

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 5, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Huennekens who was excused and Rep. Sheldon who was absent. Jim Lear, Legislative Council, was present.

SENATE BILL 89 SENATOR MANLEY, chief sponsor, stated this bill is to amend section 75-20-202, MCA, to require the Attorney General to bring an action to determine the jurisdiction of the state in each case when a federal entity is involved with a facility sited in Montana and an application for a certificate has not been made. The Northern Tier Pipeline will be affected by this.

STEVE DOHERTY, Northern Plains Research Council, supports the bill. The issue of siting is very important. It gives protection to landowners. It needs to be resolved where the federal government claims jurisdiction.

SENATOR TVEIT supports the bill. He was concerned with the northern border states and the pipelines effects.

MIKE MCGRATH, Attorney General's office, was neither a proponent or an opponent. The way the bill is written, however, would require his office to sue time and time again. MCGRATH offered EXHIBIT 1, an amendment to the bill. With the amendment he would concur with the bill.

There were no further proponents.

There were no opponents.

In closing, SENATOR MANLEY stated he was in favor of the amendment.

REP. KEEDY asked for an example of federal preemption. MCGRATH stated if the federal government wanted to build any site in the state, his office would be required to bring suit to have the courts make the determination.

REP. CURTISS asked if the Facility Siting Act was under the Board of Natural Resources. It was answered yes.

SENATE BILL 94 SENATOR BOYLAN, sponsor, stated this bill is to provide that a retired district judge may be a water judge. There are not very many lawyers and judges who are well versed in this area. This would allow the state to make use of the judges who are retired.

W. W. LESLIE, Water Court Judge, was in support of the bill. The provisions of the bill have been discussed with Justice Harrison. The state is divided into four divisions with one water judge in each division. The state needs the bill and the manpower to enact the bill. The judge's pay is listed near the end of the bill.

BILL ASHER, representing APA, PLCA, SCPA & SCALA, stated all four of the groups he represents support the bill. An interim committee was involved in this. Not many people have the expertise in this area of law. There are only a few water experts in the state. We should capitalize on the opportunity to use the retired judges.

SENATOR TVEIT supported the bill.

There were no further proponents.

There were no opponents.

SENATOR BOYLAN closed the bill.

REP. EUDAILY stated usually a person cannot draw retirement if he goes back to work. LESLIE replied it is allowable in this case. The retirement is subtracted from the salary of the judge. The judge will not get rich with this job.

REP. KEEDY stated the language in the bill would allow the Chief Justice to request that a retired judge become a water judge. LESLIE stated it is a type of command. The Chief Justice will not be asking a judge to do it that doesn't want to do it. There will be enough judges. If this bill is made law and given as a tool there will be enough judges.

SENATE BILL 111 REP. DAILY, presenting the bill for SENATOR STIMATZ, stated this bill's purpose is to amend the "driving under influence" laws to allow withdrawing blood by certain persons. There are three basic changes in the bill. "Intoxicating liquor" is being changed to "alcohol" because intoxicating liquor does not include beer or wine. Page 5, line 17 will allow a person other than a doctor or a registered nurse to draw blood. A lab technician who specializes in this could withdraw the blood. The third change in on page 6, line 4-5 changing from the State Board of Health and Environmental Sciences to the Division of Forensic Sciences.

WALT MILLER, Montana Highway Patrol, supports the bill. This would assist the department to apprehend the drunk driver as it would make it more convenient.

CHAD SMITH, Montana Hospital Association, stated the lab technician is the one who usually draws blood. The problem now is the prosecution can say that the test was not performed by a doctor or registered nurse and can argue the test was not validly performed. If this bill is passed there will no longer be that problem.

TOM HONZEL, County Attorneys, supports the bill. There is a problem with submitting evidence because a registered nurse or doctor did not perform the test.

There were no further proponents.

There were no opponents.

REP. DAILY closed the bill stating it was requested by the Department of Justice.

REP. EUDAILY asked why the Division of Forensic Sciences was included in the bill. LARRY MAJERUS, Department of Justice, replied the previous department is now under this division and it is more appropriate to have it listed as the Division of Forensic Sciences.

REP. EUDAILY asked if the lab technicians will have to be certified. It was replied they currently are certified.

REP. KEEDY asked if it is more common to have the blood test administered in comparison to the urine test or the breath test. MILLER replied the breath test is usually used because it is easier to administer and cheaper for the department. The blood test is usually performed if the person goes to the hospital. Sometimes the person would rather take the blood test because of the time delay, assuming that such delay will reduce the blood-alcohol level.

SENATE BILL 112 SENATOR TVEIT, chief sponsor of the bill, stated this is to amend 49-3-303 to require exhaustion of administrative remedies before the Human Rights Commission prior to commencing suit. Presently one case can be filed in two different forums, the Human Rights Commission and the District Court. This bill would allow filing in only one forum at a time. This would save the taxpayers money and court costs.

CHAD SMITH, Montana School Boards Association, supports the bill. This would not allow the unnecessary duplication of remedies. The Human Rights Commission is generally overburdened. There is a backlog of 180 cases. EXHIBIT 2.

There were no further proponents.

There were no opponents.

REP. EUDAILY stated line 19 in the case of a teacher who takes action, a suit could be three years before the case is ever heard. SMITH replied the purpose is to avoid that. Without that language the Human Rights Commission might be sitting on that complaint for three years.

REP. YARDLEY asked if it was common to file at both places at the same time. SMITH replied currently there are two separate cases that are doing that.

REP. YARDLEY stated in most cases school employees would not have a case heard in front of the Human Rights Commission because they would not have jurisdiction. SMITH replied only if there was a race or age discrimination. If a person had a grievance he would go to the Human Service Commission and they would direct the case to the district court.

SENATE BILL 113 SENATOR S. BROWN stated this bill is to amend section 3-5-102 to provide for a third district court judge in the first judicial district. The judge would be elected in the '82 election. EXHIBIT 3, a letter from Michael Abley, Court Administrator of the Supreme Court, was given to the committee. Presently there are 746 cases per judge in this district. This jurisdiction has the greatest amount of civil filings. There are many complex cases and many appeals are heard. Because of the heavy caseload one case was heard over five separate days when it could be worked into the schedule. There is a definite effect on adoption cases and divorce cases. Many people who have disputes come to appeal this. A new courthouse will not have to be built as there would be enough room for an additional judge.

The final point is that this is not a case where the two present judges are not putting in their time. They are working hard yet there is a need for an additional judge.

SENATOR JOE MAZUREK gave the committee EXHIBIT 4. This would service not only the residents of this county but also the people who have cases against the state. It is more appropriate to have cases against the state in Lewis & Clark county because the state agencies are located here and the necessary paperwork and files are easier to maintain during the case.

LARRY HUSS was in favor of the bill. Approximately 60% of his time is devoted to government litigation. These are difficult cases and it takes time to educate the judges and attorneys.

TOM DOWLING stated in 1965 a defendant who pleaded guilty could be sentenced and on his way to Deer Lodge in 1/2 hour. Today a recent rape case involving a child took many months to complete. With criminal rights cases take much longer and it takes the clerks time. While a case is in session nothing else can happen in the court. A pre-trial conference which DOWLING requested in February is scheduled for April 2, which shows the time lag involved.

MIKE MCGRATH, Attorney General's Office, stated the vast majority of the cases his office tries are held in the first judicial district. Many cases where someone wants to challenge the state they are required to come to Lewis & Clark County to file.

CHAD SMITH stated the judges in this district often have cases scheduled for 7:30 a.m. and go as late as 7:00 p.m. It is not fair to put that much burden on the judges.

PAUL KELLER stated the judges are overworked.

TOM BUDEWITZ, attorney from Townsend, stated Townsend is fortunate in that every Friday one of the judges come to hear cases. There is plenty of work for him to do, yet it causes a problem for him in Helena since he is gone once a week. Many rural cities do not have the service Townsend has. There have been five major jury trials in district court in the last few months. That is the time the judge has to be away from Helena.

DOROTHY STEVENS supported the bill. STEVENS felt the new judge should be restricted to hearing divorce cases. EXHIBIT 5.

RONALD WATERMAN stated the judges are faced with complicated matters. They come back on weekends, at nights and on holidays. The first opportunity to file for a full day case is not available until June. To try and find room for a week long trial, the first available opening is late November or early December.

WALTER MURFITT agrees with the bill. The judges are overworked.

MIKE MCABE, First Judicial Bar Association, supports the bill. In 1978 a study was undertaken. At that time it was thought with changes in scheduling time factors could be remedied. The backlog is very great. Judges have talked about imposing a mandatory referee situation. The cost, however, would be born by the two parties involved.

TOM HONZEL supports the bill.

There were no further proponents.

There were no opponents.

REP. HANNAH asked who decides the outcome of the cases. MURFITT replied when a case is filed the judges are obligated to hear it. REP. HANNAH further asked must the judges accept every state-involved case in this district. SENATOR BROWN replied yes. Because of the cost and expense involved it is easier to come where the agencies records are. HUSS responded the type of lawsuits will have a statewide ratification. SENATOR BROWN further stated payment has to be made for the witness expenses. In deposition, the party filing has to bear the expense.

REP. EUDAILY asked about a fiscal note. SENATOR BROWN replied the salary paid by the state would be \$39,000.

REP. DAILY asked if the judges in Helena request outside judges to come in. Yes was the answer but the outside judges do not have to come in. It was noted the different parties to the case can disqualify a particular judge.

REP. DAILY asked how many retired judges there are. It was replied about 10. Many times once a judge retires he is reluctant to come back. Retired judges would not be retired if they wanted to work.

EXECUTIVE SESSION

SENATE BILL 89 REP. EUDAILY moved do pass.

REP. EUDAILY moved the amendment presented in the hearing be adopted as he felt the amendment clarifies the bill. The amendment carried.

REP. KEEDY made a substitute motion of do not pass as amended. He felt this was a costly, unnecessary approach. REP. KEEDY stated it would place the Attorney General's office in a position to file wasteful lawsuits.

REP. KEYSER stated the Attorney General's Office supports the bill as amended.

REP. BROWN opposed the bill.

The motion of do not pass resulted in a roll call vote. Those voting yes were: SEIFERT, BENNETT, MCLANE, DAILY, ABRAMS, KEEDY, and BROWN. Those voting no were: KEYSER, CONN, CURTISS, EUDAILY, HANNAH, IVERSON, MATSKO, ANDERSON and TEAGUE. The motion failed 9 to 7.

REP. BROWN moved to pass the bill for the day. The motion carried with TEAGUE, CONN and EUDAILY opposing the motion.

SENATE BILL 94 REP. CURTISS moved do pass.

REP. KEEDY stated in Senate Bill 113 it was mentioned that most litigants do not want a retired judge to hear a case. There is an inadequate number of judges who are schooled in water law.

REP. CURTISS stated the real thrust is to provide that judges who have experience can retire from normal pursuits and do this. We need the experience of these judges.

REP. DAILY asked if a retired judge has to serve. The answer was no.

REP. BROWN stated he supports the bill. It is fortunate the judges still have the ability to handle the problems.

REP. SEIFERT stated the bulk of the water is on the seven reservations. The state takes the stand they will grant water rights in all cases where they apply but do not guarantee the rights. REP. KEYSER stated water judges do not hear trials.

The motion of do pass carried.

SENATE BILL 111 REP. CONN moved do pass.

The motion carried with REP. BROWN and REP. SEIFERT voting no.

SENATE BILL 112 REP. MCLANE moved do pass.

REP. KEEDY moved to hold the bill until he could work up some amendments.

The motion carried.

SENATE BILL 113 REP. CONN moved do pass.

REP. ANDERSON stated that redistricting was not the answer. Case-loads continue to increase and the population shifts within the state. Somewhere someone has to do something. JIM LEAR stated SJR2 concerns redistricting and will be heard later in this committee. REP. MCLANE moved to hold action on this bill until that bill is heard. The motion carried with REP. CONN opposing it.

The meeting adjourned at 10:35 a.m.

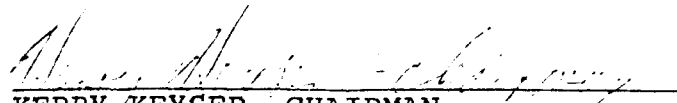

KERRY KEYSER, CHAIRMAN
mr

Exhibit 1

STATE
OF
MONTANA

**ATTORNEY GENERAL
MIKE GREELY**

STATE CAPITOL, HELENA, MONTANA 59601 TELEPHONE (406) 449-2026

PROPOSED AMENDMENT TO SB 89, BLUE COPY

Page 2, line 3.

Following: "chapter."

Insert: "When a court of competent jurisdiction has determined the validity of any claim of exclusive federal jurisdiction, the attorney general is not required to commence successive actions involving those same claims."

STATEMENT IN SUPPORT OF SENATE BILL NO. 112

This bill amends Section 49-3-303, M.C.A. which relates to Chapter 3 entitled "Governmental Code of Fair Practices" and is a part of Title 49, M.C.A. dealing with human rights. The section to be amended deals with the procedure for enforcement of any violation by authorizing dual and simultaneous procedures which are an obvious and unnecessary duplication. The complaining party may file a complaint with the Commission for Human Rights to have his complaint determined by the administrative agency and may, in addition, petition the district court in the district where the complainant resides to have the matter judicially determined at the same time.

The general law dealing with administrative remedies is that a complainant must exhaust available administrative remedies before proceeding to court. The reason for the rule is that the administrative agencies specialize in the particular field of law that they administer and the courts are not burdened with the adjudication of matters that can be resolved by administrative hearing and appeal. The general law provides that if either party is unsatisfied with the administrative decision after all administrative remedies have been exhausted, the aggrieved party may then appeal the decision to the courts.

Not only are the dual proceedings redundant and wasteful, but actually could result in conflicting decisions because the ultimate administrative decision could be appealed to the district court in Helena, while another district court proceeding was pending in the district where the complainant resides.

The duplication in simultaneous proceedings serves no purpose but it does force the defending party to defend both proceedings at double the cost. Such financial burden merely amounts to a means of harassment of the governmental entity that is being charged with some alleged violation.

CHAD SMITH.
MONTANA SCHOOL BOARDS
ASSOCIATION



MICHAEL ABLEY
COURT ADMINISTRATOR

THE SUPREME COURT OF MONTANA
STATE CAPITOL
HELENA, MONTANA 59601
TELEPHONE (406) 449-2626

FRANK I. HASWELL
CHIEF JUSTICE
JOHN C. HARRISON
GENE B. DALY
DANIEL J. SHEA
JOHN C. SHEEHY
JUSTICES

December 15, 1980

The Honorable Steve Brown
The Montana State Senate
Senate Chambers/Capitol Building
Helena, Montana 59620

Dear Senator Brown:

As of September 10, 1980, the First Judicial District had 1,492 case filings for the year, 746 filings per judge. The only districts that surpassed this were the Fourth with 885 filings per judge, and the Thirteenth with 932 filings per judge. The proportion of general civil filings (which excludes domestic relations, probate, insanity, and adoptions) in the First was the highest in the state by a significant amount. That would bear out the fact that the First, being the seat of the state government, is the county in which the cases involving state government are tried.

I will have year end figures immediately after the end of the year and I will update this for you.

Sincerely,

A handwritten signature in cursive script that reads "Michael Abley".

Michael Abley
Court Administrator

MA:jmh



District Court
First Judicial District
Helena, Montana 59601

Gordon R. Bennett
District Judge

January 14, 1981

Heiter G. Meloy
District Judge

The Honorable G. Steven Brown
Senate Chambers
State Capitol
Helena, Montana 59601

The Honorable Joseph P. Mazurek
Senate Chambers
State Capitol
Helena, Montana 59601

Gentlemen:

With regard to your bill to expand the judiciary for this district to three judges, we have been doing a little research, which we will pass on to you.

Volume 8 of the Reports (1889) discloses that the district at that time consisted of Lewis & Clark, Jefferson and Beaverhead counties and that the chief justice presided as judge. The next volume (1890) discloses that the district was reduced to Lewis & Clark County alone and a single judge presided. Volume 10 (1891) discloses that the district continued to consist of Lewis & Clark County alone and two judges were presiding, and we have had two judges ever since. The 1890 census gave Lewis & Clark County 19,000 population and the 1980 census gave the county 43,050 and Broadwater County 3,263. It should also be noted that much of our litigation today arises from the presence in the northern part of Jefferson County of a sizeable population. The earliest statute book that we have is that for 1897, six years after we obtained two judges. The fifth legislative assembly, meeting that year, passed 129 laws and the book contains 300 pages. The seventy-ninth legislature passed 763 laws and 7 ballot issues. The 3 volumes for that session consisted of 2,362 pages. The litigation arising from legislative action usually is filed and handled in this first judicial district. The Administrative Procedure Act alone has added considerably to the work load of this district in which most of the appeals are filed. In the majority of the administrative appeals the records of the agency, which must be read by the Court, are very voluminous and the legal questions very complex.

On a modest scale, this district is comparable in this particular function to the United States Court of Appeals for the District of Columbia. Chief Justice Warren E. Burger in his year-end report to Congress on December 29, 1980, had this to say about that court:

"The haphazard way in which judgeships are created, in large numbers after long periods of adding none at all,

The Honorable G. Steven Brown
The Honorable Joseph P. Mazurek
January 14, 1981


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merely compounds this problem [of court overload] and underscores the dire need for some better means of allocating new judgeships at the district and circuit level. Of special importance is the need for additional judges for the United States Court of Appeals for the D.C. Circuit. The unique jurisdiction of that court has placed an unrealistic burden on its judges. That court must have additional judges."


In this the Chief Justice was "singing our song."

The adding of a third judge in this district is a matter of urgency and we respectfully request that this legislation be implemented as soon as possible.

Very truly yours,



Gordon R. Bennett



Peter G. Meloy
DISTRICT JUDGES

hb

Amendment to
Presented to House Committee on Senate Bill 113

Exhibit 5

I wish the committee consider that in addition to adding another judge that one of the judges be designated a marriage and divorce judge and that he ^{or she} be provided with one or more accountants on the court staff in order to bring more accountability and credibility into the handling of these cases. With the addition to the court staff of financial expertise this will turn out now and in the future a cost saving device or measure to the taxpayers and justice will be served in a more equitable way.

Dorothy Stevens
520 3rd

Helene

VISITORS' REGISTER

SENATE
BILL 113 HOUSE JUDICIARY COMMITTEE
Date 3/5/81
SPONSOR S. Brown

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Tom Blunt	Townsend	self	✓	
MARK McEEL	HELENA	15- J. B. H. H. H.	✓	
Tom Horn	Helena	self	✓	
Reynold J. Watson	Helena	self	✓	
MMCGRATH	HELENA	ATTY GEN OFFICE	X	
Tom Dowling	HELENA	SELF	X	
LARRY HUSS	HELENA	Self	X	
WALTER S. MURFIN	HELENA	Self	X	
CHAD SMITH	Helena	Self	✓	
Ed Shady	Helena	self	✓	
W. W. W. W.	Helena	Attorney Montana	✓	
JO WENGER	Helena	Self	✓	
Donna Stevens	Helena	self		
Paul A. K. K.	Helena	Self	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE

JUDICIARY

COMMITTEE

SENATE

BILL 111

Date 3/5/81

SPONSOR Stimatz

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE
BILL 94 Date 3/5/81

SPONSOR Boylan

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

