANDS, BOHARSKI and KOTTEL voting no. REPS. AHNER and SMITH were absent for the vote and did not leave proxy votes.
{Tape: 2; Side: B; Approx. Time Count: 26.3}

EXECUTIVE ACTION ON SB 383

Motion: REP. WYATT moved SB 383 BE CONCURRED IN.
{Tape: 2; Side: B; Approx. Time Count: 29.0}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 0.5}

Vote: The motion carried 17 - 1; REP. HURDLE voting no. REPS. AHNER and SMITH were absent for the vote. REP. MOLNAR will carry SB 383.
{Tape: 3; Side: A; Approx. Time Count: 2.2}

EXECUTIVE ACTION ON SB 263

Motion: REP. KOTTEL moved SB 263 BE CONCURRED IN.
{Tape: 3; Side: A; Approx. Time Count: 3.2}

Motion: REP. ELLINGSON moved to amend SB 263. EXHIBIT 3
{Tape: 3; Side: A; Approx. Time Count: 4.7}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 5.2; Comments: REP. HANSON arrived.}

Vote: The motion carried 19 - 0. REP. AHNER was absent for the vote.

Motion/Vote: REP. BOHARSKI moved SB 263 BE CONCURRED IN AS AMENDED. The motion carried 19 - 0. REP. AHNER was absent for the vote. REP. HANSON will carry SB 263.

EXECUTIVE ACTION ON SB 369

Motion: REP. TASH moved SB 369 BE CONCURRED IN. EXHIBIT 4
{Tape: 3; Side: A; Approx. Time Count: 13.5}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 14.1 - 15.9}

Motion: REP. KOTTEL moved to amend SB 369. EXHIBIT 5
{Tape: 3; Side: A; Approx. Time Count: 16.1}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 20.0; Comments: .}

Vote: The motion carried 18 - 1; REP. WYATT voting no. REP. AHNER was absent for the vote.

Motion: REP. BOHARSKI moved SB 369 BE CONCURRED IN AS AMENDED.

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 25 - end of side A;
Comments: At 19.8 on the tape, REPS. WYATT and KOTTEL made statements for the record regarding SB 369}

Vote: The motion to concur in SB 369 carried 19 - 0. REP. AHNER was absent for the vote. REP. KOTTEL will carry SB 369.
{Tape: 3; Side: B; Approx. Time Count: 0.1}

EXECUTIVE ACTION ON SB 382

Motion: REP. MC GEE moved SB 382 BE CONCURRED IN.
{Tape: 3; Side: B; Approx. Time Count: 2.0}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 2.8}

Motion: REP. ELLINGSON moved to amend SB 382.
{Tape: 3; Side: B; Approx. Time Count: 3.5}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 3.6-end of Tape 3; Side B}

Motion/Vote: REP. BOHARSKI moved a substitute amendment to strike the word, "or" at the end of line 15 on page 6 and insert the word, "and." The motion carried 17 - 0; REPS. AHNER, TASH

and MOLNAR were absent for the vote and did not leave proxies for amendments. {Tape: 4; Side: A; Approx. Time Count: 0.1}

Motion: REP. BOHARSKI moved SB 382 BE CONCURRED IN AS AMENDED.
{Tape: 4; Side: A; Approx. Time Count: 2.0}

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 2.5 - 9.0}

Motion: REP. ANDERSON moved to amend SB 382. EXHIBIT 6
{Tape: 4; Side: A; Approx. Time Count: 9.2}

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 11.4 - 14.5; Comments: REP. ELLINGSON requested (and CHAIRMAN CLARK so ruled) that a lobbyist for this bill, Ms. Rehberg, remove herself from where she was seated adjacent to the table and that discussions being held with members of the committee be conducted elsewhere.}

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 14.6; Comments: REP. KOTTEL began reading into the record a list of opponents to this bill. REP. MCGEE objected to the reading of the list of opponents since they were not introduced during public testimony, CHAIRMAN CLARK so ruled and the written list was submitted as an exhibit.} EXHIBIT 7

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 16.0; Comments: REP. ANDERSON requested testimony from the Securities Division representative of the State Auditor's Office, Ms. O'Halloran. REP. WYATT objected to allowing Ms. O'Halloran's comments on the amendments because she felt the need for the bill was unclear and; REP. BOHARSKI commented on the need for the clarification of the amendments and then REP. WYATT withdrew her objection. Ms. O'Halloran was allowed to answer questions from committee members. REP. HURDLE's request for Ms. O'Halloran's opinion on the bill was ruled out of order.}

Vote: The motion to amend according to Exhibit 6 carried 18 - 0. REPS. AHNER, TASH and MOLNAR were absent for the vote and did not leave proxies for amendments.

{Tape: 4; Side: A; Approx. Time Count: 26.0}

Motion: REP. ANDERSON moved to amend SB 382. EXHIBIT 8
{Tape: 4; Side: A; Approx. Time Count: 26.6}

Discussion:

{Tape: 4; Side: A; Approx. Time Count: 27.9}

Vote: The motion carried 13 - 5; REPS. HURDLE, ELLINGSON, WYATT, SANDS and PEASE voting no. REPS. TASH and AHNER were absent for the vote and did not leave proxies for amendments.

{Tape: 4; Side: B; Approx. Time Count: 1.7}

Motion: REP. ANDERSON moved to amend SB 382.
{Tape: 4; Side: B; Approx. Time Count: 2.7}

EXHIBIT 9

Discussion:

{Tape: 4; Side: B; Approx. Time Count: 3.2 - 8.8}

Vote: The motion failed by voice vote.

{Tape: 4; Side: B; Approx. Time Count: 8.9}

Motion: REP. HANSON moved SB 382 BE CONCURRED IN AS AMENDED.

{Tape: 4; Side: B; Approx. Time Count: 10.6}

Discussion:

{Tape: 4; Side: B; Approx. Time Count: 10.9}

Motion: REP. HURDLE moved to table SB 382. The motion failed 10 - 10 (*see comments below); REPS. AHNER and TASH voted no by proxy (their aye votes to concur signified no votes to table). REPS. BERGMAN and MOLNAR voted aye by proxy (their no votes on the bill reflect aye votes to table.)

{Tape: 4; Side: B; Approx. Time Count: 16.8; Comments: The initial count was 10 - 10, however, during preparation of the minutes, the tally was corrected to 11 - 9. Due to the incorrect tally during the meeting, discussion and amending action continued though ultimately the bill was tabled by roll call vote 11 - 9 as indicated below.}

Discussion:

{Tape: 4; Side: B; Approx. Time Count: 16.6}

Motion: REP. KOTTEL moved to amend SB 382 by deleting section 4.

{Tape: 4; Side: B; Approx. Time Count: 16.7; Comments: REP. AHNER arrived.}

Vote: The motion carried 16 - 3; REPS. MCGEE, BOHARSKI and CLARK voting no. REP. TASH was absent for the vote and his proxy did not include amendments.

{Tape: 4; Side: B; Approx. Time Count: 20.2}

Motion: REP. KOTTEL moved SB 382 BE CONCURRED IN AS AMENDED.

{Tape: 4; Side: B; Approx. Time Count: 20.6}

Discussion:

{Tape: 4; Side: B; Approx. Time Count: 20.8-Tape 5; Side A; 18.9; Comments: Both Ms. O'Halloran and Ms. Rehberg responded to questions without objection from the committee. REPS. MC GEE and BOHARSKI argued the reasons for passing the bill. A statement by REP. HURDLE was ruled out of order. REP. KOTTEL reasoned for delay in passing a bill that would make a major swing in policy.}

Motion/Vote: REP. KOTTEL moved to table SB 382. The motion carried by roll call vote 11 - 9.

EXHIBIT 10

{Tape: 5; Side: A; Approx. Time Count: 19.3; Comments: REP. MCGEE asked for a roll call vote.}

EXECUTIVE ACTION ON SB 329

Motion: REP. KOTTEL moved SB 329 BE CONCURRED IN. EXHIBIT 11
{Tape: 5; Side: A; Approx. Time Count: 22.4}

Discussion:

{Tape: 5; Side: A; Approx. Time Count: 24.3; Comments: REP. GRIMES requested his remarks be noted for the permanent record.}

Vote: The motion carried 18 - 2; REPS. HURDLE and WYATT voting no. REP. KOTTEL will carry SB 329.

EXECUTIVE ACTION ON SB 289

Motion: REP. SANDS moved SB 289 BE CONCURRED IN.
{Tape: 5; Side: A; Approx. Time Count: 26.2}

Discussion:

EXHIBITS 12-14

{Tape: 5; Side: A; Approx. Time Count: 26.5}

Motion/Vote: REP. ANDERSON moved to table SB 289. The motion carried 17 - 3; REPS. McCULLOCH, SANDS and PEASE voting no.

EXECUTIVE ACTION ON SB 110

Motion: REP. GRIMES moved SB 110 be reconsidered.

Discussion:

EXHIBIT 15

{Tape: 5; Side: A; Approx. Time Count: 29.6-Tape 5; Side B; 2.0; Comments: REP. AHNER requested that Hank Hudson be allowed to speak on the bill. REP. MCGEE objected because the discussion was on the motion to reconsider. REPS. GRIMES and WYATT explained their reasons for supporting the motion.}

Vote: The motion to reconsider carried 14 - 6; REPS. MCGEE, MOLNAR, BOHARSKI, CURTISS, ANDERSON, and HURDLE voting no.

Motion: REP. GRIMES moved SB 110 BE CONCURRED IN.
{Tape: 5; Side: B; Approx. Time Count: 6.5}

Discussion:

{Tape: 5; Side: B; Approx. Time Count: 6.7-16.8; Comments: REPS. CURTISS and MCGEE stated the bill interferes with due process.}

Vote: The motion failed by roll call vote 10 - 10. REPS. AHNER and BERGMAN voted aye by proxy. REP. TASH voted no by proxy.
{Tape: 5; Side: B; Approx. Time Count: 17.6} EXHIBIT 16

Motion: REP. SANDS moved to adjourn. The meeting was adjourned.

ADJOURNMENT

Adjournment: The meeting was adjourned at 12:55 PM.



REP. BOB CLARK, Chairman



JOANNE GUNDERSON, Secretary

BC/jg