

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 9, 1979

The thirty-second meeting of the Senate Judiciary Committee was called to order in Room 331 of the Capitol Building by Senator Everett R. Lensink on the above date at 9:30 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 282:

Senator Blaylock gave an explanation of this bill, which is an act to delete the provisions which allows the county attorney to sue to enjoin the operation of a motor vehicle wrecking facility or graveyard under certain conditions and to allow a licensed motor vehicle wrecking facility to bring an action in its own name when the department fails to bring an action.

He stated that the screening law has been followed by some wrecking yards but not by others. He introduced Bill Romine.

Bill Romine, representing the Montana Automotive Dismantlers and Recyclers Association, gave a statement in support of this bill. (See Exhibit A attached.)

He stated that on Montana Avenue here in Helena is a prime example and offered pictures of this facility. (See Exhibit B.) He explained that the county says that it is a state problem and the state says that it is a county problem and neither one of them want to take up the enforcement. He also said that the Al Rose Wrecking Yard on Montana Avenue is not screened, the fees are collected from the department and they are the ones who are derelict in their duties.

Larry Mitchell, from the Department of Health, gave a statement opposing this bill.

Doug Olson, an attorney for the Department of Health, offered testimony opposing this bill. He stated that if the concern is for the department, then it seems counter to its purpose to remove the authority given to the county attorney to bring these actions.

Senator Blaylock stated that throughout the state where these wrecking yards are not screened, the department can't do it as they are too busy, the county attorneys do not want to do it; and the law-abiding citizens, who are doing it now, according to the law, are in competition with those who are not doing it right.

Senator Galt wondered what constitutes a wrecking yard. Mr. Romine stated that there is a definition in the statute -- it is three or more wrecked automobiles in a year or the components thereof. He said it would also cover a body shop if they did body shop work. He said in the facility where the pictures were presented, that they went to court and the judge decided that it was a garage and not a wrecking facility.

Senator Brown stated that in this case the judge was the most environmentally-oriented judge in the state and he refused to close this facility down. He said that one of the problems is that there are all kinds of procedures that have to be gone into before they go to court.

Senator Galt questioned how many cases do they have, and Larry Mitchell stated that they have thirty to forty hard cases that may go to court.

Senator Brown stated that two to three years ago, they had 120 cases. He further stated that this is probably not as great a problem as public health, water pollution, air pollution, etc. and that the cost to the department of health is going to be tremendous.

There were no further questions or comments and the hearing on this bill was closed.

DISPOSITION OF SENATE JOINT RESOLUTION 12:

Senator Towe stated that many of the proponents indicated that because of the language of the resolution in 1974, that this would allow a termination date, but in reviewing this, he felt that it was just in the preamble; and he did not think it has any effect.

Senator Galt stated that there are effective dates on bills and they are on all laws. Senator Towe said that the point is that it was not an effective date but it was simply printing verbatim that the resolution was ratified.

Senator Galt moved that the resolution do pass. The vote was 5 yeases and 5 nos. See Roll Call Vote.

Senator Galt Moved that the bill be reported out without recommendation. It was noted that on a tie vote, the rules now say that the bill will stay in committee.

Senator Olson stated that he agreed with Senator Turnage that he would like to see the body as a whole act on this bill.

There was some discussion on whether one of the members would change their vote so that the matter could get out on the floor.

Senator Towe moved that the bill do not pass. The vote was still five to five. See Roll Call vote.

CONSIDERATION OF SENATE BILL 139:

Senator Hazelbaker gave an explanation of this small bill, which is an act to clarify what constitutes the Montana Insurance Code and he said that this bill only changes one word. He introduced Jo Driscoll, chief deputy of insurance in the auditor's office.

Rita Theisen, chief attorney in the legal division of the auditor's office explained some of the problems that come up and said they supported this bill.

Tom Harrison gave a statement saying that he was an opponent of this bill of a sort. He stated that the legislature said that this would go in Title 40, but equated that it was not passed as part of the insurance code and was never treated as part of the insurance code but in recodification, it was put in the insurance code. He felt that it should be amended to read, "This code shall not apply to health service organizations."

There were no further opponents.

Senator Towe said that it really doesn't say that it is excluded from that code. Mr. Harrison stated that he thought that this has been interpreted otherwise and it has never been applied.

Senator Turnage gave an example of a bill that had been introduced and failed, then another bill was drafted in the interim, which was killed and another bill that would have imposed a tax and he stated that if you get this through, you will put the blues under the jurisdiction of the insurance commissioner. They agreed to do that and came up with a bill which was drafted over the interim. It was their belief that their part of the bargain was that they would be included under the insurance commissioner.

Mr. Harrison stated that this was codified and the language is still in chapter 30, and the only thing omitted there was a definition of who the commissioner is.

Diana Dowling, executive director of the legislative council, stated that they have run into this in a lot of the recodification; and that they knew this was a controversial area, and that the first chapter said that 1-26 constitutes the insurance code. She stated that by saying this, that she did not feel that this is changing anything. She said that she did not think it would cause any substantial problem. She said there is no longer a definition of commissioner in Chapter 30, but there is a definition at the beginning of the entire code.

There being no further questions or comments, the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 295:

Senator Van Valkenburg gave an explanation of this bill, which creates the position of public defense coordinator, etc. He explained that this individual and his staff would be available to handle the extraordinary cases that arise in counties and any appeals that emanate therefrom. He stated that the reason he thinks this is necessary is because there are many instances where effective representation is not being provided largely because of the resistance that is involved when someone is charged with a crime.

Dan Diemert, executive director from the department of community affairs, stated that the department has no position on the merits of this bill, but said that it would create no major problems to the department.

Mike Ably, administrator for the supreme court, made a statement in regard to this bill and said that getting defense attorneys involved in defense is almost impossible and just determining who is a defense lawyer is difficult.

Tom Honzel, representing the Montana County Attorneys Association, stated that the county attorneys do support this concept and he further said that something has to be done about defense costs and that the defendant is entitled to effective representation.

J. C. Weingartner, representing the bar association, stated that the beauty of this bill is that someone has a special problem, then he has someone he can call on; and this cuts down on the research time that the public defender would have to spend.

Dean Zinnecker, representing the Montana Association of Counties, stated that this is a means to control costs.

Margaret Davis, representing the League of Women Voters, stated that they studied this problem and this is probably the most modest proposal that could have been made to represent clients in criminal procedures.

There were no further proponents and no opponents.

CONSIDERATION OF SENATE BILL 341:

Senator Turnage stated that this bill, which is an act to compensate retired judges and justices for temporary service, arose out of a study of judicial improvement by the supreme court. He stated that they hope it will provide some means of relieving the court's backlog that exists in many of the larger areas in Montana. He said that there was no duplication of pensions or salary.

Mike Ably, administrator for the supreme court stated that they would estimate the maximum cost of \$5,000.00 a year based on their needs in the past, plus retired judges in the state that would be available and some that are near retirement.

Senator Olson questioned what a retired chief justice received right now. Senator Turnage answered that this was based on the years of service, but that it is on about 60% of his salary.

Senator Towe said that if they retired at \$30,000.00, that would be about \$18,000.00.

Senator Towe moved that this bill do pass.

Senator Anderson stated that he disagrees with taking it off his pension, that he earned that. Senator Turnage responded that he agrees, too, but if you do that, you will get the bill killed.

The motion carried unanimously.

CONSIDERATION OF SENATE BILL 345:

Senator Towe gave an explanation of this bill, which revises the law regarding the procedure following an acquittal on the grounds of mental disease or defect, etc.

He stated that on page 2, line 14, they changed from fifty days to a year, as nobody was getting a hearing within fifty days of his confinement unless someone insisted on it. He stated that he is introducing a bill that would do away with acquittal on the grounds of mental disease or defect.

Jim Johnston gave a statement in connection with the fifty-day hearing and stated that you better make sure that it is mandatory and not discretionary.

Tom Honzel, representing the Montana Association of County Attorneys, gave a statement in connection with this bill.

Nick Rotering, chief counsel for the department of institutions, stated that they support this bill and feel that this would clarify the problems. He stated that the committee may want to make it very clear where any review will be held and he does think that a yearly review is important. He stated that he thought an annual review is necessary and should be required and that it isn't enough to say that the superintendent of Warm Springs should be the only say on when this should be required.

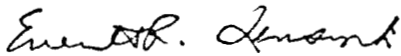
There were no further proponents and no opponents.

Senator Towe said that it should be a six-months' review in order to be consistent with the commitment bill and he thought that that would insure equal protection.

Senator Turnage stated that this would be a mandatory review on a yearly basis if you were committed for a crime.

There was some further discussion and the hearing on this bill was closed.

There being no further business, the meeting was adjourned at 11:18 a.m.

  
\_\_\_\_\_  
SENATOR EVERETT R. LENSINK, Chairman  
Senate Judiciary Committee

Date 2/9/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.





*Confidential 11*

*Testimony by William L. Romine  
Mont. Automotive Disasters & Recyclers Assoc.*

EXPLANATION OF SENATE BILL 282.

In 1967, as a result of pressure from the Federal Government, the Montana Legislature adopted an act requiring that wrecking yards located within 1000 feet of an interstate or primary be screened from public view. Although the Federal Government had promised to make certain funds available, so the cost of screening could be borne by the Department of Highways, in point of fact, the funds were never forthcoming. In 1973, the Legislature adopted a second set of screening laws which applied to all wrecking yards wherever their location, and which further required that the wrecking yards were required to screen at their own expense.

Initially the Department of Health & Environmental Sciences, the Solid Waste Division, which has jurisdiction of the Wrecking Yard Act for licensing and screening purposes, vigorously began an enforcement program. A number of wrecking yards throughout the State were forced to screen their property, or be subjected to criminal proceedings, and although there was not uniform enforcement, initially it was thought that, because of manpower and because it was a new program, uniform enforcement would take some time.

However, during the last couple of years, it was noticed that enforcement of the law seemed to be dropping off, except for those yards which were already screened and licensed. A number of complaints were made to the Department, some by the individual yards and some by the Association. It was obvious that the Department was no longer vitally concerned with uniform enforcement of the law as to screening

requirements. The Department recommended that enforcement be forced through the various counties, which is allowed by the Act, but it was quickly determined that the various counties did not have any desires to get involved in enforcement.

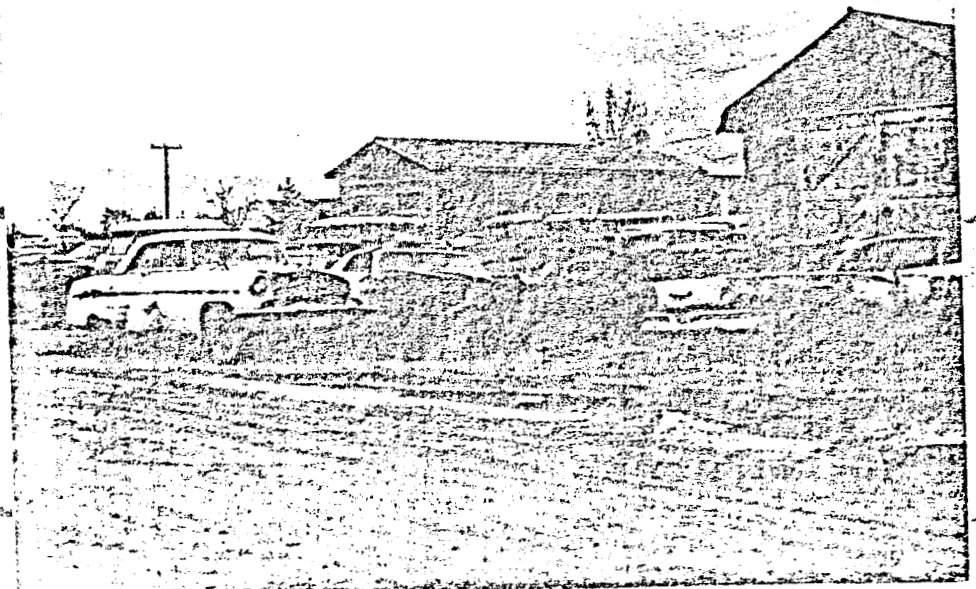
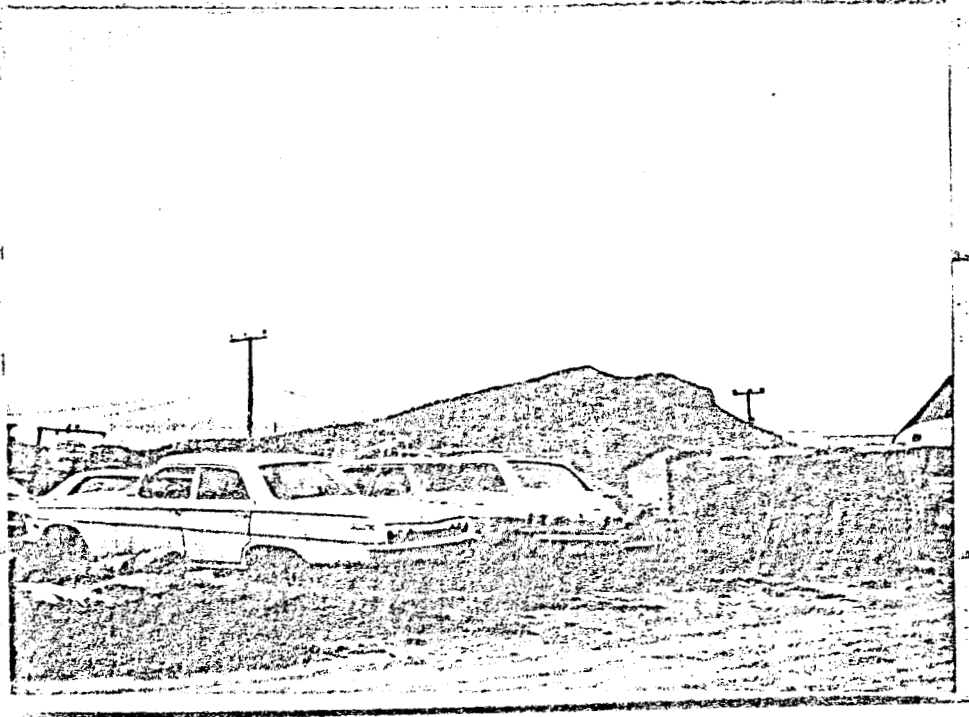
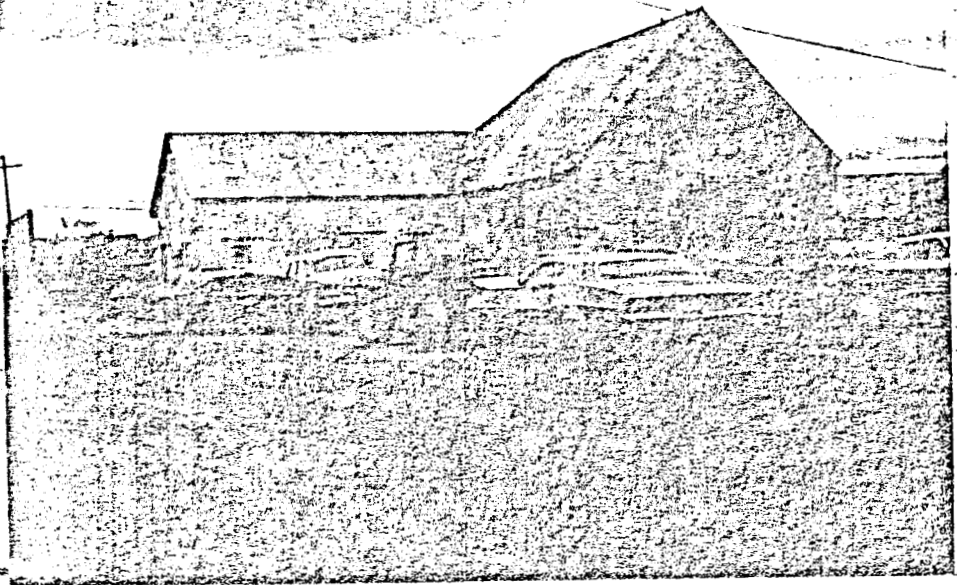
Finally, in 1978, the Department informed the Wrecking Yard Association that this Act did not have high priority, and that basically the Department had no real intentions to pursue an enforcement program.

Senate Bill 282 is an attempt to do two things. First of all, it is to do away with the divided enforcement of the Wrecking Yard Act. Having the enforcement power in two separate governments is fatal since each government refers the complaining party to the other. All the enforcement power would remain with the Department, which is the proper party anyway, since it adopts the rules and regulations concerning screening requirements and issues licenses.

Secondly, and possibly more important, Senate Bill 282 will provide the means for enforcement even if the Department continues with its present position that the Wrecking Yard Act does not have high priority. Basically, the Bill would allow any person who files a complaint with the Department, concerning an unlicensed wrecking yard, to bring an action if the Department does nothing within ninety (90) days. To prevent unfounded actions, the amendments proposed would allow the complaining party to collect his attorney fees in that action from the Department only if he is successful in the action. It also prevents an unlicensed wrecking yard from bringing an action against another unlicensed wrecking yard.

It is not the desire of the licensed wrecking yards to bring a number of actions solely in an effort to collect attorney fees.

It is hoped that this legislation will result in the Department acting upon complaints and in the Department attempting to bring uniform compliance with the Wrecking Yard Act. A number of wrecking yards in this State have spent a great deal of money to comply with the rules and regulations of the Department. They feel that it is unjust that the Department now is not pursuing the law as diligently as it was several years ago.



*Sheet B*

SENATE COMMITTEE JUDICIARY

Date \_\_\_\_\_ Bill No. 17P12 Time \_\_\_\_\_

NAME	YES	NO
Lensink, Everett R., Chr. (R)		✓
Olson, S. A., V. Chr. (R)	✓	
Turnage, Jean A. (R)	✓	
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)	✓	
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)		✓
Brown, Steve (D)		✓
Van Valkenburg, Fred (D)		✓
Healy, John E. (Jack) (D)		✓

Secretary \_\_\_\_\_ Chairman \_\_\_\_\_

Motion: Do pass

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(include enough information on motion--put with yellow copy of committee report.)

(1132)

SENATE COMMITTEE JUDICIARY

Date \_\_\_\_\_ Bill No. SJR 12 Time \_\_\_\_\_

NAME	YES	NO
Lensink, Everett R., Chr. (R)	✓	
Olson, S. A., V. Chr. (R)		✓
Turnage, Jean A. (R)		✓
O'Hara, Jesse A. (R)		✓
Anderson, Mike (R)		✓
Galt, Jack E. (R)		✓
Towe, Thomas E. (D)	✓	
Brown, Steve (D)	✓	
Van Valkenburg, Fred (D)	✓	
Healy, John E. (Jack) (D)	✓	

Secretary \_\_\_\_\_

Chairman \_\_\_\_\_

Motion: Do not pass

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(include enough information on motion--put with yellow copy of committee report.)

#3

# STANDING COMMITTEE REPORT

February 9 1979

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 153

Respectfully report as follows: That Senate introduced bill, be amended as follows:

1. Page 4, lines 14 and 15.  
Strike: "other than an agency"
2. Page 18, line 3.  
Following: "copy"  
Insert: "of a declaratory ruling"

And, as so amended,

DO PASS

# STANDING COMMITTEE REPORT

February 3, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 207

Respectfully report as follows: That Senate Bill No. 207

~~DO NOT PASS~~  
~~DO NOT PASS~~ P.A.



# STANDING COMMITTEE REPORT

February 9, 1973

MR. President:

We, your committee on Majority of Judiciary

having had under consideration Senate Bill No. 217

Respectfully report as follows: That Senate Bill No. 217

S. A. Olson

Mike Anderson

Thomas E. Towe

Steve Brown

John Healy

Fred Van Valkenburg  
Chairman

DO NOT PASS

DO:PASS:

# STANDING COMMITTEE REPORT

.....February 9,..... 19 79.

MR. ....President:.....

We, your committee on.....Minority of Judiciary.....

having had under consideration .....Senate..... Bill No. 217.....

Respectfully report as follows: That.....Senate..... Bill No. 217.....

\_\_\_\_\_  
Everett R. Lensink

\_\_\_\_\_  
Jean A. Furnage

\_\_\_\_\_  
Jesse A. O'Hara

\_\_\_\_\_  
Jack E. Galt

DO PASS

*HC*

# STANDING COMMITTEE REPORT

February 9 19 79

MR. President.....

We, your committee on.....Judiciary.....

having had under consideration.....Senate..... Bill No. 232

Respectfully report as follows: That.....Senate..... Bill No. 232,  
introduced bill, be amended as follows:

1. Title, lines 6 and 7.  
Following: "TO" on line 6  
Strike: "REQUIRE THAT CERTAIN"  
Insert: "ALLOW STATUTORY EXCEPTIONS TO THE CONFIDENTIALITY OF THE"
2. Title, lines 7 through 11.  
Following: "COMMISSION" on line 7  
Strike: the remainder of line 7 through "LEGISLATURE" on line 11
3. Page 1, lines 20 and 21.  
Strike: "All appointees shall be subject to confirmation by the senate."
4. Page 2, lines 10 through 22.  
Following: "except" on line 10  
Strike: remainder of line 10 through "judge" on line 22  
Insert: "as provided by statute"

DO PASS

(Continued)

5. Page 3, lines 5 through 8.

Following: "FOR" on line 5

Strike: remainder of line 5 through "commission" on line 8

Insert: "allowing statutory exceptions to the confidentiality of the documents of the judicial standards commission"

6. Page 3, lines 9 through 12.

Following: "AGAINST" on line 9

Strike: remainder of line 9 through "commission" on line 12

Insert: "allowing statutory exceptions to the confidentiality of the documents of the judicial standards commission"

And, as so amended,  
DO PASS

# STANDING COMMITTEE REPORT

February 9

19 79

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 260

Respectfully report as follows: That Senate Bill No. 260,  
introduced bill, be amended as follows:

1. Title, line 6.  
Following: "JUDICIAL"  
Strike: "NOMINATING"  
Insert: "NOMINATION:"

2. Page 1, line 17.  
Following: "privacy"  
Insert: "clearly"

And, as so amended,

DO PASS...

STANDING COMMITTEE REPORT

February 9

79

19

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 261

Respectfully report as follows: That Senate Bill No. 261,

introduced bill, be amended as follows:

1. Title, line 9.

Following: "WEATHER"

Insert: "EXCEPT WHEN GROSS NEGLIGENCE HAS BEEN ESTABLISHED"

2. Page 1, line 20.

Following: "conditions"

Insert: "except when gross negligence has been established"

And, as so amended,

DO PASS

*J.R.*

*H 29*

# STANDING COMMITTEE REPORT

February 9 19 79

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 278

Respectfully report as follows: That Senate Bill No. 278, introduced bill, be amended as follows:

1. Page 2, line 2.  
Strike: "when spoken in a normal conversational tone"
2. Page 2, line 11.  
Following: line 10  
Strike: "certified"  
Insert: "listed"
3. Page 2, line 12.  
Following: "services"  
Insert: "as provided in [section 7]"
4. Page 3, line 2.  
Following: "proceeding"  
Insert: "of a judicial or quasi-judicial nature"

XXXXXX  
DO PASS

(Continued)

5. Page 5, line 8.  
Following: "with a"  
Insert: "list of"

6. Page 5, line 8.  
Following: "qualified"  
Strike: "interpreter"  
Insert: "interpreters"

7. Page 5, lines 8 and 9.  
Strike: "at a time and place and for a period specified by  
the authority"

8. Page 5, line 10.  
Following: "qualified"  
Strike: "interpreter"  
Insert: "interpreters"

9. Page 5, line 13.  
Following: "deaf"  
Strike: "may assist"  
Insert: "and the Montana registry of interpreters for the deaf  
shall provide"

10. Page 5, lines 14 through 16.  
Following: "services" on line 14  
Strike: the remainder of line 14 through "updating" on line 16  
Insert: "with"

11. Page 5, line 16.  
Following: "a"  
Strike: "listing"  
Insert: "list"

12. Page 5.  
Following: line 17  
Insert: "(3) The only function of the department of social and  
rehabilitation services is to maintain the list referred to  
in subsection (2)."

And, as so amended,  
DO PASS



SENATE COMMITTEE JUDICIARY

Date 2/7/79 Senate Bill No. 217 Time 7:32pm

NAME	YES	NO
Lensink, Everett R., Chr. (R)		✓
Olson, S. A., V. Chr. (R)	✓	
Turnage, Jean A. (R)		✓
O'Hara, Jesse A. (R)		✓
Anderson, Mike (R)	✓	
Galt, Jack E. (R)		✓
Towe, Thomas E. (D)	✓	
Brown, Steve (D)	✓	
Van Valkenburg, Fred (D)	✓	
Healy, John E. (Jack) (D)	✓	
	6	4

*Glenn Conway*  
Secretary

\_\_\_\_\_  
Chairman

Motion: *Do not pass*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(include enough information on motion--put with yellow copy of committee report.)

SENATE BILL 129

- Section 3  
Page 2 & 3  
Reinsert all deleted language.  
- would really screw up Quiet Title action if this matter was deleted.
- Section 4  
Page 4  
Line 4  
Reinsert all deleted language.  
-should not be able to kick a sheriff out of office because he didn't make service
- Section 9  
Page 8  
Line 18-21  
Reinsert
- Section 8  
Line 12  
Situations listed in Rule 4D(5)(a) are not the same as in the statute - 25-3-504  
-Rule pertains to service by publication  
-Statute pertains to designating unknown  
-Put deleted language back in
- Page 7  
Line 24  
-Put deleted language back in to refer to items specified in Lines 4 thru 12.
- Section 9  
OK
- Section 10  
Page 9  
Line 18  
-Strike unless and reinsert provided
- Section 12  
Page 10  
Line 11  
-Reinsert Answer Ex. Motion to dismiss - if denied then defendant must Answer in 20 days.
- Section 17  
Page 12  
Line 19  
Question: When can you try "some facts" before a jury:
- Section 23  
Page 17  
Line 2 & 6  
-Would reinsert "or" to convey Real Estate  
- The Conveyance of Real Estate is not the same as delivery "of other thing capable of delivery."
- Section 30  
Page 21  
Line 7  
-Reinsert "in equity cases" - to maintain traditional distinction and to clear up any confusion that may result if this section is ever attempted to be reconciled with Rule 39c
- Section 33  
Page 22  
Line 17  
Reinsert "Security" & delete "Surety"  
-The term "Security for another" does not mean that said person is acting as a surety.

<p>Section 35 Page 24 Line 8</p>	<p>Reinstate Line 8 &amp; delete "property" -such change would make law remain harmonious with 93-4702 and would limit the property which can be seized.</p>
<p>Section 36 Page 24 Line 22</p>	<p>- 25-13-305 - Is this proper reference - This section refers to the execution of a <u>Lien</u> on real property.</p>
<p>Section 36 Page 25 Line 5</p>	<p>-Reinstate "and" - to show that subsections (1) and (2) are in the conjunctive</p>
<p>Line 6</p>	<p>-Reinsert "satisfy" - to make it clear that the costs, damages, etc. can be gathered to <u>satisfy</u> the judgment</p>
<p>Section 41 Page 29 Line 17</p>	<p>-Reinsert "township" and Strike "county" -want to post notice in the place where the property is seized and to be sold. -County is too broad</p>
<p>Line 21</p>	<p>Same as above</p>
<p>Page 30 Line 1</p>	<p>Same as above</p>
<p>Page 31 Line 5</p>	<p>Same as above</p>
<p>Section 45 Page 34 Line 9 - 14</p>	<p>Leave the old language -much more understandable</p>
<p>Section 48 Page 37 Line 18</p>	<p>"Acquired before or after he redeemed." - Can you apply this section to a lien acquired after redemption?</p>
<p>Section 50 Page 38 Lines 14 - 15</p>	<p>Leave in old language because it -Gives a reference to the 60 days provision - Is less confusing - new language would require one to look for other provisions</p>
<p>Section 53</p>	<p>Is it proper to delete "assigns" and substitute "person who has redeemed."</p>
<p>Section 56 Page 42 Line 21</p>	<p>Reinsert "Judgment" and strike "Docket" on line 22.</p>

Section 60

In the present laws, there is no reference to the Justice Court having Jurisdiction in the Landlord & Tenant Act.

- might want to add

Section 65

Page 48

Line 18-19

Unclear - What does it mean?

Section 68

Page 50

Line 5

25-3-204 is deleted - Why?

- Green sheet says it is added.

Section 82

Page 58

Line 9 - 15

Like old language better

- more clear and more specific

Section 86

-Unable to find Supreme Court Order of 1966

GOUGH, SHANAHAN, JOHNSON & WATERMAN  
ATTORNEYS AT LAW

301 FIRST NATIONAL BANK BUILDING  
P. O. BOX 1686  
HELENA, MONTANA 59601  
(406) 442-8560

TAYLOR B. WEIR (1883-1962)  
EDWIN S. BOOTH (1907-1976)

EWELL GOUGH, JR.  
WARD A. SHANAHAN  
ORDELL JOHNSON  
RONALD F. WATERMAN  
JOSEPH P. MAZUREK  
DANIEL C. MURPHY  
MARGARITA A. KNIGHT

February 9, 1979

RE: Senate Bill 129

Mr. J. C. Weingartner  
GRAVELEY, McCABE & WEINGARTNER  
Attorneys at Law  
1111 North Rodney Street  
Helena, MT 59601

Dear J. C.:

This letter responds to your request that I review Senate Bill 129, Montana Legislative Council comments on the bill and your comments on behalf of the State Bar of Montana concerning this bill.

Initially and as a general comment regarding this legislation, I would note that the bill makes several changes which, though they are cosmetic in nature, have a substantive effect upon many of the code provisions amended. In many respects, I question whether or not it is appropriate at the present time to consider this revision and whether further study should be given to the revision. My concern arises because I have not been able to completely analyze all of the effects of all of the changes proposed. I have considered some of them and do not see major problems with the changes proposed but feel that there may be other changes not seen by me which could adversely affect future litigation.

In light of the previous comments, however, I do not find objectionable many of the specific sections which you cite. Turning to section 3, page 3, lines 7-11, I agree that that language should be reinstated except I would strike from line 8 the phrase "or the enforcement of liens upon".

I have no objection to the deletion in section 4 and do not believe it is necessary to reinsert the language on page 7, line 24. I do question whether or not the incorporation by reference utilized in this section or elsewhere throughout the bill is appropriate. It must be understood that individuals other than lawyers refer to the Montana codes and incorporating one section by reference into another makes it difficult for lay persons who utilize the code to

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find the specific reference to the language. It must be remembered that on occasion lay persons only have one volume of the code; and, therefore, the language which incorporates by reference may be to a provision of the codes unavailable to those persons. For that reason, I generally object to the incorporation by reference provisions and believe the definition should continue within the primary statute.

I have no objection to the language deleted from section 10. I would recommend, however, that the term "answer" struck from section 12, page 10, line 11, be reinserted.

Understanding the reason for the additional language to section 17, page 12, lines 19-21, I have no objections to them.

With reference to section 23, I would recommend inserting on page 17, line 3, after the word "delivery" the phrase "or the conveyance of real property" and reinserting "or the conveyance of real property" on page 17, line 7, after the word "thing".

I do not believe the change in section 30 adversely affects the reach of the rule. I would approve the proposed amendment.

I agree with your comments concerning section 33; but, in reading the section as a whole, I believe the word "security" used in the original statute was probably incorrect and insertion of the word "surety" in place thereof more correctly sets forth the intention of the original drafters of the bill. I would note that this is a substantive change and not merely one that is grammatical in character.

I have no problem with the phraseology suggested in section 35 by the code commissioners and, likewise, conclude that section 36 is all right in the manner it is proposed to be changed by the Legislative Council. I come to the same conclusion with respect to section 37.

Section 41 in my opinion should be amended by deleting county and reinserting township. The change proposed is substantive in nature.

I agree with the Legislative Council that section 45 is unclear as originally drafted. My opinion is that the changes proposed do not clarify the section but only serve to continue its lack of clarity. Under those circumstances, my opinion would be that the section as originally written

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should continue because it is more understandable than the recodification.

I have no problems with the proposed changes to section 48. I would suggest, as you have, that the reference to the 60-day provision be included in section 50. Section 50 as amended does not provide a point of reference for any party to know what the period is for successive redemption and some point of reference should be given. I believe section 53 would be clearer if following the term "redeemed" on page 40, line 9, there was inserted "or that person's assigns".

I, likewise, agree that the recodification proposal for section 56 is inappropriate. I would strike the language on page 42, lines 21 and 22, following "or" and insert "a transcript of the original judgment is filed".

I do not have any problems with the recodification of section 60 and, likewise, agree with the recodification proposals for section 65. I see no problems also with section 68 as proposed to be amended. Section 82 appears to bring into civil actions commenced in city courts the concept of notice pleading. Again, this should be recognized as a substantive change. I do not object to the change, but I believe the committee should do so recognizing the substantive nature of the change proposed.

Finally, with reference to section 86, I cannot find a copy of the Supreme Court of Montana's Order No. 11020. I, therefore, am not in a position to comment upon whether or not the amendment reflects that order.

Very truly yours,

GOUGH, SHANAHAN, JOHNSON & WATERMAN



Ronald F. Waterman

RFW/maw

1/29-111  
COMMENTS ON SENATE BILL 129

\* \* \* \* \*

After reviewing Senate Bill 129 I find myself in agreement with the majority of comments made by J. C. Weingartner on behalf of the State Bar. While this bill would appear at first blush to be nothing more than an attempt to remove archaic and inappropriate language from the remaining statutory provisions on civil procedure (other than the Montana Rules of Civil Procedure) I have grave doubts about the wisdom of enacting this bill.

In many cases substantive changes are made which the drafter seems to view as nothing more than changes in language. An example would be in Section 3 of the Bill where changes are made in the provisions which provide for the place of trial of actions involving real property. Current law would require all actions for recovery of the possession of, quieting title to or the enforcement of liens upon real property to be commenced in the county in which the real property or the part thereof is situated, and does not provide any authority in the District Court to change the place of trial. Other actions involving real property must be commenced in the county where the property is located "subject to the power of its court to change the place of trial". The question then arises as to whether or not it is a good idea to permit the Court to change the place of trial in a quiet title action. My personal feeling is that it is not and that the suggested change should not be effected.



There are many other examples but time simply does not permit a detailed examination of each. When rules of civil procedure have been changed or enacted it has been thought prudent to form a committee of members of the Bar to give the matter thorough study which often has stretched over several years. The reason for doing this, of course, is because it is very difficult to think of all the possible situations that might arise and which would require the application of the statute or rule in question. The statutes which the Bill would change have, for the most part, been in effect for many, many years and are familiar to practitioners. It is highly questionable whether these statutes should be now changed without a considerable input from the Bar as to the possible effect of those changes.

In many cases I find the changes to be nothing more than nit picking. For instance, if one looks at Section 3 of the Bill the drafter would change "situated" to "located". One really wonders whether this change is actually necessary.

In other places the Bill changes existing language and inserts a reference to another section. I have a very strong aversion to this manner of drafting, which is frequently seen in the United States Statutes On Taxation. The effect of drafting statutes in such a manner is to require a reader to constantly refer to other sections in order to make any sense out of the section which he is reading. In

my considered judgment this should be avoided.

In some cases what I consider to be rather nit picking changes are made in the language of the statute when the statute really ought to be completely rewritten because it is outmoded. An example would be Section 40 of the Bill which alters the section concerning exemptions from execution. This section was enacted before the turn of the century and its substantive provisions are outmoded and do not provide any protection at all for the persons referred to. For example, what good does it do to protect the farming utensils of a farmer not exceeding \$600.00 or his seed grain not exceeding \$200.00. If this statute were to be amended it ought to be amended so as to provide some realistic types of protection.

The repealer section involves a good many present code sections, most of which are probably superceded by the Montana Rules of Civil Procedure. However, I simply did not have enough time to carefully go through each of the sections to determine whether or not it would be appropriate to repeal it. This, obviously, should be carefully done in order that some mischief not be unwittingly accomplished.

My overall reaction to this piece of legislation is that it is unnecessary. The stylistic changes made in the sections involved are, for the most part, of no consequence and are, therefore, unnecessary. In other cases, the language changes may effect some substantive change in the law which

is not appreciated. In other cases language has been inserted allegedly to clarify the section where it appears to me the former language did a better job of explaining what the law was. As mentioned above, I have a grave reservation about fooling around with sections on procedure, because they interact with other sections in so many ways, without careful and thoughtful input by members of the Bar who are the only people who work with these sections and, therefore, would be the only people qualified to judge the proposed changes.

Although I am sure the drafter of this piece of legislation put a considerable amount of time into it, it would be my suggestion that the Bill be killed since any attempt to amend it within the time frame of the legislative session would be an exercise in futility. I see nothing in the Bill that cures any situation which poses a real problem to the practitioner or his clients at this point. Therefore, I can not see any reason to be hasty in enacting such legislation. In addition, I must confess that I harbor the opinion that the Legislative Counsel and the Code Commissioner should be discouraged from this type of wholesale change in various areas of the law.

# STANDING COMMITTEE REPORT

.....February 9,..... 19...70.....

MR. ....President:.....

We, your committee on .....Judiciary.....

having had under consideration .....Senate..... Bill No. 341.....

Respectfully report as follows: That.....Senate..... Bill No. 341.....

DO PASS

EC.