

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 10, 1977

The meeting of this committee was called to order on the above date by Senator Turnage, Chairman, at 9:35 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Rep. Hal Harper - District 30, Helena
Ron Semple - Publisher of Independent Record & MT Press Assn.
Rep. Dorothy Bradley - District 77, Bozeman
Sam Gilluly - Secy.-Mgr. Montana Press Assn.
Terry Dwyer - Great Falls Tribune
Bob McGiffort - Professor, School of Journalism, University of MT
Bob Henney - executive director, MT Broadcasters Assn.
Sen. Pat Goodover - District 22, Great Falls
Phil Strope - Helena attorney
Greg Morgan - MT Bar Assn.
Rick Foot - Butte newsman
Pat Melby - Director, Dept. of SRS

CONSIDERATION OF HOUSE BILL 164:

Rep. Harper, sponsor of this bill, told the committee that it was introduced to bring the Montana law toward compliance with federal regulations and to bring it in compliance with the new Montana Constitution, and to protect the confidentiality of information concerning recipients of public assistance. The director of SRS, Pat Melby, requested Rep. Harper to introduce this bill for the previous reasons. It should be amended in regard to the confidentiality of information because, to make this information public, would violate the rights of privacy. (See Ex. 1) He recommended that §71-231.1 be repealed to protect the rights of privacy. He then told the committee that our law is now out of compliance. This bill provides an additional penalty for use of any of this information for political or commercial purposes.

The only opponent of this bill was Ron Semple, publisher of the Independent Record and representing the Montana Press Assn. He said that the people's right-to-know conflicts often with the right-to-privacy information. This information should be made available to the public and the press if the need is present. He further said that he thinks H.B. 164 is an unnecessary piece of legislation.

There were no proponents of the bill, so the committee was allowed to question the witnesses. The Chairman then thanked and excused the witnesses.

CONSIDERATION OF HOUSE BILL 116:

Rep. Dorothy Bradley of District 67, Bozeman, sponsor of this bill, said that it involved some cleanup on the present law and some substantive changes. She said that it did two things, the first being that, in addition to not having to disclose the source of information, the reporter would not have to disclose the information itself, and that if some of the information had been disclosed by a reporter he does not have to disclose the rest of it. This bill was introduced because of a decision made by the Montana Supreme Court last year and the whole point is whether or not partial dissemination should constitute a waiver. News reporters are not a police force for the state. They are supposed to tell the public what is going on, but, if those who know of corruption are not guaranteed anonymity, they will not tell the public. This bill deals with the confidentiality of sources of information. The rule of freedom of the press is very crucial in this country. She further told the committee that this bill is not something the reporters dreamed up, but it is something for the people.

The other witnesses who were proponents and present to testify were: Mr. Sam Gilluly, secretary-manager of the Montana Press Assn., told the committee that they supported the bill, and Terry Dwyer of the Great Falls Tribune said that he thought the question is whether this bill is in the public interest rather than in the interest of the press. He also agreed that people involved would not want to talk to reporters if they feared they would say who gave them the information.

At this point, Ron Semple of the Independent Record said that the people's right to know is protected by allowing reporters to make and disseminate information for the public. He asked that the legislature strengthen the "Shield Law" because a reporter would go to jail rather than reveal confidences.

Bob McGifford of the faculty of the School of Journalism at the University of Montana said that the shield law has worked very well. He added that the Great Falls Tribune case of 1976 shows that Montana is not immune to pressures.

Bob Henney, executive director of the Montana Broadcasters Assn., told the committee that this legislation is supported by them because it provides protection for broadcasters as well as reporters. Senator Pat Goodover, who is a former broadcaster, said that he supports this bill also.

Phil Strope, a Helena attorney appearing for himself, said that he had represented Frank Adams in the Great Falls Tribune case in 1976 and he said that he believes the Supreme Court made an error in their decision. By that decision, it means that the newsman does not have the same privilege of confidentiality as doctors do with their patients.

The next proponent was Greg Morgan of the Montana Bar Assn. who said that they adopt the comments of the other proponents.

There were no more proponents of the bill present.

Rick Foot, a Butte newspaperman, representing himself, was the only opponent of the bill to testify. He said that he believes shield laws are not healthy to the press, and that, dealing on a daily basis with the bureaucracy which has existed in Montana for the past several years, he finds that employees remain afraid of their bosses and are afraid to talk to reporters.

At this time Rep. Bradley was allowed to close. She said that she found the comments of Rick Foot interesting and that a reporter does not have an absolute 1st Amendment right, but he has a privilege.

The Chairman then allowed questions by committee members. During this time, Frank Adams, the Tribune reporter involved in the Supreme Court case, told the committee that does not think a reporter should take a position on legislation. He said that when the Supreme Court called him he did not know what they were going to ask him and he drew the line about what he was going to talk about.

Senator Turnage, the committee Chairman, told the witnesses that the committee would take H.B. 116 under advisement.

CONSIDERATION OF HOUSE BILL 384:

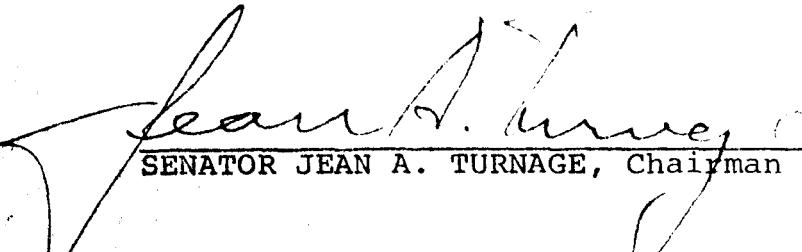
This bill had been transferred in to committee on the previous day. After some discussion as to the bill being overbroad, Senator Towe moved to amend page 3, section 1, line 2, following "to" by inserting "persons acting as". The motion carried unanimously. He then moved that H.B. 384 as amended BE CONCURRED IN. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 4:

During discussion by the committee members, it was decided that Billings should have a 4th judge and Gallatin should have another one; also, that Lincoln County can justify its own judicial district. Senator Warden moved that the bill be so amended. The motion carried unanimously.

Senator Regan moved that H.B. 4 as amended BE CONCURRED IN. The motion carried unanimously. However, Senator Towe said that he had never had any trouble in Judge Lessley's court getting cases set.

There being no further business, the committee adjourned at 11:20 a.m..


SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 3/10/74

concerned with the welfare of such needy individual. Before such payments may be paid to such other person, such person shall give a bond, with adequate corporate surety and in form to be approved by the state department, running in favor of the needy individual and the state of Montana, conditioned upon the faithful use by such other person of the funds for the welfare of the said needy individual. Such bond shall be an amount equal to six (6) times the amount of the monthly payment involved.

(c) On or before the twentieth of each month the state department will present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department must make such reimbursement to the state department within twenty (20) days after such claim is presented.

71-231. Records and reports. Each county department shall keep such records and make such reports and in such detail as the state department may from time to time require, and shall transmit to the state department upon its request copies of applications and any or all other records pertaining to any case. The state department is hereby authorized and directed to keep such records, in such form and containing such information, as the federal social security board may from time to time require, and comply with such provisions as the federal board may from time to time find necessary to assure the correctness and verification of such reports.

71-231.1. Filing of records showing recipients of public assistance - public records - destruction after four years. The county welfare board of each county shall on or before the thirtieth (30th) day of January, April, July and October of each year file with the county clerk and recorder of each county a complete report showing the names of all recipients receiving public assistance, together with the amounts paid to each during the preceding quarter.

The reports so filed with the county clerk and recorder shall be and the same hereby are declared to be public records and shall be open to public inspection at all times during the regular office hours of said county clerk and recorder. The reports so filed may be destroyed by the county clerk and recorder in the presence of the board of county commissioners and upon order of said board of county commissioners at any time after the period of four (4) years from their filing date.

71-231.2. Misuse of public assistance information. Except as provided in this act, it shall be unlawful for any person, body, association, firm, corporation or other agency to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any lists or names for commercial or political purposes of any nature, or for any purpose not directly connected with the administration of public assistance.

71-231.3. **Penalty.** Any person, body, association, corporation, firm, or other agency who shall willfully or knowingly violate any provision of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than one thousand (\$1,000.00) dollars, to which may be added imprisonment in the county jail for any determinate period not to exceed sixty (60) days. If the violation is by other than an individual, the imprisonment may be adjusted against any officer, agent, employee, servant, or other person of the association, corporation, firm or other agency who committed or participated in such violation and is found guilty thereof.

71-232. **Repealed.**

71-1515. **Contracting with other agencies to process claims.** The state department may, by suitable rules and regulations, provide for contracting with any state or private agency for processing and payment of claims under such program of medical assistance, and the state department shall have the authority to contract with one or more private or state agencies to provide any or all of the enumerated medical services.

SENATE

VISITORS' REGISTER

COMMITTEE

BILL 116 of 164

DATE 3/10/17

Please note bill no.

(check one)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 11, 1977

The meeting of this committee was called to order on the above date by Senator Turnage, Chairman, in Room 442 of the State Capitol Building at 9:30 a.m..

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Rep. John Scully - Bozeman - District 76

Jack Burke - Montana Power Co.

Geoffrey L. Brazier - Consumer Counsel

Les Loble - Montana-Dakota Utilities, Gen. Telephone of the Northwest, Inc.

Jim Hughes - Mountain Bell

Gene Phillips - Pacific Power & Light and Northwestern Telephone

Rob Smith - Counsel, Public Service Commission

Dan Mizner - Montana League of Cities & Towns

CONSIDERATION OF HOUSE BILLS 352, 395 and 396:

Representative John Scully, District 76 - Bozeman, sponsor of this bill, said that the three bills to be considered today -- H.B. 352, 395 and 396 -- precipitate the changes regarding the Public Service Commission. There is a mandatory rule-making directive in H.B. 396. He told the committee that H.B. 352 mainly sets a time limit for decision of the Public Service Commission. If the decision is not made in time, the rate increase requested is allowed until the decision is handed down. Then, if there is a rebate due the customers, it bears 10% interest. It is felt that 9 months is a reasonable period of time and one that the Public Service Commission can meet.

Rep. Scully then explained H.B. 396, saying that this bill requires that the Public Service Commission promulgate their rules by 10-31-77 and that, in subsection (3), there has been an amendment made that, if they do not meet the rules deadline, the appropriation made this session for them, can be cut -- keeping in mind that the legislature may be in session in November, 1977.

Dan Mizner, executive director of the League of Cities and Towns, was the first proponent to testify, saying that the decisions on rate increases by the Public Service Commission have sometimes taken up to 15 months, and he supports the review process and decision having to be made within 9 months.

The next proponent was Jack Burke of the Montana Power Co. who said that they support H.B. 352 as part of the package of bills and that he supports the remarks of Rep. Scully. He told the committee

regulatory time is very much in use in other states.

Geoffrey Brazier, Consumer Counsel, concurred in what had been said so far. He said that a statutory function of his office is to recommend remedial legislation to the committee of the Consumer Counsel. He told the committee that a good number of things were considered by the House committee and that these bills are essentially a compromise of what came before that committee. He said that he had a problem with line 8 of the title and he would like to have inserted the words "subject to rebate with interest", and also on page 4, line 11. A hearing on an MDU appeal is being held next week and the Montana Power has a hearing scheduled for the middle of June involving approximately \$50 million dollars. Therefore, he thinks the effective date should possibly be changed and that perhaps the mandate to adopt rules should be October 31, 1977, rather than July 1, 1977.

Les Loble, representing MDU and General Telephone of the NW, Inc., was the next proponent, saying that they are in favor of these bills and that he feels they should be treated as a package. He urged caution when amending these bills as they might not get out this session.

Gene Phillips of Kalispell, representing the Pacific Power & Light and Northwestern Telephone, Inc., said that they would like to have H.B. 352 in effect when they file two rate cases this summer. He said that these companies operate in six western states and, in those states, rate applications are handled in about one-half the time they are in Montana.

Jim Hughes, representing Mountain Bell, said that they certainly do support this package of bills, including H.B. 352.

There were no opponents to the bills present.

Rep. Scully closed on these bills by saying that he questioned changing the effective date to July 1, 1977. However, he said that he would not oppose it if the committee inserted the words "It does not apply to any cases being currently considered." He did oppose making it effective after July 1, 1977. He further said that he thinks the Public Service Commission could have the rules done by July 1, 1977.

The Chairman allowed questions to be asked of the witnesses by the committee members.

Senator Towe was excused at 10:05 to attend another meeting.

At this time, Rep. Scully explained H.B. 395 to the committee. He said that it came from the Consumer Counsel committee and that it deals with the ability of the Consumer Counsel to have discovery. It came about because a railroad refused to give them information. This bill says that the Consumer Counsel does have discovery, and discovery should be available. The enforcement is at the district

court level.

Rep. Scully then proceeded to explain H.B. 396 to the committee. He said that rules have to be made by October 31, 1977, by the Public Service Commission. This bill mandates those rules be promulgated as some companies or cities and towns do not know what they have to have when they file the applications.

Geoffrey Brazier, Consumer Counsel, said that the problem with the commission is that they make up their rules as they go along. Another problem is that there are a lot of uncontested cases which are never disposed of, which is really criminal. He further testified that his committee had law students during one summer study and prepare suggested rules for the Public Service Commission to adopt. At that time the PSC seemed happy to have them but they would not adopt them, in fact, they told the Consumer Counsel to mind his own business. They again filed the proposed set of rules and all the PSC would have to do is adopt or amend them, but they have not done this either. The national organization has adopted the rule that all commissions have to have rules, and in these rules there are to be minimum filing requirements. The Public Service Commission staff should review them, notice them up and ask for opposition. If there is some, they can have a hearing on the issues. He said that they now have before them at least five sets of rules they could adopt.

In regard to H.B. 395, Mr. Brazier said most companies give figures and numbers involved in their applications. He said that they have a problem in a case coming up of whether the Consumer Counsel has discovery. He asked that the Consumer Counsel have the power to prepare a good defense. This bill has been made complimentary to H.B. 352.

Jack Burke of the Montana Power Co. said that, through the efforts of the Consumer Counsel, the committee has had a composite view of what went on during the 4 or 5 meetings held on these bills. He urged that the package be adopted as sent to this committee. However, he did say that he believes the staff of the Public Service Commission is competent and needs some backing from the commission, and that this package of bills says to the commission: "Make the decision."

Les Loble concurred in these remarks. He said that he had received a bulletin from the commission stating that written requests of the commission had to be acted on in 72 hours.

Gene Phillips said that he had also received the same policy statement, but that he had a 1975 case which was appealed to the district court and that was the first time they had heard of this rule. That is why they want to have the rules set out. They do not like oral rules.

Rob Smith, attorney with the Public Service Commission, said that they have no basic argument with most of these bills. The commission recognizes that they have problems.

At this time, Rep. Scully said that they had a great deal of help from the staff of the Public Service Commission on these bills and that he hopes they will help the staff.

DISPOSITION OF HOUSE BILL 396:

Senator Murray moved that H.B. 396 BE CONCURRED IN. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 395:

Senator Olsen moved that H.B. 395 BE CONCURRED IN. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 352:

Senator Roberts moved to strike section 2 and the effective date in the title. The motion carried, with Senator Murray voting "No".

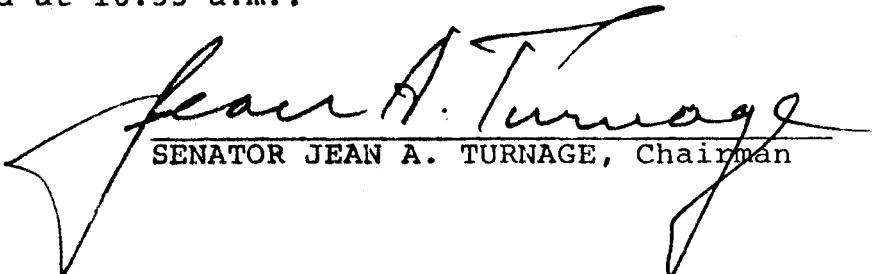
Senator Regan then moved to amend the title in line 8 by inserting "subject to rebate with interest". The motion carried unanimously.

Senator Roberts then moved that H.B. 352 as amended BE CONCURRED IN. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 226:

The committee discussed amending this bill. However, further action was deferred until the next day as there was not time to consider the amendments thoroughly.

There being no further business before the committee this day, the committee adjourned at 10:55 a.m..


SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 3/11/77

SENATE

COMMITTEE

BILL 3652, 3954

VISITORS' REGISTER

DATE

316

Please note bill no. 117-1

(check one)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 12, 1977

The meeting of this committee was called to order on the above date by Senator Turnage, Chairman, at 9:40 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All committee members were present for this meeting except Senator Warden who was excused.

WITNESSES PRESENT TO TESTIFY:

Rep. Barrett - District 48, Lewistown

Roger Tippy - Staff attorney, Administrative Code Committee for last biennium

Rod Gudgel - MNHA, MSPA & MOA

Robert Lohn - Governor's staff, attorney

JoAnn Woodgerd - office of the Secretary of State

George Losleben - State Personnel Division, staff counsel

Dorris Dietzen - office of Secretary of State

CONSIDERATION OF HOUSE BILL 77:

Rep. Barrett of Lewistown, sponsor of HB 77, said that this bill simply recodifies the Montana Administrative Codes.

Roger Tippy of the office of the Administrative Code Commissioner, said that the administrative code committee oversaw rule making on a month by month basis during the last biennium. He explained the changes made in H.B. 77 section by section.

Rod Gudgel, representing the Montana Nursing Home Assn. and the Montana State Pharmaceutical Assn., was the first proponent of H.B. 77 to testify. He said that they support this bill because there are abuses to the rule making process.

Bob Lohn, attorney on the Governor's staff, said that they support the bill and that he feels that it is necessary for a change to be made in the personnel rules. It was agreed that he would write the amendment for the committee and submit it for their consideration.

JoAnn Woodgerd of the Secretary of State's office was the next proponent to testify. She said that she was concerned about several things in the bill. She went over these with the committee.

Dorris Dietzen of the Secretary of State's office said that they have no money to print the code updates more than once a month.

George Losleben, staff counsel, State Personnel Division, said that he believes there is a hidden cost in the fiscal note, but that he thinks it is a better policy to have all state agencies put in their own input.

Senator Turnage, Chairman, thanked Roger Tippy for the help he has given the code committee in drafting this bill.

Senator Olsen moved to amend H.B. 77 by adding a savings clause. The motion carried unanimously.

Senator Towe moved the adoption of the attached amendments with the exception of amendment #9 which was moved by Senator Olsen as previously stated. (See attachment #1) The motion carried unanimously. He then moved that H.B. 77 as amended BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE SESSION

At this time the committee went into executive session on the following bills:

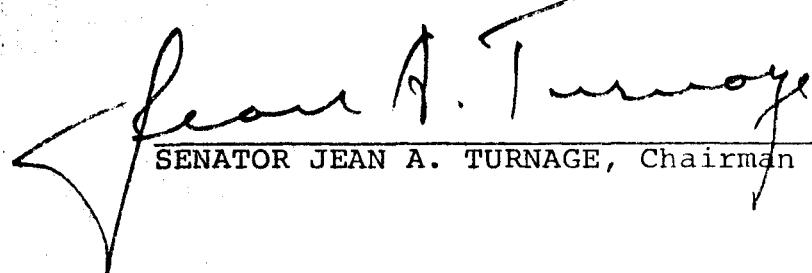
H.B. 226 - Lon Maxwell, Judiciary Committee counsel, proposed some amendments to this bill. Senator Roberts moved the adoption of the discussed amendments. (See attachment #2) The motion carried unanimously. Senator Roberts then moved that H.B. 226 as amended BE CONCURRED IN. The motion carried unanimously.

HJR 7 - Senator Roberts moved that HJR 7 BE NOT CONCURRED IN. The motion carried unanimously.

HJR 3 - Senator Regan moved that HJR 3 BE NOT CONCURRED IN. The motion carried with Senator Roberts voting "No".

HJR 2 - Senator Regan moved that HJR 2 BE NOT CONCURRED IN. The motion carried with Senator Roberts abstaining.

There being no further business, the committee adjourned at 11:00 a.m..


SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

COMMITTEE

45th LEGISLATIVE SESSION -- 1977

Date 3-12-17

Respectfully report as follows: That.....**HOUSE**..... Bill No. 77,
the Third Reading bill, be amended as follows:

1. Amend page 19, section 11, line 9.

Following: "code)."

Insert: "However, this does not require the republication of rules
which have been published under the name 'Montana Administrative Code'.
The"

2. Amend page 24, section 11, line 19.

Following: ~~XXXXXXXXXX~~ "COMMITTEE"

Insert: "but not more often than twice a month"

3. Amend page 35, section 19, lines 9 through 11.

Following: "hearing"

Strike: ", unless the applicable statute provides for a trial ~~de novo~~ on
appeal to the district court"

4. Amend page 42, section 27, line 14.

Following: "new"

Strike: "R.C.M."

DOORPASS

STATE PUB. CO.
Helena, Mont.

~~RECORDED~~

A.B. 77
Page 4.

5. Amend page 42, section 28, line 24.

Following: "new"

Strike: "R.C.M."

6. Amend page 43, section 28, lines 7 and 8.

Following: line 6

~~XXXXXXXXXX~~ Strike: "second and third volumes of that manual under the title
of Statewide Budgeting and Accounting Manual"

Insert: "publication of this material in manual form under a new title
not containing the word 'administrative'"

7. Amend page 43, section 29, line 19.

Following: "new"

Strike: "R.C.M."

8. Amend page 43, section 29, line 25.

Following: line 24

Strike: "30"

Insert: "1"

9. Amend page 44, section 29, line 3.

Following: line 3

Insert: "Section 30. Savings clause. Section 82-4220(3), ^{R.C.M. 1977} not apply
to a contested case for which the initial notice of hearing was issued
prior to March 15, 1977."

(Attachment # 2)

Respectfully report as follows: That HOUSE BILL NO. 226,
the Third Reading Bill, be amended as follows:

1. Amend page title, line 5.

Following: "TO"

Strike: "PROVIDE A PENALTY FOR"

Insert: "REDEFINE"

2. Amend title, lines 6 and 7.

Following: "DRIVING"

Strike: lines 6 and 7 in their entirety

Insert: "AND TO AMEND THE PENALTIES THEREFOR."

3. Amend page 1, section 1, line 12.

Following: "driving."

Strike: "(a) Any"

Insert: "(1) A" XMKNA

Following: "person"

Strike: "who drives"

Insert: "commits the offense of reckless driving if he:

(a) operates"

4. Amend page 1, section 1, line 14.

Following: "property"

Strike: "is guilty of reckless driving"

Insert: "; or

(b) flees or attempts to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 32-21-132"

5. Amend page 1, section 1, line 15.

Following: line 14

Strike: ~~(b)~~ "Every"

Insert: "(2) A"

Following: "driving"

Insert: "under subsection (1)(a)"

6. Amend page 1, section 1, line 25 through line 3 on page 2.

Following: line 24

Strike: "(c) Each"

Insert: "(3) A"

Following: "driving"

Strike: lines 25 through line 3 on page 2 in their entirety

Insert: "under subsection (1)(b)"

7. Amend page 2, section 1, lines 12 and 13.

Following: ~~xxxxxx~~ "set"

Strike: "(2)"

Insert: "(4)"

Following: "state"

Strike: "is hereby given authority to"

Insert: "may"

Following: ~~xxxxxx~~ "enact"

Strike: "the foregoing paragraphs (a), (b), and (c)"

Insert: "and enforce subsections (1) through (3)"

8. Amend page 2, section 1, lines 14 through 17.

Following: "an ordinance"

Strike: lines 14 through 17 in their entirety

Insert: "."

3/12/77

Judiciary
VISITOR'S REGISTER

H.B. 77