

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 8, 1981

Page 1.

The second meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date, in Room 331, at 10:01 a.m.

ROLL CALL:

All members were present, with the exception of Senator Bob Brown, who was excused.

CONSIDERATION OF SENATE BILL NO. 36:

TO PROVIDE A METHOD FOR DISTRICT COURT  
JUDGES AS EX OFFICIO PROBATE JUDGES TO  
ISSUE DEEDS FOR ENTRY TOWNSITE LOTS THAT  
WERE NOT ORIGINALLY ISSUED OR WERE LOST.

Chairman Anderson introduced Senator Pat Goodover, sponsor of the bill, who explained that he had sponsored SB 36 at the request of the Code Commissioner. He stated that the purpose of the bill was to allow titles to be cleared on parcels of land that were settled under an act similar to the Homestead Act, but had never had the owner's title of deed legally established. Because of the many legal aspects involved in this bill, Senator Goodover introduced Lee Heiman to discuss it further.

Mr. Heiman stated that the bill would correct a problem of townsites homesteaded where the deed was given to the district court judge. At the time of homesteading, when a person had been on the land for six months or more he could get a patented deed from the district judge. As many of the townsites involved gradually lost population, the few remaining residents picked up most of the land around them, but the original lots they occupied never were legally in their name. This bill would again allow the judge to turn over title to the deed.

No opponents to the bill were present.

DISPOSITION OF SENATE BILL 27:

Chairman Mike Anderson then turned the committee's attention to Senate Bills 8 and 27, pending from Tuesday's meeting. Acting first upon Senate Bill 27, Senator Anderson asked if there were further questions or comments. There being none, Senator S. Brown recommended that the bill receive a DO PASS,

which was seconded and unanimously carried. Senator S. Brown then moved to place Senate Bill 27 on the Consent Calendar. After an explanation that this was a method of eliminating the second reading vote on a bill of a non-controversial nature, Senator Brown's motion was seconded and carried unanimously.

DISPOSITION OF SENATE BILL 36:

Senator Anderson then suggested that since Senate Bill 36 had no opponents present, and was not of a controversial nature, a disposition be made on it at this meeting. Senator S. Brown moved that Senate Bill 36 DO PASS, a motion which was seconded and unanimously carried. Senator Brown then moved that it be placed on the Consent Calendar, and this motion was also seconded and carried unanimously.

CONSIDERATION OF SENATE BILL 8:

Senator Berg then quoted Senator Ryan, a Great Falls probation officer, as saying that Senate Bill 8 would possibly increase his load two-thirds simply by increasing the number of years he would be responsible for the individuals involved. It was then pointed out that because the additional two years would only apply to certain cases, and because the last two years of a probation period generally require a much more relaxed schedule than the early years do, probably the case officers' actual work load would not increase very much.

Senator Anderson then read a letter from Daniel D. Russell, Corrections Division of the Department of Institutions, concerning data on the number of deferred sentences being handled. This letter and its accompanying data sheet is marked "Exhibit A" of these minutes.

DISPOSITION OF SENATE BILL 8:

Senator Berg then moved that Senate Bill 8 receive a DO PASS; his motion was seconded, and passed unanimously.

Chairman Anderson then reminded the committee that it would be hearing Senate Bills 14, 24, and 40 on Friday, January 9. He further stated that it was his intention to have no meeting on Friday, January 16, and that there would be no regularly scheduled Saturday meetings.

There being no further business, the meeting adjourned.



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Senator Anderson  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/08/81

NAME	PRESENT	ABSENT	EXCUSED
<del>Anderson, Mike, Chr. (R)</del>	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)			✓
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

SENATE JUDICIARY COMMITTEE

BILL SB 36

# VISITORS' REGISTER

DATE 1/08/81

Please note bill no.

(check one)

NAME

REPRESENTING

BILL #

## SUPPORT

**OPPOSE**

Lee Heiman

Legislative Council

36

KATZEN Mikota

League of Women Voters of Mont

Sharlene Lenzdorf

" " " "

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

2

NAME: Lee Heiman DATE: Jan 8, 1980

ADDRESS: Legislative Council

PHONE: 449-3064

REPRESENTING WHOM? Leg. Council - code Commissioner

APPEARING ON WHICH PROPOSAL: SB 36

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: Attached memo to Sen. Goodover.

TO: Senator Goodover  
FROM: Lee Heiman, Staff Attorney  
RE: Explanation of SB 36  
DATE: January 8, 1981

Senate Bill 36 is a bill that will allow titles to be cleared on parcels of land that were once open to settlement under a federal law similar to homsteading but for towns instead of farms.

Under the federal provisions for entering upon a townsite a group who wished to form a town had a territorial judge, who was the probate judge, receive a deed in trust for the settlers. The judge then had the town platted into streets, lots, and school sites. A person moving on the land registered with the judge. After 6 months the judge could issue a deed for the land to that settler. Of course many townsites were started but few survived. Apparently some persons who continued to live on the land did not bother to get their deeds or they received a deed but did not have it recorded and it was later lost. This bill provides the method for receiving a new deed in either circumstance.

Federal law on entry townsites was repealed, except for Alaska, in 1976 and the corresponding Montana law was also repealed. SB 36 is the substantive portion of one part of the repealed law.

SB 36 provides a method for receiving a deed that does not involve a quiet title action, because some of the land is still held in trust by Montana district court judges and one probably can't sue a judge on his official duties.

Senator Goodover  
January 8, 1981  
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The bill provides that a settler, or a legal successor in title to him, may petition for a deed. Notice is published and given as with quiet title actions for known persons. If there are no other valid claimants for the deed the Montana district court judge, as ex-officio probate judge, may sign a deed to replace a lost one or may sign an original deed.

The Legislative Council knows of 2 circumstances requiring the procedure contained in SB 36.

*R.C.M. 1947*

11-3026. (5356) District judge authorized to execute deeds—procedure. Wherever an entry has heretofore been made at a land office by a probate court of any county in the territory, now state of Montana, for a tract of land for a townsite, under the provisions of an act of Congress entitled, "An act for the relief of the inhabitants of cities and towns upon public lands," approved March second, eighteen hundred sixty-seven, or other and subsequent acts of Congress relating to entering lands for townsite purposes, and such entry shall have been allowed and patent therefor shall have been issued by the United States to such probate court, or a judge thereof and it shall appear to the district judge of the county in which such townsite is situated by a verified petition filed with the clerk of said district court, that no deed has been issued by the probate judge of such county or the district judge thereof as ex officio probate judge, for any lot or tract of land situated in such townsite other than streets, alleys, parks, or school sites, or that a deed for any such lot or tract has been issued, but has not been recorded, and has been lost or cannot be found, the district judge shall set a day for the hearing of said petition, and cause notice thereof to be published in a newspaper published in the county wherein such lands are situated for four successive weeks, and upon proof of such publication being made, and at such hearing shall examine such petition and claim thereunder, and hear such proof as the claimant or claimants may submit to establish his or their claims thereto; and if the district judge shall find that the claimant or claimants is in possession of such lot or tract of land or shall by reference to abstracts of title or other evidence produced in support thereof, find that the title to such lot or tract of land has been derived and deraigned from the person or persons who may have originally entered such lot or purchased the same at a sale thereof, as provided by the laws of the territory of Montana, or the state of Montana, and no conflicting claims shall have been filed, the said district judge shall, upon the payment of the fees originally provided for the issuance of a deed for such lot or lots, proceed forthwith to make and issue to such claimant or claimants a good and sufficient deed for such lot or tract of land.



# STANDING COMMITTEE REPORT

January 3

1961

MR. **PRESIDENT**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **27**

Respectfully report as follows: That **SENATE** Bill No. **27**

DO PASS

A MOTION WAS MADE AND PASSED UNANIMOUSLY TO PLACE  
SENATE BILL 27 ON THE CONSENT CALENDAR.

# STANDING COMMITTEE REPORT

January 8, 1981

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 6

Respectfully report as follows: That SENATE Bill No. 8

DO PASS

# STANDING COMMITTEE REPORT

January 8 19 81

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 36

Respectfully report as follows: That SENATE Bill No. 36

DO PASS

A MOTION WAS MADE AND PASSED UNANIMOUSLY TO PLACE  
SENATE BILL 36 ON THE CONSENT CALENDAR.