

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 30, 1981

Page 1.

The sixteenth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 149:

Reports from the committee members revealed little or no concern on the part of local bankers relative to the passage of this bill. Senator Tveit moved that the bill not pass. His motion failed. Senator Berg moved that the bill be amended on page 1, line 11, by inserting "purposely or" after "who". The motion for the amendment carried. Senator O'Hara moved that the bill DO PASS AS AMENDED, and his motion carried with Senator Tveit's vote being the only opposing one.

DISPOSITION OF SENATE BILL 203:

Senator S. Brown moved that the bill DO NOT PASS, and the motion carried unanimously.

DISPOSITION OF SENATE BILL 201:

Senator Berg moved that the bill DO NOT PASS. Following discussion of the merits of the bill, his motion carried.

FURTHER CONSIDERATION OF SENATE BILL 161:

Ted Doney, representing Petro-Lewis Corp., spoke to the committee about a proposed amendment to Section 63 (marked Exhibit A and attached to these minutes), a savings clause specifically designed to protect existing limited partnerships. Senator Mazurek moved that the amendment pass. His motion carried unanimously. Senators Halligan and Mazurek agreed to work with the Secretary of State's office relative to the fee schedule for filings (marked Exhibit B and attached to these minutes). A letter and memorandum from the Secretary of State (marked Exhibits C and D and attached to these minutes) were presented.

DISPOSITION OF SENATE BILL 144:

Senator S. Brown moved that on page 1, line 12, "purposely

and" be inserted following "he"; and that additional changes be made on page 1, line 15; page 2, line 3; and page 2, line 7. Senator Mazurek moved that these amendments pass, and Senator Crippen's vote was the only dissenting one. Senator Olson moved that the bill DO PASS AS AMENDED, and Senator Crippen's vote was the only one in opposition.

CONSIDERATION OF SENATE BILL 286:

AN ACT TO GENERALLY REVISE THE LAWS  
RELATING TO THE PRISONER FURLOUGH  
PROGRAM.

Senator Van Valkenburg presented the bill at the request of the Department of Institutions, which is presenting the bill in order to seriously restrict the prisoner furlough program.

Curt Chisholm, Deputy Director of the Department of Institutions, spoke in favor of the bill.

Nick Rotering, legal counsel for the Department of Institutions, said that the present prisoner furlough law is unworkable, and has prompted many lawsuits. He introduced a statement of intent meant to accompany the bill (marked Exhibit E and attached to these minutes). He stated that this bill has the support of the Parole Board.


Karen Mikota stated that the League of Women Voters supports the bill, and said that they hoped that the furlough process would be streamlined through its passage.

Senator S. Brown questioned many of the bill's repealers.

DISPOSITION OF SENATE BILL 162:

Senator Mazurek moved four amendments to the bill (illustrated on attached committee report) which were designed to clarify which person contribution may be obtained from and to clarify the fact that the court may apportion the negligence among the parties. The amendments carried unanimously. Senator O'Hara moved that the bill DO PASS AS AMENDED, and his motion carried unanimously.

A motion for adjournment then carried unanimously.

  
\_\_\_\_\_  
Senator Anderson  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/30/81

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.

January 30

Judiciary

SENATE BILL NO. 286

## VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

NAME: Karen Triskata DATE: 1/30/81

ADDRESS: 406 N. Euwing

PHONE: 443-6297

REPRESENTING WHOM? LWV

APPEARING ON WHICH PROPOSAL: SB 206

DO YOU: SUPPORT? ✓ AMEND?            OPPOSE?           

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

### Comment

This amendment would substitute a new savings clause in section 63 of S. B. 161.

Concern has been expressed by several interested parties about the effect of S. B. 161 on existing limited partnerships. Although the original savings clause in the bill could be interpreted to protect existing limited partnerships from being required to reform under the new law, its effect is not clear. In addition, there are questions concerning the application of other provisions to existing limited partnerships, such as the liability of partners to the limited partnership for any promise to contribute cash or property, the form of contributions to the limited partnership, and the rights of an assignee of a partnership interest.

The amended savings clause would address these concerns directly. The language used is adapted from the savings clause of the Revised Limited Partnership Act as proposed by the National Conference of Commissioners for Uniform State Laws (Section 1104 thereof), with modification particular to Montana's code numbering system. In addition, language is added concerning the priority of creditors, and a clear-cut system is adopted providing limited partnerships the option of electing to be covered by the new law. The savings clause in Colorado's proposed law is nearly identical to the savings clause herein.

This savings clause creates a dual system of limited partnership laws. The new law will apply to limited partnerships formed on or after its effective date. Prior law will control limited partnerships formed before the effective date of the act, unless the limited partnership elects to be governed by the act. It is contemplated that the decision to bring the limited partnership within the act may be made solely by the general partner or partners without consultation with the limited partners, unless expressly prohibited by the partnership agreement, and such decision shall not be a breach of the general partner's contractual obligations, representations, duties or obligations (contractual, fiduciary or other) to the limited partnership or the limited partners. Sections (2)(a) to (2)(c) are intended to prevent the application of the new act to transactions entered into prior to the election date, where application of the act could unfairly alter the existing rights of partners or creditors.

*Amend 563.*

(1) [This act] does not impair the obligation of any contract existing on [the effective date of this act] , nor affect any rights accrued, duties incurred, or proceedings begun before [the effective date of this act].

(2) A limited partnership formed under any statute of this state before [the effective date of this act] may elect to be governed by [this act] . The general partner or partners may make the election for the limited partnership at any time on or after [the effective date of this act] by complying with [section 11] of [this act], except that the limited partners shall not be required to execute a new certificate of limited partnership. Notwithstanding such election by the general partner or partners:

(a) [Sections 30, 31, and 41] apply only to contributions and distributions made after the date of the election;

(b) [Section 45] applies only to assignments made after the date of the election; and

(c) [Section 50] does not change the priority of creditors for transactions entered into before the date of the election.

(3) A limited partnership formed under any statute of this state before [the effective date of this act], until or unless it elects to be governed by [this act], shall be governed by 35-12-101 through 35-12-403, or other applicable prior law, ~~except that such limited partnership may not be renewed unless provision therefor is specifically provided in the original partnership agreement or any amendment thereto before [the effective date of this act].~~

*Shanahan, Tippy*

PROPOSED ADDITIONS TO S.B. 161

Section 16 refers to filing fees required by law, but none are provided for unless following new sections are added.

Section 65. Fees for filing documents and issuing certificates. The Secretary of State shall charge and collect in accordance with the provisions of this Chapter for:

- (1) filing a certificate of limited partnership, \$20.00; (reference bill section 11)
- (2) filing a certificate of amendment to a certificate of limited partnership, \$20.00; (reference bill section 12)
- (3) filing a certificate of cancellation of a certificate of limited partnership, \$5.00 (reference bill section 13)
- (4) filing an application to reserve a name, \$2.00; (reference bill section 6(2))
- (5) filing a notice of transfer of a reserved name, \$2.00; (reference bill section 6(2))
- (6) filing an application for registration as a foreign limited partnership and issuing a certificate of registration to transact business in this State, \$20.00; (reference bill section 52 and 53)
- (7) filing a certificate of correction to the registration of a foreign limited partnership to transact business in this state, \$20.00; (reference bill section 55)
- (8) filing a certificate of cancellation of the registration of a foreign limited partnership to transact business in this state, \$5.00 (reference bill section 56)
- (9) filing any other statement or report of a domestic limited partnership or foreign limited partnership registered in this state, \$2.00;

Section 66. Miscellaneous charges.

(copy text of 35-2-1002)



*Exhibit C*



SECRETARY OF STATE  
THE STATE OF MONTANA

JIM WALTERMIRE  
SECRETARY OF STATE

CAPITOL BUILDING  
HELENA, MONTANA 59620

January 27, 1981

The Honorable Mike Anderson, Chairman  
Senate Judiciary Committee  
State Capitol  
Helena, MT 59620

RE: Senate Bill 161 (Revised Uniform Limited Partnership Act)

Dear Senator Anderson:

Several people have asked me if I have any comments regarding Senate Bill 161. After reviewing the Bill and discussing it with members of my staff, I discovered there were a few suggestions I would like to make.

These suggestions involve fees and charges, so I asked our staff attorney, Alan Robertson, to draft a proposed fees and charges section for S.B. 161 for your consideration. Attached is a copy of the suggested section along with Mr. Robertson's comments.

I hope this material is helpful. If you or members of the Committee have any questions on this, please do not hesitate to contact me.

Most sincerely,

*Jim Waltermire*  
Jim Waltermire

JW:ma

cc: Senator Jesse O'Hara  
Senator Harry K. Berg  
Senator Bob Brown  
Senator Steve Brown  
Senator Bruce Crippen  
Senator Mike Halligan  
Senator Joe Mazurek  
Senator S. A. Olson  
Senator Larry Tveit  
Senator Jean Turnage

*Exhibit 12*

MEMORANDUM

TO: Jim Waltermire, Secretary of State  
FROM: Alan D. Robertson, Chief Counsel  
RE: Senate Bill 161 (Revised Uniform Limited Partnership Act)  
DATE: January 27, 1981

I have reviewed the above-referenced proposed legislation. My primary concern with the Bill involves the question of fees. The Secretary of State's office collects various statutory fees for the filing of documents and issuance of certificates which are deposited regularly into the State General Fund. Although the general fees statute is Section 2-6-103, MCA, Chapters 1 thru 6 of Title 35 all make provisions for the filing of various documents required by them. In fact, virtually all of the chapters in Title 35 which require filing of documents prescribe a fee for such filing in one manner or another. That is except for Chapter 12, Limited Partnerships.

Under current law the only documents required to be filed with this office under Chapter 12 are the Certificates of Formation and the Certificates of Amendment or Cancellation. Because no specific fee is described in Chapter 12, this office has heretofore been relying on Subsection (g) of 2-6-103 MCA for the collection of a filing fee of \$5.00.

Senate Bill 161 creates a whole series of new documents to be filed governing, among other things, amendments, cancellation, reservation of name, notice of transfer of reserved name, registration as a foreign limited partnership, issuing certificates of registration to transact business in this State, etc. Since S.B. 161 does not prescribe any filing fees for these documents, we would again be operating under Subsection (g) of 2-6-103 MCA.

The question arises as to whether this \$5.00 fee is sufficient to cover the administrative costs of filing the various documents required by S.B. 161. In comparing these requirements to other sections of the law, I discovered that most of the filings required by S.B. 161 correspond substantially to those provided for in Section 35-2-1001, MCA, the fees and charges section of the chapter on non-profit corporations. Based on these charges, I drafted a proposal of what a fees and charges section of S.B. 161 might look like if one were to be included. That proposed section is attached.

Page 2  
January 27, 1981

Should the Senate Judiciary Committee or the sponsors of S.B. 161 desire, this section could be added to the bill as the fees and charges provision in the same manner that Part 10 is included in the non-profit corporations section of Title 35 and Part 12 is included in the Business Corporations Chapter of Title 35. Without such a provision, there is serious question as to whether the filing fees collected would be sufficient to offset the additional overhead required by the Act, as well as whether the costs of administration were being borne by those people benefitting from provisions of the Act. These are both theories which underline the whole rationale for variable filing fees.

ADR:ma  
Attachment

Exhibit E

STATEMENT OF INTENT

SENATE BILL 286

INTRODUCED BY VAN VALKENBURG

By the Request of the Department of Institutions

SENATE JUDICIARY COMMITTEE

A statement of intent is required for this bill because it delegates authority to the Department of Institutions to adopt rules which will include overall guidelines and criteria for the operation of the supervised release program.

Senate Bill 286 intends that the Department of Institutions carry out the provisions of this bill in order to provide better correctional policies for the supervised release program which is a replacement of the existing prisoner furlough program found in Part 4, Chapter 23 of Title 46.

The bill authorizes the Department of Institutions to adopt administrative rules which will include guidelines concerning prisoner eligibility to participate in the supervised release program. Such guidelines are intended to provide objective criteria for evaluating each individual inmates chances for success by considering the type of crime for which he is incarcerated, prior criminal history, revocation of paroles or probation, escape attempts, institutional adjustment and time to serve to parole eligibility. Each prisoner is to be given points set up under criteria and each criteria is to be weighed in accordance with its relative importance.

Further, these rules will allow that the inmate shall be responsible for developing his own program and for obtaining his own financial support where necessary.

The Department shall adopt rules for the supervision of the inmates while in the program outlining the responsibilities of the supervising parole officer and sponsor. Rules shall also be adopted concerning the revocation hearings and any other provisions that are needed to implement this act.

AMENDMENTS TO SENATE BILL 24

1. Title, line 6.

Following: "3-15-313,"

Strike: "and"

2. Title, line 6.

Following: "3-15-505"

Insert: "3-15-507, 46-16-301, and 46-16-304"

3. Page 1, lines 11 through 17.

Strike: lines 11 through 17

Insert: "3-15-312. Discharge by court. The court must discharge a person from serving as a trial juror in either of the following cases:

(1) when it satisfactorily appears that the person is not competent; or

(2) when it satisfactorily appears that the person ~~is exempt and claims the benefit of exemption~~ should be excused under 3-15-313 or 3-15-507."

4. Page 1, line 19, through line 2 on page 2.

Strike: line 19 through line 2 on page 2.

Insert: "3-15-313. Who may be excused -- affidavit to claim excuse. A juror must not be excused by a court for a slight or trivial cause or for hardship or inconvenience to his business but only when material injury or destruction to his property or property entrusted to him is threatened or when his own health or the sickness or death of a member of his family requires his absence (1) The court shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person.

(2) If a person believes jury service would entail undue hardship for him or the public served, he may make and transmit an affidavit to the clerk of the court for which he is summoned stating his occupation or such other facts as he believes will excuse him from jury service. The affidavit shall be filed with the clerk of the court who shall transmit it to the court. The court may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

(3) A person may also be excused from jury service upon presentation of his excuse to the court as provided in 3-15-507.

5. Page 2, lines 7 and 8.

Following: "designates."

Strike: the remainder of line 7 through "3-15-314." on line 8, page 2.

Insert: "He may attach to the notice a form for an affidavit claiming an exemption excuse, as provided for in 3-15-314 3-15-313."

6. Page 2, lines 13 through 16.

Strike: All of Section 4.

Insert: "Section 4. Section 3-15-507, MCA, is amended to read: "3-15-507. Clerk to call list of jurors summoned and prepare capsules. (1) At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned and the court may hear the excuses of prospective jurors summoned. The court shall excuse any person satisfying the requirements of 3-15-313 (1)." Subsection (2) remains without change.

Section 5. Section 46-16-301, MCA, is amended to read: "46-16-301. Formation of trial jury." Subsection (1) remains without change. "(2) The qualifications of jurors and ~~exemptions~~ excuses from jury duty are prescribed in Title 3, chapter 15, part 3."

Section 6. Section 46-16-304, MCA, is amended to read: "46-16-304. Challenges for cause." Subsections (1) and (2) remain without change. (3) An ~~exemption~~ excuse from service on a jury is not a cause of challenge but the privilege of the person exempted excused."

7. Page 2, lines 19 through 22.

Strike: All of Section 6.

# STANDING COMMITTEE REPORT

.....January 21..... 1931.....

MR. PRESIDENT.....

We, your committee on JUDICIARY.....

having had under consideration SENATE Bill No. 149.....

Respectfully report as follows: That.....SENATE Bill No. 149.....

be amended as follows:

1. Page 1, line 11.  
Following: "who"  
Insert: "purposely or"

AND, AS AMENDED,  
DO PASS

*L.C.*



# STANDING COMMITTEE REPORT

January 31 19 31

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 203

Respectfully report as follows: That SENATE Bill No. 203

*He.*  
~~DO PASS~~  
DO NOT PASS

# STARDIN COMMITTEE REPORT

January 27

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 201

Respectfully report as follows: That SENATE Bill No. 201

~~DO PASS~~

DO NOT PASS

*410*

# STANDING COMMITTEE REPORT

January 30, 1955

MR. ....PRESIDENT.....

We, your committee on .....JUDIC ARY.....

having had under consideration .....SENATE..... Bill No. 144

Respectfully report as follows: That.....SENATE..... Bill No. 144

be amended as follows:

1. Page 1, line 12.

Following: "he"

Insert: "purposely and"

2. Page 1, line 15.

Following: "agency"

Insert: ", "

Strike: "or its contractors or to any"

Following: "servant"

Insert: "or contractors"

3. Page 2, line 3.

Following: "who"

Insert: "purposely and"

4. Page 2, line 7.

Following: "of"

Insert: "not to exceed"

~~DO PASS~~

And, as so amended

DO PASS

# STANDING COMMITTEE REPORT

January 30, 1931

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 162

Respectfully report as follows: That SENATE Bill No. 162

be amended as follows:

1. Page 1, line 18.

Strike: "is claimed to"

Insert: "may"

2. Page 1, line 23.

Strike: "is"

3. Page 1, lines 23 and 24.

Strike: "is claimed to"

Insert: "may"

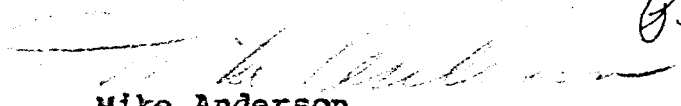
4. Page 2, line 1.

Following: "action."

Insert: "Whenever more than one person is found to have contributed as a proximate cause to the injury complained of, the trier of fact shall proportion the degree of fault among such persons."

And, as so amended,

DO PASS

  
Mike Anderson Chairman.