

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 27, 1979

The seventeenth meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. by Senator Everett R. Lensink in room 331 of the Capitol Building.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 149:

Senator Hazelbaker was not at the meeting and Senator Lensink explained the bill, which is an act to clarify the Montana Recall Act. He offered a copy of some amendments that the League of Women Voters felt should be included in this bill. (See Exhibit A)

Margaret Davis, representing the League of Women Voters said that they would only support this bill if these amendments or similar amendments were worked into this bill. She said that on page 2, line 6, because of Senate Bill 65, which makes a reference to this, that this would make a hardship on the clerks and recorders; that in section 2, that she does not feel that appointed official is clearly stated, and several other small amendments were offered.

Charlotte Edwards representing the county clerks and recorders questioned the definition of a qualified voter and suggested that in every case they be called "qualified registered elector".

There were no further proponents and no opponents. There were a few short questions from the committee and Senator Lensink requested Joan Mayer, attorney from the Legislative Council to work on the amendments proposed.

CONSIDERATION OF HOUSE BILL 7:

Representative Manuel was not able to attend the meeting as he was at another meeting so Larry Wineberg, staff attorney for the Legislative Council gave the explanation of this bill, which is an act to generally revise and clarify the laws relating to public utilities and common carriers.

Bill Opitz, executive director for the Public Service Commission, stated that they do support the bill and that their attorneys have agreed to changes in the bill.

There were no further proponents and no opponents.

There were numerous questions on this bill and the hearing on this bill was closed at 11:01 a.m.

CONSIDERATION OF SENATE BILL 132:

As Senator Blaylock was not at the meeting, former Senator Terry Murphy was there to explain the bill. He explained that he was appearing on his own behalf and this bill was drafted upon his suggestion. This bill is an act to allow a recount if the unsuccessful candidate posts a bond to cover all costs of the recount. He gave an example of an election he lost wherein he lost the election by a very small margin. He explained that he represented four counties and there were three district judges involved, that he was allowed a recount in one county but not in the other three. He stated that legislators will be running in districts that criss-cross lines and he felt that you have to have one authority that would decide these issues. He stated that anyone in a close election who feels there was a mistake, should be entitled to a recount if they would post a bond to cover the cost of the recount. He felt that there would not be too many people coming in for a recount as it is too expensive. He said in regard to the argument that it will involve a lot of work for the clerks and recorders that they are there for the purpose to see that the wishes of the people are being carried out.

There were no further proponents.

John Bell, representing the Association of Clerks and Recorders stated that they do object to this bill. He stated that the monetary cost of the recount would be relatively small but the cost in time would be considerable and that there is a social cost involved when an election is up in the air. He also stated that 1/4 of 1 percent of the votes is a pretty small amount in order to justify a recount and on one recount on the difference of 11 votes, the count came out the same. He felt that perhaps this could be changed to 1/2 of 1 percent.

Murphy stated that the difference in their area should have been 57 and it ended up 51.

Ms. Charlotte Edwards, the past county clerk of Powder River County gave a statement opposing this bill. She stated that in some areas they have such sloppy work and then the proper approach would be to bring the responsibility where it lies - with the county clerk and recorders. She stated that many of the counties are quite derelict and that these were the reasons she would oppose this bill.

Senator Anderson stated that he was the other half of Terry Murphy's bill, and that the new election bill addresses this in approximately the same range. He stated that if there were 14,000 votes, 1/4 of 1% of this amount would be 30 votes. He felt that people have a right to know who their elected official is going to be and that this should not be a long

drawn-out affair. He felt that by allowing this recount that it would prolong the chance for fraud. He also stated that he was prepared to go to the Supreme Court if they had allowed a recount in his case and the session would probably have been over before this matter was decided.

There were no further opponents.

Margaret Davis, representing the League of Women Voters, commented that the League was concerned about close elections but that this bill does not mention ballot issue recounts. She suggested on line 23 and 24 that the language is not clear; "recount the ballots as specified in the petition", and they would recommend the deletion of "as". She stated that they were really neither a proponent or an opponent.

Mr. Murphy stated that the recount did not take long at all. It took about six hours in Jefferson County and that is about 45 percent of the ballots. He stated that they did find an 18 vote transposition but this was transposed on both sides.

Senator Towe questioned as to what they have in mind when they consider costs.

Terry Murphy stated that they used 5 county officials and it took them six hours. Taking about six hours and including dollars per hour and mileage, he would estimate it would be about \$800.00 to do the district.

John Bell commented that he felt these costs are interpreted quite conservatively, as costs are not defined to include loss of time to the county. If the clerks are working on recounts, they are out of their office, not in a position to supervise, make decisions, etc. He felt there still is an indefinable cost.

Senator Galt questioned as to how this is addressed in Senate Bill 65 and Senator Lensink replied that in multi-county districts, an individual only has to go to the county of his residence.

Mr. Murphy explained how tally books in one precinct were wrong in that everyone of them had been shortened 10 votes. He stated that no way would that have been discovered if there had not been a recount. It did not change the vote, however.

Senator Blaylock stated that he believed strongly that if a losing candidate wishes to put up his money for a recount, he thinks that this should be a privilege that should be extended.

The hearing on this bill closed.

There being no further business, the meeting adjourned at 11:42 a.m.

*Everett R. Lensink*  
SENATOR EVERETT R. LENINK

Date 4/29/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

Each Day Attach to Minutes.

of those regard a return to the electorate.

SENATE

Medicinae

COMMITTEE

## BILL

VISITORS' REGISTER

DATE

1/22/29

Please note bill no.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

## Proposed amendments to SB 149

1. Page 2, lines 3 and 4.

Following: ~~the~~ "elections."

Strike: "Special elections"

Insert: "a special election"

2. Page 2, lines 5 through 7.

Following: ~~was~~ "certified in"

Strike: "all respects as was the election in which the officer was elected to the office"

Insert: "the same manner that the law in effect at the time of the election for recall requires for an election to fill the office that is the subject of the recall petition"

3. Page 2, line 8.

Following: line 7

Strike: "appointed officials"

Insert: "an official holding a nonelective office"

4. Page 2, lines 9 and 10.

Following: "in"

Strike: "all respects as was the election of the person who appointed the official"

Insert: "the same manner that the law in effect at the time of the election for recall requires for an election to fill the office of the person who has the power to appoint such official"

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# Montana Legislative Council

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## 1979 Legislature Code Commissioner Bill - Summary

House Bill No. 7

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO PUBLIC UTILITIES AND COMMON CARRIERS; REPEALING SECTION 8-127.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 69-1-102. The phrase "the public utilities hereinafter named" is changed to "public utilities, common carriers, railroads, and other regulated industries listed in this title" to reflect the fact that the various laws related to commission control of regulated industries are collected in one title. For a similar reason "chapter 3" is changed to "this title".

Section 2. 69-1-108. Subsection (1) is rewritten to make clear the qualifications to be secretary to the commission. Reference to the qualifications of commission members is unsatisfactory since each commission member must satisfy a district residency requirement.

Section 3. 69-1-113. "Chapter 37, Laws of 1907" is changed to "this title" to reflect the fact that a commissioner must perform all duties imposed upon him or face the possibility of a charge of official misconduct.

Section 4. 69-2-202. A reference to 27-19-202 is deleted as not applicable. The appropriate reference is 27-19-203.

Section 5. 69-3-110. This section is rewritten for clarity.

Section 17. 69-11-421. In subsection (5), "[the last section]" is changed to "subsection (2)" to correct an erroneous reference. The "last section" referred to was repealed and replaced by the material in subsection (2) of 69-11-421.

Section 18. 69-12-101. In the introductory phrase, "the following definitions apply" is added for uniform style. In subsection (7), reference to "any trailer, semi-trailer, dollie, or other vehicle drawn thereby" is deleted to conform to the decision of the Montana Supreme Court in *State ex rel Sammons Trucking, Inc. v. Bollinger* (544 P. 2d 1235).

Sections 19 and 20. 69-12-108 and 69-12-203. References to "Chapter 184, Laws of 1931" are changed to "this chapter" to update an obsolete reference to what appears to be the appropriate reference. In 69-12-203(1), "it" is changed to "the commission" for clarity. It should be noted that the highway patrol, under 44-1-1005, and the department of highways, under 61-10-141, are granted the same enforcement powers as are given to the commission by 69-12-203, hence any change in 69-12-203 affects the authority of the highway patrol and the department of highways.

Section 21. 69-14-101. In subsection (1), "shall be held to mean" is changed to "means the situation" for uniformity. The definition of railroad in subsection (2)(b) is deleted as superseded by the definition appearing in subsection (2)(a). General regulation of common carriers is found in chapters 11, 12, and 13. Chapter 14 contains the material related to railroads.

Section 22. 69-14-102. The first subsection is deleted as redundant with the second subsection. A reference to "Chapter 37, Laws of 1907" is changed to "this chapter" to update an obsolete reference.

Sections 23 through 25. 69-14-103, 69-14-112, and 69-14-113. "Chapter 37, Laws of 1907" is changed to "this chapter" to update an obsolete reference with what appears to be an appropriate reference.

Section 26. 69-14-115. In subsection (2), "its annual report" is changed to "the annual report required by 2-7-102". The annual report referred to originally was contained in 72-138, R.C.M. 1947, which was repealed. The new reference is to the report required of all state agencies.

Section 27. 69-14-131. "Chapter 37, Laws of 1907" is changed to "this chapter" to update an obsolete reference. The language of the last sentence is amended for consistency with 69-14-132.

Section 28. 69-14-132. "This law" is changed to "this chapter". "This law" referred to "Chapter 37, Laws of 1907", and this outdated reference is replaced.

Section 29. 69-14-133. "Chapter 37, Laws of 1907" is changed to "this chapter" to update an obsolete reference; and because of this change the phrase "Unless otherwise provided" is added.

Section 30. 69-14-134. In subsection (1), "Chapter 37, Laws of 1907; Chapter 136, Laws of 1909; and Chapter 105, Laws of 1913" is changed to "this chapter" to update obsolete references. In subsection (3) an exception for original proceedings in the supreme court is added for consistency with 69-14-131, 69-14-132, and 69-14-135.

Section 31. 69-14-135. "Chapter 37, Laws of 1907; Chapter 136, Laws of 1909; and Chapter 105, Laws of 1913" is changed to "this chapter" to update an obsolete reference. The term "or common carrier" is added because this term was used in a definition of railroad which is proposed for amendment (see section 21) and this section is a penalty section.

Section 32. 69-14-137. "Chapter 37, Laws of 1907" is changed to "this chapter" to update an obsolete reference. "Of" is changed to "or" to correct what appears to be a typographical error.

Section 33. 69-14-202. In subsection (1), the reference to "decennial" in connection with the federal census is dropped because the federal census will be taken every 5 years in the future. Subsection (3) is deleted as obsolete. The reference to platted township was amended out of 72-627, R.C.M. 1947, which appears as subsections (1) and (2).

Section 34. 69-14-209. "Their" is changed to "its" for grammar.

Section 35. 69-14-215. In subsection (1), "registered" is changed to "registered or certified" pursuant to 1-1-202 and the subsection is rewritten for clarity.

Section 36. 69-14-232. In subsection (1)(f), "designed" is changed to "designated" for better word usage. In subsection (2), "[the preceding section]" is changed to "this section and 69-14-233" to make clear what the reference should be. The "preceding section" was extensively amended.

Section 37. 69-14-252. This section is rewritten for clarity.

Section 38. 69-14-301. In subsection (1), "Chapter 37, Laws of 1907" is changed to "this chapter" to update obsolete reference.

Section 39. 69-14-303. In subsections (1) and (2), changed "Chapter 37, Laws of 1907" to "this chapter" to update obsolete references and deleted references to "intimidation" as obsolete under the new criminal code. Subsection (3) is deleted as redundant with 69-14-303(1). It should be noted that the provision left provides a greater penalty than the provision stricken.

Section 40. 69-14-309. "Chapter 37, Laws of 1907" is changed to "this chapter" to update obsolete reference.

Section 41. 69-14-322. In subsection (2)(a), the material was rewritten for clarity, and subsection (2)(b) was deleted as redundant with subsection (2)(a).

Section 42. 69-14-402. In subsection (1), the words "shipper, or other interested person" are added to reflect that 72-132 and 72-133, R.C.M. 1947, are being combined into this section, and "Chapter 37, Laws of 1907" is changed to "this chapter" to update obsolete reference. In subsections (1) and (2), "regulations" is changed to "rules" for uniform terminology. In subsection (3)(a), "by a railroad" is deleted because of combination of 72-132 and 72-133, R.C.M. 1947. In subsection (3)(b), the material is deleted for consistency with subsection (3)(a).

Section 43. 69-14-501. In subsection (2), "on" is changed to "of" to correct a typographical error and "[15-405]" is changed to "35-1-506" to replace the reference to 15-405, which was repealed by the MCA section which replaces the repealed section. The sentence "The candidate for director receiving the highest number of votes shall be declared elected." is added as it was contained in 15-405, R.C.M. 1947, and is not found in 35-1-506. "Appoint" is changed to "specify" for better word usage.

Sections 44 through 47. 69-14-511 through 69-14-514. These sections are extensively rewritten and parts of each have been interchanged and combined for consistency and clarity. A requirement of 3/5 approval of action is changed to majority approval to be consistent with 69-11-514. In 69-14-511(1), "to be known" is added for clarity. In 69-14-512(1)(e), "[15-405]" is changed to "69-14-501" to correct an internal reference to a repealed section.

Section 48. 69-14-532. "Their" is changed to "its" for grammar.