

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
January 15, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. by CHAIRMAN KERRY KEYSER, presiding. All committee members were present except REP. SHELDEN, who was absent. Those excused were REP. TEAGUE, REP. YARDLEY, and REP. HUENNEKENS. JIM LEAR, Legislative Council was also present.

HOUSE BILL 130 REP. JACOBSEN, chief sponsor of the bill, noted this bill would protect farm implement dealers who are under contract. JACOBSEN stated most dealers have agreements with the main manufacturers. If a contract is terminated and the retailer has to return the merchandise to the manufacturer, the retailer takes a 10 to 15% cut. This bill sets down what the contract should have so a contract can be negotiated and the dealer does not take a loss.

There were no further proponents.

There were no opponents.

REP. SEIFERT inquired if it was a normal pattern that the retailers usually take a 10-15% loss. REP. JACOBSEN replied it can vary. Some products are eliminated from the line. Transportation costs are at the retailers expense.

REP. SEIFERT asked if there was a 60-90 day free flooring. REP. JACOBSEN stated it varies on different equipment. Inventory on parts have no free flooring. Other products vary from 30 days to six or nine months. This is usually with interest.

REP. MATSKO asked if it was not uncommon for the merchandise to have two or three price increases. REP. JACOBSEN said that was correct due to inflation.

REP. MATSKO stated a dealer could come out with a large profit with a large inventory. REP. JACOBSEN noted that was correct but in many instances it cost the dealer more to replace the item than it is sold for.

REP. ANDERSON questioned if the state should become involved in this situation as a third party. Couldn't these items be covered in the contract. REP. JACOBSEN noted the state is not becoming a third party. It is up to the dealer to initiate action but the provision in this bill would be there for the dealer to initiate the action.

REP. ANDERSON inquired why these provisions were not placed in the contracts between the retailers and the manufacturers. REP. JACOBSEN noted it was in some cases. This bill would help it to be in all cases. The larger companies dictate the terms to the smaller dealer.

REP. EUDAILY noted that state government has been accused of interfering into the smaller businessman's activities. Would this hinder the smaller businessman? REP. JACOBSEN felt this

would help the smaller businessman by treating all parties fairly.

REP. EUDAILY stated it looked like this bill would protect the retailer and the manufacturer would be more wary of whether or not to deal with the retailer. REP. JACOBSEN noted retailers are paying the freight if the item is returned.

REP. DAILY asked if merchandise was on a consignment. REP. JACOBSEN stated larger equipment is. Consignment is usually for six months or so. Other items are paid for.

REP. DAILY further asked about the freight situation. REP. JACOBSEN would have no objection to amending the bill concerning the freight.

REP. ABRAMS asked if merchandise is not necessarily shipped back to the manufacturer but to another dealer. REP. JACOBSEN noted merchandise is sometimes traded with another dealer. The freight charges are usually worked out between the dealers.

REP. DAILY inquired if this bill would make manufacturers want to start their own business in selling the equipment. REP. JACOBSEN stated no.

CHAIRMAN KEYSER inquired if the contracts are on a one year or two year basis. REP. JACOBSEN noted it varies. Some dealers have no contracts while others have a continuing contract.

CHAIRMAN KEYSER asked if on a continuing contract if some goods were purchased in 1980 and were not sold in 1982, the manufacturer would pay you the 1982 price when it was returned. REP. JACOBSEN noted if it was the same part it would be net of the retailers cost.

REP. EUDAILY noted motor vehicle dealers were not in this bill. REP. JACOBSEN stated when the bill was first requested auto dealers were to be included with the bill. Since that time it was noted that auto dealers were covered by a different section of the law.

There was no further discussion on House Bill 130.

HOUSE BILL 153. REP. WILLIAMS, chief sponsor of the bill, told committee members this was an act to amend section 3-10-101, MCA, to authorize the Board of County Commissioners to constitute a justice's court in each city having a population of over 5,000 and to authorize the city and county to combine the offices of justice of the peace and city judge. REP. Williams noted that House Bill 153 is necessary for cities in Montana that have a population of over 5,000 but are not the county seat.

Proponent LARRY HERMAN, Mayor of Laurel, was in favor of this bill. He gave committee members written testimony. (EXHIBIT 1). HERMAN stressed that House Bill 153 does not automatically establish a justice court in cities with a population of more than 5,000. It

takes a city and the county both to take this action.

WALTER MENELLO, City Judge, is in favor of this bill. MENELLO noted case loads of judges have increased greatly over the past few years. GVW scales process 100-125 cases per month and this does not include Fish & Game or the Highway Patrol cases. MENELLO feels the bill is well received by all enforcement agencies in Billings.

There were no other proponents.

There were no opponents.

REP. WILLIAMS, in closing, stated this bill is established for any city in the state that meets the requirements set forth in the bill not only now, but in the future. After the 1980 census has been established there could be other cities that would qualify. The city of Forsyth could need this type of court soon. The city of Laurel is the largest city in Montana that is not a county seat. REP. WILLIAMS urges committee members to seriously recommend House Bill 153. REP. WILLIAMS stated the League of Cities and Towns is in favor of this bill.

REP. HANNAH inquired if this would establish a third justice court. REP. WILLIAMS indicated it could.

REP. HANNAH further asked if an existing justice could be assigned to go into these towns on a regular schedule. REP. WILLIAMS noted that could be possible. CHAIRMAN KEYSER asked if that would really ever happen. REP. WILLIAMS stated a district justice court would probably have to be established because of the heavy case load already incurred by judges.

There was no further discussion on House Bill 153.

HOUSE BILL 154. REP. BRAND, chief sponsor of the bill, stated under current law the Bonneville Power Company is allowed to go through state lands for placement of power lines. This bill would require the company to file an easement with the state.

Proponent DAVID WOODGERD, Attorney for the Department of State Lands, supports this bill. WOODGERD states the purpose is to require the federal government to obtain an easement to cross state land for placing power lines, pipes, etc. WOODGERD feels the current law is unconstitutional because it takes away the discretion of the Land Board.

There were no further proponents.

There were no opponents.

REP. BRAND, in closing, stated this could become a problem in Montana and a law should be established before hand.

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REP. HANNAH stated he didn't know the federal government owned private companies like Bonneville. REP. BRAND stated the government owns the BPA (Bureau of Bonneville Power Association).

REP. BRAND noted Congress passed a law to go beyond the continental divide with power lines, pipes, etc. This would allow them to go into Colstrip.

REP. HANNAH inquired if Montana Power wanted to go across state land they would not have the same type of freedom as Bonneville. REP. BRAND stated that was correct.

REP. BROWN told committee members the BPA was a direct appointment of the president.

REP. EUDAILY asked about repealing sections of the law. WOODGERD noted sections 77-2-108 and 77-2-316 would be repealed.

REP. SEIFERT asked if the state would be compensated for lands that would be disturbed. WOODGERD said it would. REP. SEIFERT further asked if the company would still have to go through the same procedure as far as locating of lines. WOODGERD said that was correct.

There was no further discussion on House Bill 154.

#### EXECUTIVE SESSION

HOUSE BILL 93 REP. DAILY moved do pass. REP. EUDAILY seconded the motion.

REP. HANNAH felt page 1, lines 19,20 and 21 should be amended to "as of the time of injury" from "as of the time of process", stating claims are paid as of the date of settlement would be changed to claims paid as of time of injury.

The committee asked MIKE MELOY's opinion. MELOY felt section 25-9-204 should be amended or this amendment be placed into section 25-9-204.

JIM LEAR stated by inserting a new section - it would read to include interest in judgment. MELOY stated the problem in doing that is a section on rule guides of judgement and MELOY is not sure that in some types of judgment a debt would be treated as one.

REP. EUDAILY inquired whether instead of placing the amendment on page one, the committee would have to have a new section.

JIM LEAR stated this would become section 2 and the subsequent sections renumbered.

REP. EUDAILY so moved it that the title be amended to fit the amendment proposed.

JIM LEAR stated 25-9-204 would read ... "from the time rendered or made, when applicable, from the time specified in 27-1-211 (2)".

The amendment passed.

REP. HANNAH wanted page 1, line 21 changed from "date of injury" to "date of process". REP. BENNETT asked what the date of process was. REP. KEEDY replied it is the date that action is commenced. REP. BENNETT stated Colorado has a law similar to this. If you add this amendment you are inviting people to file litigation and cluttering the courts when the people are really not prepared. The injured party still has to pick up the bills from the date of injury. CHARIMAN KEYSER noted this amendment changes the bill and the intent of the bill.

REP. HANNAH stated that as an insurer, the unknown of the years down the road would affect the insurance cost and affect the consumer. Insurance companies lay aside the amounts of money they have to pay. It is fair for the insurance companies to know who is considering cases against them and who is not. That is why this amendment is being offered, rather than letting it go up to the statute of limitations.

REP. CONN stated the intent of the bill is because it is more beneficial for the insurance companies to do it this way. REP. CONN does not want to change the bill with this amendment.

REP. KEEDY does not want the amendment. He stated a potential plaintiff will not let the calendar go by so he can file a suit later on. The purpose of the bill is to make whole an injured party and not help insurance companies make money.

The amendment did not pass, with REP. HANNAH voting for the amendment.

REP. EUDAILY moved do pass on House Bill 93. REP CONN seconded the motion. Bill passed as amended, with REP. HANNAH voting against the bill and REP. YARDLEY abstaining.

HOUSE BILL 130 REP. KEEDY moved do not pass. REP. HANNAH seconded the motion.

REP. BROWN felt the committee should not be so hasty. There are some parts of the bill worth considering. This is a serious matter in the farming communities.

REP. DAILY stated the bill will not do what it is intended to do.

REP. BROWN stated it is an identical draft as to what is done in North Dakota.

REP. KEEDY withdrew his motion of do not pass. He stated a substitute motion to change the bill to eliminate the transportation costs and have the retailers pay 100% of costs of shipment.

REP. HANNAH did not feel the government should become involved. REP. HANNAH moved do not pass. REP. MCLANE seconded the motion.

REP. ANDERSON was in favor of the motion. If protection was provided for this type of merchandise, it would be necessary for the government to protect dress sellers, etc.

House Bill 130 did not pass. Those voting against the motion were REP. BROWN, REP. DAILY, REP. ABRAMS. REP. YARDLEY abstained.

HOUSE BILL 153 REP. MCLANE moved do pass. REP. BROWN seconded the motion.

REP. HANNAH inquired if county commissioners had the authority to do this in their communities or if it were to a vote of the people. REP. MCLANE stated it is the county commissioners and not a vote of the people.

After a brief discussion House Bill 153 was passed unanimously.

HOUSE BILL 154 REP. EUDAILY moved do pass. REP. CONN seconded the motion.

REP. KEEDY inquired why the bill would repeal 77-2-108 and 77-2-316. Section 77-2-316 is the sale of state lands.

JIM LEAR stated that the result of the repeal would be to require that all statutory procedures in Title 70, MCA, be complied with if the federal government wants to buy the land. As it reads now any state lands needed would have to be sold merely on demand. REP. HANNAH stated 77-2-316 deals with the fact that the federal government does not have to go through condemnation of state land.

JIM LEAR replied they do not have to condemn state land but they just have to give notice that they want it.

REP. HANNAH wants to leave 77-2-316 in the bill. Federal government should not have the right to take over state land and should follow certain procedures like anyone else.

REP. SEIFERT noted if section 316 were removed most of the text of the bill would be removed.

It was questioned whether this bill should go into subcommittee. CHAIRMAN KEYSER stated the chair did not feel it should go into subcommittee at this time.

REP. IVERSON stated if the federal government wanted state lands they should have to go through the same procedure as everyone else.

REP. KEEDY felt the committee was going too far too fast with this bill.

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REP. EUDAILY withdrew his motion of do pass on House Bill 154.

CHAIRMAN KEYSER stated this bill would need some further clarification.  
The committee would act on this bill during another executive session.

The meeting adjourned at 9:30 a.m.

Respectfully submitted,

KERRY KEYSER, CHAIRMAN

mr

Exhibit 1

Mr. Chairman, Members of the House Judiciary Committee:

My name is Larry Herman. I am the Mayor of the City of Laurel.

Housebill No. 153 concerns itself with the justice courts in counties and cities having a population over 5000. The establishment of the justice courts under Housebill No. 153 remains in the discretion of the Board of County Commissioners. Under present statute, the county is limited to the establishment of only two justice courts in a county, one of which must be in the county seat. Housebill No. 153 provides that, in addition, the Board of County Commissioners could establish a justice of peace in each city with a population exceeding 5000, upon resolution of the city requesting a justice of the peace. In addition, Housebill No. 153 provides that the office of city judge and justice of the peace may be combined upon ordinance of the city and county.

Historically a justice court is regarded as of great importance to the people at large, because it opens the door of justice nearer their homes. It not only affords an inexpensive and speedy remedy for minor grievances as to the rights of property, but also renders substantial aid in the prevention and punishment of crime. The elimination of the justice court in each township, as it was under the original Montana Constitution, removes justice from cities within a county not a county seat. It is true that cities have a city court; however, the justice court differs widely in its functions from a city court. The jurisdiction of the city court is limited to: 1) Enforcement of municipal ordinances; 2) Enforcement of state misdemeanors within its city limits where the fine does not exceed \$500 or 6 months in jail; 3) Civil jurisdiction only where the city is a party to the action, and then limited to the sum of \$300.



The city court does not have civil jurisdiction between parties, other than the city, involving minor grievances, i.e. minor debts, landlord/tenant disputes, or property disputes. A city court can not enter a civil judgement except for money owed the city which does not exceed \$300.

The jurisdiction of the justice court is more extensive than a city court and is responsive to both civil and criminal grievances of the people. 1) The justice court has jurisdiction to enforce state misdemeanors where a fine or forfeiture does not exceed \$1500; 2) Enforce state misdemeanors which are punishable by fine not exceeding \$500 or imprisonment not to exceed 6 months in jail; 3) Enter civil judgment not to exceed \$1500 and have concurrent jurisdiction with the district court in forceful entry and unlawful detainer.

The justice court is responsive to the needs of the people by providing inexpensive and speedy remedy from minor grievances in small claims of less than \$750. The Board of County Commissioners can establish a small claims court within the justice court wherein the minor grievances are readily handled without the need of an attorney.

The justice court is not a court of record and has, unlike the city court, countywide civil jurisdiction.

Cities with a population in excess of 10,000 presently can create a municipal court which has concurrent jurisdiction with the justice court within a city. The municipal court, however, is a court of record and more costly to operate than a justice court. There is, however, no provision for cities with a population less than 10,000 in population.

Housebill No. 153 provides a means of establishing a justice court in cities with a population greater than 5000. Under Housebill No. 153 a city and county must both agree to the establishment of a justice court in the city. In addition, the justice court could act as city judge, in which case the cost of the justice court would be proportionately shared between the city and the county.

The City of Laurel is unique in that it has a population of over 5000. The City of Laurel is not a county seat, nor does it have a justice court responsive to the needs of the people. In fact, the City of Laurel is the only city of its size in the state with a population greater than 5000 which is not a county seat. The majority of county seats in the state have less than 5000 population.

Housebill No. 153 would permit the City of Laurel and the County of Yellowstone to jointly establish a justice court.

As a summary, Housebill No. 153 will: 1) Provide responsive justice to the people; 2) Reduce costs of justice by avoiding duplication of services; 3) Provide for the growth of Montana.

It should be stressed that Housebill No. 153 does not automatically establish a justice court in cities greater than 5000. It takes both city and county action. What it does do is provide a mechanism to establish a justice court in cities of a population greater than 5000, when the need arises.

VISITORS' REGISTER

HOUSE \_\_\_\_\_ JUDICIARY \_\_\_\_\_ COMMITTEE \_\_\_\_\_

130 \_\_\_\_\_

Date 4/15/81

OR Jacobsen \_\_\_\_\_

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

LL 153  
 SPONSOR Williams, Keedy, et al

Date 1/15/81

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS.
<i>Bill Williams</i>	<i>Representative</i>	<i>Chief Sponsor</i>	<input checked="" type="checkbox"/>	
<i>David Meyer</i>	<i>West Virginia of Columbia</i>	<i>Helena</i>	<input checked="" type="checkbox"/>	
<i>Walt Menello</i>	<i>Laura Moss</i>	<i>Laura</i>	<input checked="" type="checkbox"/>	
<i>John H. ...</i>	<i>...</i>	<i>...</i>	<input checked="" type="checkbox"/>	
<i>John ...</i>	<i>Helena</i>	<i>...</i>		
<del><i>John ...</i></del>	<del><i>Helena</i></del>	<del><i>Dept. of State Land</i></del>		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.  
 PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER  
JUDICIARY

HOUSE \_\_\_\_\_

COMMITTEE \_\_\_\_\_

LL 154

Date 1/15/81

SPONSOR Brand, Marks

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
David Woodgerel	Helene	Dept. of State <del>and</del>	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.