

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 13, 1981

The meeting was called to order by Vice-Chairman Carl Seifert at 8:00 a.m. in Room 437 of the Capitol. Rep. Keyser and Rep. Anderson were excused from the meeting.

HOUSE BILL 336 REP. KANDUCH, chief sponsor, stated this was an act to prohibit solicitation within or at the entry of any polling place to gather signatures for petitions. REP. KANDUCH stated when he has gathered signatures he announced the place and time where he would be with the petition. People then knew he would be at a specified place so they could either come sign the petition or avoid him. REP. KANDUCH does not feel the voting place is appropriate for petition signing. The petitioner should be across the street from the polling place or at a store (with the store's permission) to gather the signatures. Initiatives are being abused. If enough signatures are gathered and the initiative is on the ballot it can become law. People should not be bothered while going to vote.

ALLEN SHUMATE believes this is a good bill. We should stop the harassment at the polling place. Signatures should be worked for by going door-to-door.

DAVE JOHNSTON, WETA, and Operating Engineers, supports this bill.

KEITH ANDERSON felt that petitioners should be across the street from the polling place. Voting should be a pleasant experience.

FOREST BOLES, Montana Chamber, stated many calls have come into his office concerning this subject. Petitioners should be forced to go door-to-door like the candidates do.

MARILYN GROSFIELD supports the bill. EXHIBIT 1.

DONALD JOHANNSEN stated most people who listen to the radio, tv or read the paper only see one side of an initiative. There is another side that is not presently fairly. It should be left to the judgment of the people. JOHANNSEN agrees with this bill.

There were no further proponents.

CAROL BRASS, Citizens Legislation Coalition, stated there are pros and cons that could be battled around on this subject. The Attorney General was asked to give his opinion on the subject. It was stated it does not violate the law. Section 13-13-122, MCA, lists preventing obstructions that allows clearing of the passageway to prevent any obstruction including the arrest of the person if necessary. BRASS gave EXHIBITS 2 and 3.

MIKE MALES, C.I.C. stated 45,000 Montana voters signed petitions

at polling places this last election. The function of the petitioner is to allow people to sign if they are interested. In 1980 about 80% of the people who were approached signed petitions. MALES urged do not pass because the voters should make the decision whether to sign or not.

TONI MCOMBER, Montana Education Association, stated the board of directors of the MEA opposes the bill. Teachers feel this bill would limit their rights to petition government. MCOMBER stated her own experience is when the person petitions, their main interest is not to harass the voter. If they do it will be discovered. It is in the best interest of petitioners to be courteous and not harassing. The initiative process should be stopped instead of the petitioning.

ALAN OSBTY, Common Cause, stated the proponents have a strong argument that the polling place is sacred, however, it is a constitutional right to petition. People who try to collect signatures would not harass people if they were trying to obtain signatures. In REP. KANDUCH's district over 1,000 signatures were collected last election day.

There were no further opponents.

In closing, REP. KANDUCH stated the bill is not to stop or obstruct gathering of petitions. It merely says they cannot do it at the polling place on election day. The rights are not taken away. The Attorney General has been proven wrong before. If people want to petition they should go to stores and ask permission to be in front of the store.

REP. SHELDEN asked if grocery stores allow this. REP. KANDUCH replied they do if permission is asked before hand and if the flow of the traffic is not disrupted. REP. SHELDEN asked if bell ringers at Christmas time were considered as harassing. REP. KANDUCH replied yes, it does harass him. He does not like to be bothered when walking down the street.

REP. CONN stated the tax indexing initiative was vetoed by the governor. REP. KANDUCH stated that was the one place where it worked like it should.

REP. HANNAH asked about subsection 2. REP. KANDUCH stated that is present law.

REP. EUDAILY asked what statistical proof is available that 80% signed petitions. MALES stated he was at a polling place and it averaged 80% signed. REP. EUDAILY asked if this would hold true statewide. MALES stated it was the general consensus. A tally was not drawn up.

REP. HANNAH asked if the initiative law states the person signing must read the complete initiative. MALES replied no, it just certifies they have not signed another one.

REP. KEEDY stated last year when he was preparing to go door-to-door with a petition it began to rain. Instead he spent the day in the post office gathering signatures. Would there be any problems with that? REP. KANDUCH stated no, as long as the postmaster approved. REP. KEEDY stated the polls would be the only place you could not petition. REP. KANDUCH replied nobody has asked to be at the polling places. They just come and set up tables.

REP. KEEDY asked if this requires someone who has a petition to get permission. REP. KANDUCH replied not at the polling place. REP. KEEDY stated in 13-13-132 it states just so they are not obstructing traffic. REP. KANDUCH stated most people do not know what that is. It must be in plain language.

REP. HUENNEKENS asked where the polling place begins. Sometimes when voting in a school the voter has to walk down corridors to get to the voting room. REP. KANDUCH replied the voting place begins right when the voter comes off the street.

REP. CURTISS asked the wording on petitions. MALES replied it is the same on every petition stating you did not sign any other petition relating to the subject.

REP. CURTISS asked if it is difficult to throw someone out who is obstructing the voters. GROSFIELD stated the petitioners being there is harassment. In a city such as Helena it might be easy to ask them to leave but in a town such as Big Timber hard feelings might result.

REP. CURTISS asked about rules for judges. GROSFIELD replied there is a judges handbook which lists instructions. There is no mention of the possibility of people setting outside that the judge can or cannot give permission to.

REP. CONN asked why is it different to have petitioners at the stores compared to the polling place. GROSFIELD stated if she is walking down the street she can avoid going into a store. But on election day, she has to go in to vote.

REP. TEAGUE asked if MALES would object to a committee bill stating that each person must read an initiative before signing it. MALES had no objection.

There was no further discussion on House Bill 336.

EXECUTIVE SESSION

HOUSE BILL 676 REP. HUENNEKENS moved do pass. He felt the method of funding was awkward. Right from the start the money should have been appropriated.

REP. DAILY stated he had information on a fiscal note and made a motion to hold the bill until the information was brought later in the meeting. The motion passed.

HOUSE BILL 656 REP. KEEDY moved do pass. He stated there is a bill in the senate to repeal this. The judges were there to support that bill because it is difficult for any judge to comply. There is a widespread disregard for district court judges.

REP. YARDLEY stated he has mixed feelings. He knows a lot of judges don't ask because they don't care or get around to it. You can require them but cannot get it accomplished.

REP. MATSKO finds it obnoxious for judges to have the ability to violate the law.

REP. HANNAH stated it is interesting that with this piece of legislation not one judge showed up to testify but for a bill that places restraints they were all there. There is a tendency to allow judges to be free from accountability. All this bill does is give an opportunity to handle this.

REP. KEEDY stated rarely do voters get an opportunity to criticize judges.

REP. HUENNEKENS stated many judges run uncontested on the ballot.

REP. CONN stated if we don't provide enough judges how can we expect them to get the work done.

JIM LEAR stated there was a clerical error on page 2, line 11 and line 19. It should be section 11 and not 9. REP. BROWN moved that those lines be changed from 9 to 11. The motion passed unanimously.

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

The motion carried 12 to 6.

HOUSE BILL 676 REP. DAILY was not able to bring the fiscal note for the bill. He instead brought the sponsor of the bill, REP. QUILICI, to answer any questions.

REP. SEIFERT read 53-9-109 to the committee.

REP. DAILY asked REP. QUILICI to explain the 6% traffic fine. REP. QUILICI handed out the fiscal note of 1977. EXHIBIT 4. In 1977 it was a mechanism to try to take away from the innocent victim funding. At the judge's discretion the fee could be raised 6%. In some cases judges won't add it on. This would allow extra money without dipping into the general fund money.

REP. BROWN suggested a letter of intent should be sent to the cities and towns and the bill should be rejected.

REP. CURTISS stated she voted for this bill when it first came to the legislature because of victims of crime. She wonders if it is doing what it was intended to do. REP. QUILICI responded the innocent victim benefits from this.

REP. IVERSON stated he likes the programs the money goes towards. REP. IVERSON felt the program should continue to run on the money that is now in the account and next session the money should be appropriated as it should have been done in the beginning. REP. DAILY opposed REP. IVERSON's remarks because it is not possible to know what the future sessions will entail.

REP. MATSKO stated he has seen fines go up in several years. A large percentage goes to the judges' retirement instead of to this fund. It might have to be raised 25% to get anything done.

REP. EUDAILY stated if this section is repealed will it disallow payment of money from the fund that is now in it. JIM LEAR stated he thought that was correct.

REP. HUENNEKENS moved to pass this bill for the day until the right language was drawn up. The motion carried with REP. BENNETT, REP. CONN, REP. DAILY, REP. KEEDY, and REP. SEIFERT voting no.

HOUSE BILL 678 REP. YARDLEY moved do pass.

SHARI SPRIGG, from the Attorney General's office was available to answer questions. REP. HUENNEKENS asked about page 2. SPRIGG replied that portion does not have to do with the Attorney General's opinion. The office did not draft that part of the bill. SPRIGG stated the law needs to make clear who gets to make the decision.

REP. KEEDY asked if a Justice of the Peace would have to serve if he did not want to. SPRIGG replied if it is the decision of the

committee to leave it up to the judge she would eliminate the section all together. REP. BURNETT stated in Bridger they offered to hire a Justice of Peace out of Red Lodge. Since the Attorney General's opinion came out they have been without a Justice of the Peace. With this bill the city council could appoint a city judge.

REP. MATSKO stated in most jobs the employee has the option to quit. The way this bill is written the Justice of the Peace will take whatever is offered.

REP. EUDAILY asked if the mayor of a town could appoint a judge. REP. BURNETT stated they could not. They have tried to do this before but it was not allowed.

REP. HANNAH stated the purpose of the bill is to allow small towns to have city judges if they want one. Would that be possible in this bill? JIM LEAR stated those situations would have to be addressed.

REP. KEEDY made the following motions: On page 2, line 1 following "or" insert "may". On line 19 following "who," strike all of line 19 and on line 20 strike through "towns,". On page 3, line 2 strike all of subsection 1 including the title except 3-11-201. On line 6 strike (2).

On line 15 following "may" insert "and who agrees to act in that capacity". REP. KEEDY amended his motion to include page 3, line 2 following (1) strike cities of first, second, and third class and insert of cities of the first class. On line 3 strike "except as provided in subsection 2". The amendments passed.

REP. KEEDY moved the title be amended. The motion passed unanimously.

REP. YARDLEY moved do pass as amended. The motion passed with REP. BENNETT voting no. (REP. IVERSON was absent during the vote).

HOUSE BILL 590 REP. BENNETT moved do not pass.

REP. BROWN made a substitute motion of do pass. REP. BROWN made the following amendments: Page 1 and the title strike all section of the bill except on page 5 lines 1 through 15. This would allow the state to be a party of any action. A further amendment was to strike in the title and line 6 on page 1 and lines 7-10 leaving MCA and inserting new language expanding the coverage of the act and amending section 30-14-133, MCA. On page 5 of the bill retain lines 1-15 and strike lines 16-25. Strike all of pages 6, 7, and 8. On pages 5 and 6 reinsert the original language.

REP. KEEDY made a substitute motion to strike line 6 in its entirety and to amend the title. Following ";" strike "CHANGING" on line 7

and the title. Following line 7 strike "TIME FOR NOTICE;" on line 8 and in the title. Strike line 9 in its entirety and amend the title. On page 1, lines 13 through line 24 on page 4, strike sections 1 through 5 in their entirety and renumber subsequent sections.

A roll call vote resulted on the substitute amendment. Those voting yes were: SEIFERT, CONN, MATSKO, DAILY, ABRAMS, HUENNEKENS, SHELDEN, KEEDY, YARDLEY, and BROWN. Those voting no were: MCLANE, BENNETT, CURTISS, HANNAH, IVERSON and TEAGUE. The amendment carried 10 to 6.

REP. BROWN moved do pass as amended.

REP. BROWN did not believe the suits are brought for harassment purposes. REP. IVERSON replied the IRS has been doing that for years. It is the same principle.

A roll call vote resulted on the motion do pass as amended. Those voting yes were: DAILY, HUENNEKENS, KEEDY, YARDLEY and BROWN. Those voting no were: SEIFERT, BENNETT, CONN, CURTISS, EUDAILY, HANNAH, IVERSON, MATSKO, MCLANE, ANDERSON, ABRAMS, SHELDEN and TEAGUE. The motion failed 13 to 5.

REP. MATSKO moved to reverse the vote. Those voting yes for do not pass were: SEIFERT, BENNETT, CONN, CURTISS, EUDAILY, HANNAH, IVERSON, MATSKO, MCLANE, ANDERSON, ABRAMS, SHELDEN and TEAGUE. Those voting no were: DAILY, HUENNEKENS, KEEDY, YARDLEY and BROWN. The motion carried 13 to 5.

House Bill 590 did not pass as amended.

HOUSE BILL 336 REP. DAILY moved do pass.

REP. KEEDY stated there would be serious mistakes to pass the bill. There are statutes in the books already that govern this. The real objective of the bill is to "gut" the initiative process. REP. CONN supported KEEDY's statement.

REP. HUENNEKENS stated there is a problem with the question where does the polling place being, on the street, in the building or on the steps?

REP. DAILY disagreed with REP. KEEDY's remarks. The sponsor was not trying to "gut" the initiative process. REP. DAILY strongly supports the initiative process and is in favor of the bill. He has been harassed by people at the polls with these initiatives. When you go to the polls you go to vote.

REP. CURTISS thought people had to read the entire initiative

before signing a petition. It was stated they do not. JIM LEAR read 13-27-204, petition for initiatives. It is clear the signer does not have to be required to read the entire initiative.

REP. TEAGUE was in support of the bill. If the initiative subject is good they will obtain enough signatures regardless of where the petitioner is.

REP. SHELDEN stated people on the street corner at Christmas time would be considered as harassing. REP. CONN stated harassment would include candidates going door-to-door.

REP. DAILY stated there are different types of harassment. When a voter goes to the polls he should not be subjected to harassment. Senior citizens especially are harassed more than anyone else.

The motion of do pass resulted in a roll call vote. Those voting yes were: SEIFERT, BENNETT, CURTISS, EUDAILY, HANNAH, IVERSON, MATSKO, MCLANE, DAILY, ABRAMS, TEAGUE and BROWN. Those voting no were: CONN, HUENNEKENS, SHELDEN, KEEDY and YARDLEY.

House Bill 336 passed 12 to 5.

HOUSE BILL 658 REP. HUENNEKENS moved do pass.

REP. HUENNEKENS moved on line 13, page 1 "7th" be stricken.
REP. HUENNEKENS withdrew his motion.

REP. HUENNEKENS moved the individual elected shall be located in Sidney. REP. HANNAH stated there are four county seats within that district. If one county grows they might request a judge there at another time. If his homebase is not distinguished he can go with the population.

A roll call vote resulted. Those voting yes that the judge should be located in Sidney were: BENNETT, CONN, CURTISS, DAILY, KEEDY, HUENNEKENS and TEAGUE. Those voting no were: SEIFERT, HANNAH, IVERSON, MATSKO, MCLANE, ABRAMS, SHELDEN, YARDLEY and BROWN. The amendment failed 9 to 7.

It was decided to hold the bill until the next meeting for completion.
The meeting adjourned at 11:20 a.m.



CARL SEIFERT, VICE-CHAIRMAN

Mr. Chairman - Members of the Committee

My name is Marilyn Grosfield from Big Timber and I'm the Chief Election Judge from Precinct 4 in Sweet Grass County. I am here in favor of HB 336 because I believe that soliciting signatures at a polling place on an election day constitutes harassment of the public. I feel that it is intimidating to be asked to sign a petition against my will, but which I will sign because a friend or business associate asks me to do so in a public place where I have come to perform my voting right. This did occur during the last year at a voting place in Big Timber and it was met with anger and distaste.

The sanctity of the polling place should not be violated. The possibility of a dozen card tables set up at a polling place manned by petitioners trying to get my attention and explain to me why I should sign their petition is disruptive, inconsiderate and intolerable. We live in a community of elderly retired people whose main goal on election day is to get to the polls and remember what it is they went there to vote for in the first place. To be confronted by the confusion of signature seekers would certainly undo them.

It's difficult enough to run a smooth election as it is, without inflicting the problems caused by this excessive harassment. I urge the committee to pass this bill. Thank you.

HB 336

CITIZEN'S LEGISLATIVE COALITION
Carole Brass

The Attorney General Of Montana was asked by Senator Stan Stevens to give his opinion on the practice of gathering signatures at the polling place. He stated that signature gathering did not violate the "electioneering laws". He also stated that the voting process was protected from obstruction and voters protected from harrassment by section 13-13-122, MCA. He further stated that banning signature gathering at the polls raises serious First Amendment questions.

Such a ban not only violates the U.S. Constitution, but also the Montana Constitution. When the Initiative and Referendum were enacted in 1906, the following words were used in the amendment: "the people reserve to themselves power to propose laws and enact or reject the same at the polls." Proposing laws is done by collecting signatures on initiative petitions. In a democracy all power comes from the people; and when they reserve power for themselves, only they can limit or give up that power.

HC/MLG/EL
Exhibit 3

29 May 1980

Senator Stan Stephens
422 Third Street
Havre, Montana 59501

Dear Stan:

Thank you for your letter regarding the collection of signatures for initiative petitions during the primary election of June 3rd. There are no provisions under Montana law that prohibit gathering signatures at the polling place.

Section 13-35-211, MCA, provides:

ELECTIONEERING. (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) No person may buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

This statute prohibits political activity which aids or promotes a ballot issue to be voted upon at the election. The gathering of signatures for initiatives proposed for future elections does not violate the provisions of section 13-35-211, MCA.

Your inquiry has constitutional implications. A total ban on the collection of signatures at the polling place raises serious First Amendment questions. However, section 13-13-122, MCA, does allow the local election administrators to prevent obstructions. It has been our position, together with the Secretary of State and the Commissioner of Campaign Practices, that local election administrators have the authority to limit the collection of signatures if that activity creates any obstruction at a specific polling place. Orderly signature gathering which does not interfere with the election process cannot be prohibited.

29 May 1980

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I hope this letter will clarify your misunderstanding concerning this issue. If you have further comments or questions don't hesitate to contact me.

Very truly yours,

MIKE GREELY
Attorney General

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. 179-77

AMENDED

Form BD-15

Victim of Crime Compensation

Exhibit 4

In compliance with a written request received April 4, 19 77, there is hereby submitted a Fiscal Note for HB 357 as Amended pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to establish a state-financed program of compensation to persons who suffer bodily injury and to dependents of those who are killed by criminally injurious conduct or in attempts to prevent criminal conduct or apprehend criminals; and to appropriate money therefor.

The amended version of House Bill 357 shifts the financial burden from the general fund to a specially created crime victims compensation account in the earmarked revenue fund. The revenue for this earmarked account is derived from a portion of the fines assessed and bails forfeited on all offenses involving a violation of a state statute or a city ordinance relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles. Six percent of such fines and bail forfeitures are set aside to compensate eligible crime victims.

ASSUMPTIONS:

1. All claims compensated for murder will result in maximum \$25,000 payment being made to dependents.
2. Claims rejected and compensation will follow other states' experience with 35% of the claims filed being rejected and 40% compensated with the remainder held, pending various legal and administrative details or closed for other reasons.
3. Montana will not experience the doubling of second year claims common to other states' program experience.
4. First year start up will reduce the number of claims filed and compensated by 50%.
5. Average per case compensation costs will be \$1,200 in 1978, \$1,500 in 1979, and \$1,650 in 1980.
6. 40% of those cases carried over to the next year will be compensated.
7. 5% of all crime categories will result in claims filed.
8. MBCC data is the most reliable information available.

FISCAL IMPACT:

	FY78	FY79	Total
Additional cost of proposed legislation:			
Personal services	\$ 39,126	\$ 40,045	\$ 79,171
Operating expenses	12,000	12,000	24,000
Capital outlay	8,000	0	8,000
Local assistance, grants, benefits and claims	63,600	214,500	278,100
Total additional costs	<u>\$122,726</u>	<u>\$266,545</u>	<u>\$389,271</u>

LOCAL IMPACT:

- The setting aside of 6% of the traffic fines and bail forfeitures should not have an adverse effect upon local revenue.

Most generally, the special earmarking of traffic fines and bails do not reduce local revenues because the Justices of the Peace have authority to set higher traffic fines and bonds to compensate for state earmarking of such fees. Fines and bail forfeitures that are retained by the county are placed in the general road fund of the county.

LONG-RANGE IMPACT:

- It appears that the program, if continued, would tend to escalate in cost in subsequent years.

Richard L. Drayton
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 4-5-77

John F. Hantman

VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL 336

Date 2/13/81

SPONSOR KANDUCH, ET AL.

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Maxilyn Grosfield	Big Timber	Self	✓	
Arthur Muroci	Helena	Retired	✓	
Donald J. Bragg	Big Timber	Self	✓	
David Johnston	Helena	WETA Operating Engineers	✓	
Don Johansson	Shelby	self	✓	
Carol Brass	Butte	City of Butte		✓
Peter Jackson	Hel	WETA	✓	
J. Keith Anderson	Helena	Self	✓	
Toni M. Dube	Helena	Mont. Educator Assoc		✓
Al Bole	Helena	Mont. Chamber	✓	
MIKE MALES	HELENA	E.I.C.		X
ALAN OSTBY	HELENA	Common Cause		✓

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.