MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE February 4, 1981

The meeting of the House Judiciary Committee was called to order by Rep. Ralph Eudaily, who was acting chairman, at 8:00 a.m. in Room 437 of the Capitol. Rep. Bennett was absent. Rep. Keyser, Rep. Seifert, and Rep. Anderson, after presenting committee bills elsewhere, were present later during the meeting.

HOUSE BILL 337 REP. KANDUCH, chief sponsor, stated this is to authorize GVW personnel to arrest for violations of motor vehicle registrations.

BEATE GALDA, Department of Highways, showed support for the bill. GALDA stated when a trucker is in violation of the law GVW personnel do not have the authority to make an arrest. Many times a highway patrol officer is not in the vicinity to respond to the call to make the arrest. GALDA proposed an amendment. EXHIBIT 1.

BEN HAVDAHL, Montana Motor Carriers, stated he was not in opposition to the bill.

WALT MILLER, Montana Highway Patrol, had no objection to the bill. MILLER stated many times the GVW officers do not have the authority to arrest and have to call the Montana Highway Patrol to come. Sometimes it is not possible to get to the station right away. Many times the violations go unenforced because they cannot get there. MILLER feels GVW should have the power of arrest.

There were no further proponents.

There were no opponents.

REP. KANDUCH closed the bill.

REP. HANNAH questioned if this would be an increase of duties. GALDA replied no.

There was no further discussion on House Bill 337.

HOUSE BILL 348 REP. METCALF, sponsor, stated this bill is to amend the constitution to provide that 2/3 vote is required from each house before a law can be amended. The present procedure has been practiced since 1907. In those 74 years, 32 initiatives have been on the ballots, 19 of which have been passed. If there is a major amendment it should be some concern of the people. REP. METCALF gave a sheet which contained four amendments. EXHIBIT 2.

MIKE MALES, EIC, was in favor of this bill. In 1978 they polled 300 voters throughout the state. Of those who responded 92% were favorable to this type of legislation and 3% were not in

favor. MALES gave written testimony. EXHIBIT 3.

MARK MACKIN, Citizens Legislation Coalition, was in support of the bill. EXHIBIT 4.

ALAN OSTBY, Common Cause, supported this bill.

There were no further proponents.

BILL HAND, Montana Mining Association, was in opposition to the bill. HAND stated each legislature, bills are amended, debated, etc. between each house and the governor's staff. Still there are bills that are passed that have to be changed the next session. The Montana Mining Association is opposed to the bill because of the recent action concerning Initiative 84.

PETER JACKSON, representing Montana Coal Association and WETA, opposes the bill. JACKSON stated bills that look clean and pass the session often times the next session have to be amended. JACKSON feels the need is necessary to amend and repeal.

BEN HAVDAHL, Montana Motor Carriers, opposes the bill.

FORREST BOWLES, Montana Chamber of Commerce, believes the legislature should have the ability to amend any law by the usual process. Initiatives should not be processed differently. BOWLES does not feel the four years makes sense.

DON ALLEN, Montana Petroleum Association, stated this bill is forgetting the real process of government. It is impossible as a legislator to understand everything that comes before you all the time. Most people will not give up their favorite past-times to become informed on various issues. They instead listen to the people who do the research that is presented on television, radio and the newspapers. It is inconsistent for the people to say 2/3 vote is needed.

There were no further opponents.

In closing, REP. METCALF stated he could not understand how it is taking away rights of the legislature to deal with initiatives. What it does is make it more difficult to change something the people have passed. The authority to question an issue and debate it can still work. BOWLES said the amendment would require the legislature to hold off for four years. The opposite is true. It would have to be amended within the four years at a 2/3 vote. There are many cases where a 2/3 vote is required, for example, to amend the constitution, or overriding the governor's veto. The issue boils down to a vote of the people, by the people and for the people.

REP. HANNAH asked of the 19 initiatives in the past, how many were radically amended? REP. METCALF did not know how many were amended or how many were repealed.

REP. KEEDY asked if HAND felt the voters did not know what they were doing when they passed Initiative 84. HAND replied most people thought there were voting for a ban on nuclear waste in Montana. REP. KEEDY asked if the opponents of the initiative spent more money advertising to get their point across. HAND replied they did.

REP. TEAGUE asked the sponsor if he opposed the striking of the amendments. REP. METCALF did oppose.

REP. KEEDY questioned if 2/3 vote by each house should be clarified to a 2/3 vote of the two houses combined. REP. METCALF stated the committee should debate that. It should probably be 2/3 vote of the total legislation.

HOUSE BILL 518 REP. BARDANOUVE, chief sponsor, stated this was a bill to revise the procedure for placement of persons in youth forest camps. This would legally allow the Swan River Forest Camp to be used as an adult offender camp. There is minimum security of prisoners at these camps. Presently at the Pine Hill facility there is no room for the adult offenders. This would change the concept of the Swan River Forest Camp to be for adults. It is really no longer used as a youth camp.

Proponent DAN RUSSELL, Department of Institutions, noted in the prisons at present time are 655 inmates. The facility holds only 672. Today there are 45 inmates at Swan River. If the Department did not have this facility the prison would be overcrowded. RUSSELL stated juveniles shall not be retained where adult offenders are. If this is continued federal funds might be unavailable. Currently in Pine Hill there are 100 juveniles.

There were no further proponents.

There were no opponents.

In closing REP. BARDANOUVE stated if the mandatory bill is passed more room will be needed in prisons. This bill will conform to what is now being done.

REP. HUENNEKENS asked if 100 juveniles was a low, high or average number for the facility. RUSSELL stated it was about average. The maximum total is 150. RUSSELL indicated we should not place juveniles with adults.

REP. TEAGUE asked if any inmates have escaped or run away from the camps. RUSSELL stated a small number. REP. BARDANOUVE replied there was some research completed since the last session indicating there were few escapes, one or two cabins broken into and a few cars stolen. This is not much compared to crimes in surrounding towns.

REP. SEIFERT asked if the original intention of the law was to set up a youth camp. It was answered yes. REP. SEIFERT went on to say jurisdictions started placing adults in the camp. This would now give the Department of Institutions the right to place adults in the camp. It was not designed for this type of program.

REP. CURTISS stated the language on page 5 provides the establishment of juvenile correction facilities. Is this proposing to build new facilities? RUSSELL stated no.

REP. SEIFERT inquired if there has been any abuse relative to first, or second offenders, or parolees 23-24 years of age with young adults. It was answered no unusual problems.

REP. SEIFERT asked what was the intent of the camps when they were originally set up. It was replied a place where the youth offenders could benefit from a place of work, not necessarily just education. REP. SEIFERT asked the intent was not to have adults sent to the youth camps. RUSSELL replied yes.

REP. EUDAILY asked if a statement of intent would be needed. REP. BARDANOUVE felt one might be in order.

 $\overline{\text{HOUSE BILL 545}}$ REP. SIVERTSEN, chief sponsor, stated this was a bill to guarantee a member of a policeman's family the right to participate in political activities. Just because a person is a public employee should not disallow his family to become involved in political issues.

There were no proponents.

There were no opponents.

REP. HANNAH asked why is there a law that does not allow this. The sponsor did not know. REP. HUENNEKENS stated maybe a policeman has the authority within the community and is a figure of authority. Based on what he could do might be a pressure on the community.

The sponsor stated he would have no problem if the bill were amended to read any public employee and not restrict it to just policemen.

REP. EUDAILY questioned about the nepotism law. If the wife ran and was elected into office would the policeman have to resign. REP. SIVERTSEN stated it would probably depend on the office.

REP. KEEDY asked if there would be a problem to strike everything from line 14 forward. The sponsor felt the committee should deal with the bill as it is and make a committee bill if necessary.

That ended the discussion on House Bill 545.

HOUSE BILL 531 REP. KEEDY, sponsor, stated this would grant any person the right of access to his medical records. In the '79 session there was a bill dealing with confidentiality of health care information.

REP. KEEDY resents the big brotherism some doctors display that they alone can decide the type of information to release to a patient. The person has paid for the information and is entitled to it.

There were no proponents.

ALAN CAIN, Blue Shield, opposed the bill. His company comes into possession of this type of information through claims processed. Frequently the information contained is information that was written without the intent of the patient ever seeing it. CAIN gave an example of a doctor who did not tell an elderly woman that she had a mild cardiac condition. The doctor felt the woman would worry herself to death. CAIN feels this is a legitimate concern.

ROSE SKOOG, Montana Nursing Home Association, opposes the bill because of the broad language. The language might put nursing homes at a disadvantage with respect to frail and elderly people. She would like some discretion to release the information only at the physician's suggestion.

In closing, REP. KEEDY stated the remarks from the opponents were unpersuasive. Maybe it is time the doctors clean up their act and not put candid comments in the files. It is the people themselves that should be able to determine what is in their best interest.

REP. CONN asked about when a doctor prescribes sugar pills to a patient. The pills work and the patient is "cured" of the ailment. Would it be in the patient's best interest to know in reading the record this was not actual medicine? REP. KEEDY stated that is a possibility, but it would put an end to the deception.

REP. KEEDY stated he became aware of the problem when he was notified by a concerned citizen who could not obtain her medical records for a trip she was going on.

REP. DAILY asked if the opening of medical records would be like the recent opening of school records resulting in many law suits because of the information placed in the files. REP. KEEDY did not see a problem with that.

REP. DAILY stated he had a relative that was a hypochondriac. If this information was released to the relative what would that do to her? CAIN replied this is the problem. Maybe if this law is passed the doctors will not make candid comments in the patient's files, but maybe they will. This might ruin the doctor patient relationship.

HOUSE BILL 576 REP. YARDLEY, sponsor, stated that the purpose of the bill is to increase the scope of the offense of unlawful transactions with children. YARDLEY noted the changes in the bill.

MIKE FLEMING, Montana Probation Officers Association, was in favor of the bill. There is an ever increasing amount of this type of crime. Often times a child is running away from home and is taken in by a friend. If that person would report to the probation office that they have the child it would eliminate the parents and police searching all over the countryside. Usually adults are involved in these cases. Most of the sale of drugs and alcohol is done by adults to youths.

There were no opponents.

In closing, REP. YARDLEY stated the bill is intended to solve the problem when a child leaves home to run off to live somewhere else.

REP. KEEDY stated if he saw a child in his neighborhood who was neglected and he advised the child to leave home without the parents' consent, would he be guilty of a crime? FLEMING stated in those cases this would probably not apply.

REP. MATSKO believed child abuse and this issue were very close.

REP. EUDAILY questioned if a child came home from school and was locked out of the house because his parents were gone, and a neighbor took pity and let the child come over to his house, when the parents returned at midnight discovering the child was gone, could the neighbor be arrested? FLEMING replied yes if it came to the issue the neighbor was harboring the child. FLEMING stated the neighbor should contact authorities to let them know

he has the child and to leave a note on the door.

DICK MEEKER arrived late for the hearing. He was allowed to speak on the bill.

MEEKER, Montana Probation Officers Association, supports the bill. The difficulty in this area arises when males lead females away from home without parents consent. There was a case where a 47 year old man was living with a 12 year old girl. A child is naive at that age.

REP. KEEDY asked if there was a physical relationship. MEEKER stated yes. REP. KEEDY asked if that would be under a criminal code already. MEEKER replied it would be considered statutory rape.

There were no further questions.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 10:25 a.m.

HOUSE BILL 359 REP. DAILY moved do pass.

EXHIBIT 5 was handed out to the committee. REP. EUDAILY moved to amend line 17, page 1 to \$5.00 instead of \$25.00, and to amend the title and line 17 of page 4 the same way.

A roll call vote resulted. Those voting yes were: KEYSER, SEIFERT, CONN, CURTISS, EUDAILY, HANNAH, IVERSON, MCLANE, SHELDEN and HUENNEKENS. Those voting no were: MATSKO, ANDERSON, DAILY, ABRAMS, KEEDY, TEAGUE, YARDLEY, and BROWN. The amendment passed 10 to 8.

REP. EUDAILY moved do pass as amended. A roll call vote resulted. Those voting no were: SEIFERT, CONN, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, ANDERSON and ABRAMS. Those voting yes were: KEYSER, EUDAILY, DAILY, HUENNEKENS, SHELDEN, KEEDY, TEAGUE, YARDLEY, and BROWN. Because of the tie vote the motion failed.

REP. HUENNEKENS moved to table the bill. The motion passed unanimously.

HOUSE BILL 545 REP. KEEDY requested a committee bill be drafted for section 2 and 3 of the bill concerning all public employees.

The motion passed with REP. EUDAILY voting no.

The meeting adjourned at 10:55 a.m.

KERRY KEYSER, CHAIRMAN

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Exhibit 1

Amendment to House Bill No. 337
(Proposed by the Department of Highways)

p. 3
Add a new subsection to subsection (1) as follows:
(s) section 15-24-1001.

Ekhibit 2

Amendments

House Bill 348

1. Title, line 6.

Following: "LEGISLATURE"

Insert: "WITHIN 4 YEARS AFTER ENACTMENT"

2. Page 2, line 3.
Following: "repealed"

Insert: "within 4 years after enactment"

3. Page 2, line 13.
Following: "legislature"

Insert: "within 4 years after enactment"

4. Page 2, line 16. Following: "legislature"

Insert: "within 4 years after enactment"

Exhibit 3

NAME: MIKE MALES	* DATE: 4 FFB 1931
ADDRESS: Col3 5 RODNEY, H	ELFUA S9601
PHONE: 443-2520	
REPRESENTING WHOM?	
APPEARING ON WHICH PROPOSAL: <u>HB</u> 3	4-8
DO YOU: SUPPORT? AMEND	?OPPOSE?
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EXHIBIT 4 CITIZEN'S LEGISLATIVE COALITION

P.O. Box 4071 Butte, Montana 59701

2-3-81

TESTIMONY GIVEN BEFORE THE HOUSE JUDICIARY COMMITTEE HB 348 - Metcalf

Mr. Chairman, members of the committee, my name is Mark Mackin, lobbyist for the Citizens' Legislative Coalition. I rise in support of HB348 for the follwing following reasons.

A 2/3 vote of each house of the legislature is required to override the governor's veto. Since the Montana Constitution provides that all power rests in the people, surely, a decison of the people of Montana should require at least the same consideration as the Governor, before their decison is overridden or changed.

We believe that anyone who would willingly vote to increase the difficulty or "responsibility" of the initiative process by imposing regulations or raising the standards to qualify an initiative, ceratinly should look vavorably on this bill. An increased responsibility on the part of the Montana electorate should be matched by an increased responsibility on the part of this body in dealing with laws enacted by the initiative process.

This allows even a relative minority to protect the intent of the initiative as it move through the legislative process, if that is necessary. This amendment does not tie the hands of the legislature.

Refer to Addendum A.

This data demonstrates that the 2/3 majority can be achieved. We believe that in these cases the intent of the initiatives involved was CITIZEN PARTICIPATION **LOBBYING INITIATIVES**

retained to a very high degree.

Refer to Addendum B.

This section of the MCA indicates that this requirement is not without precedent. In fact, it has been imposed by this body on other governmental entities for the specific purpose of restraining those bodies from acting contrary to the public will.

Note that 7-5-137 restrains these bodies from acting XKXXXXXX in any way during a two year period following the public decison.

Amendments to Initiatives

Homestead Tax Initiative

Four bills were introduced in 1979 to amend this initiative,

HB 906

HB 512

HB 483

SB 369

Only one of these bills passed the legislature and became law. HB 483

Third Reading Vote

House

69 yes '21 no

Senate 38 yes 5 no

107 total

Final Conference Committee Vote

House

71 yes 21 no

Senate 37 yes

8 no

108 total

Recall Initiative

One bill passed the legislature and became law. HB 795 1977

Third Reading Vote

House

88 yes 4 no

Senate 30 yes 18 no

118 total

Wine Initiative

One bill passed the legislature and became law. SB 99 1979

Third Reading Vote

House

89 yes 5 no

Senate

6 no

43 yes 132 total

Final Conference Committee Vote

House

82 yes 7

7 no 2 no

Senate $\frac{41}{122}$ yes 2

123 total

- (2) A special election may not be held sooner than 60 days after the adequacy of the petition is determined by the election administrator or the governing body orders a special election.
- (3) If the adequacy of the petition is determined by the election administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election unless a special election is called.
- (4) Whenever a measure is ready for submission to the electors, the appropriate election administrator shall in writing notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed shall be published.
- (5) The question shall be placed on the ballot, giving the electors a choice between accepting or rejecting the proposal.
- (6) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared unless otherwise stated in the proposal.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(7); amd. Sec. 300, Ch. 571, L. 1979.

7-5-137. Effect of repeat or enactment of ordinance by initiative or referendum. If an ordinance is repeated or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repeated pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repeated ordinance. This section shall not prevent exercise of the initiative at any time to procure a reenactment of an ordinance repeated pursuant to referendum of the electors.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(6)(d).

Part 2

Operation c. Consolidated Units of Local Government

7-5-201. Operation of self-government consolidated units of local government. (1) Whenever existing law contains different provisions and procedures for the functioning of counties and municipalities, including but not limited to such areas as election procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision of services, the governing body of a self-government consolidated unit of local government which contains at least one county and one municipality shall by ordinance adopt either the county or municipality provisions. The ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated unit. This subsection applies to self-government consolidated units only in those areas where such units are subject to state law under 7-1-111 through 7-1-114.

EIGHTH JUDICIAL DISTRICT STATE OF MONTANA

APPLICATION FOR PEPMISSION TO CAPRY A CONCEALED WEAPON SECTION 94-214 R.C.M. 1947 Full Name 1. Last First Middle List all other names you have used, including nicknames, if you have ever used any surname other than your true a) name, during what period and under what circumstances where these names used? Have you ever legally changed your name? If yes, then designate: PLACE COUPT REASON Social Security Number Present Address 2. No. Street City State Zip How long have you lived there? a) List all previous addresses for ten (10) years and the b) dates you lived there. Date of Birth Place of Birth 3. Height b) Weight Hair Color d) Sex C) Pace Are you a citizen of the United States? a) If naturalized, give Date Place 5. Are you a resident of Montana? a) If yes, for how long? b) If mo, of what State?

6.		yes, Branch Service? yes, branch Serial No. no, have you ever been in the Military Service?
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13.	volunta counsel treatme	u ever been committed to a mental institution, or rily been committed; or undergone psychiatric ling or nt? yes, give dates, places and details
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		N.	Signature of Applicant
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JUDICIARY

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BILL 348		Date	2/4/81	
SPONSOR Metcalf				

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SPONSOR	Bardanouve				

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