

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 6, 1981

The twenty-first 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.

CONSIDERATION OF SENATE BILL 308:

AMENDING 3-2-404 TO CLARIFY THE DIS-
POSITION OF FEES COLLECTED BY THE
CLERK OF THE SUPREME COURT.

Senator Himsl, Chairman of the Legislative Audit Committee which sponsored the bill, said that the bill had originated because of funds that have been improperly credited to the Judiciary Retirement Fund rather than the General Fund. He noted that 37-61-213 currently requires the clerk to credit all of the license tax paid by attorneys to the General Fund.

CONSIDERATION OF SENATE BILL 306:

AMENDING 5-13-309 TO REQUIRE STATE
AGENCIES TO IMMEDIATELY REPORT THE
THEFT OF STATE PROPERTY TO ATTORNEY
GENERAL.

Senator Himsl presented the bill. This bill, by mandating an independent investigation, intends to insure that a clear-cut disposition be made of any charges brought relative to theft of state property.

Mike McGrath, from the Attorney General's office, rose in support of the bill, and stated that currently the statute of limitations has expired by the time his office gets many of the reports.

CONSIDERATION OF SENATE BILL 323:

Chairman Anderson reported that legal technicalities, outlined by David Niss, had been discovered in this bill, and its sponsor had asked that it be removed from the schedule.

CONSIDERATION OF SENATE BILL 222:

AMENDING 25-10-711 TO PROVIDE NEW

STANDARDS FOR AWARDING COSTS TO A
PARTY PREVAILING AGAINST THE STATE.

Senator Kolstad, District 5, presented the bill as its sponsor. He referred to it as the "equal access to justice" bill, and stated that the intent is to encourage businesses and individuals to challenge actions by state and local government agencies.

Janelle Fallan, representing the Montana Chamber of Commerce, read from a letter written by the Helena Area Chamber of Commerce, in favor of the bill (marked Exhibit A and attached to these minutes).

Also speaking in favor of the bill were Larry Huss, attorney for many Helena businesses; Chet Dreher, who told of his personal frustration in dealing with governmental agencies; Dave Goss, of the Billings Chamber of Commerce, who said that he would be getting a letter to the committee in the near future; Ed Nurse, Helena businessman; John Braunbeck, of Energy Services Company; Senator Crippen, Billings; and Scott Currey, of the Montana Association of Realtors.

Speaking in opposition to the bill were Mike Young, of the State Department of Administration, and Mike McGrath, of the Attorney General's office, both of whom felt that the problems addressed in the bill were adequately covered by existing legislation recently enacted, which should be given additional time to be implemented.

Senator Mazurek raised the question that this bill might change the tort standards, and for that reason the committee might want to put in an amendment. Also discussed for purpose of amendment of the bill were the distinction between costs and attorney's fees and a requirement that an agency pay an award out of its current budget.

CONSIDERATION OF SENATE BILL 305:

AMENDING 1-2-201 TO CHANGE THE AUTOMATIC
EFFECTIVE DATE OF NONAPPROPRIATION
STATUTES TO OCTOBER 1.

Senator Stevens, District 4, representing the Rules Committee, presented the bill, which was a product of the Legislative Improvement Committee. The problem which prompted this bill exists because the Legislative Council does not get to start work on codifying legislation into the state Code until late in May. An effective date of July 1, therefore, does not give adequate time for this chore to be completed. Therefore, the new laws are not available to the State Bar until after they have already been in effect for several months.

Speaking in support of the bill were J. C. Weingartner, on behalf of the State Bar Association; Tom Honsel, representing the County Attorneys Association; and Mike McGrath, speaking for the Attorney General's office.

DISPOSITION OF SENATE BILL 305:

Senator Berg recommended that the bill DO PASS, and his motion carried unanimously.

DISPOSITION OF SENATE BILL 306:

Senator B. Brown moved that the bill DO PASS, and his motion carried unanimously.

DISPOSITION OF SENATE BILL 308:

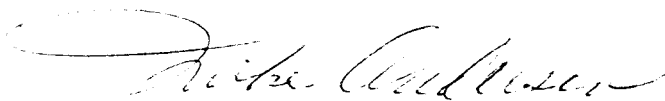
Senator Olson moved that the bill DO PASS, and his motion carried unanimously.

FURTHER CONSIDERATION OF SENATE BILL 222:

David Niss agreed to write an amendment and rework some of the language of the bill.

DISPOSITION OF SENATE BILL 182:

At Senator B. Brown's request David Niss presented amendments as shown on the attached Committee Report. Senator B. Brown moved that the amendments be adopted, and his motion carried unanimously. Senator Anderson moved that the bill be further amended on page 1, line 14, by inserting ", at the choice of the condemned person, either" after "inflicted"; and on page 1, following line 14, the words "hanging or by". In a roll call vote this motion failed five to four. Senator B. Brown moved that the bill DO PASS AS AMENDED, and his motion passed six to three.



Senator Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 2/16/81

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
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.

NAME: MIKE M'GARITY DATE 2/6/81

ADDRESS: OFFICE OF ATTORNEY GENERAL

PHONE: 2026

REPRESENTING WHOM? ATTORNEY GENL

APPEARING ON WHICH PROPOSAL: SB 222

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

NAME: FRANK Nunez DATE: 2-6-81

ADDRESS: Box 514 Kellen

PHONE: 442-3070

REPRESENTING WHOM? Sold (Expense) for 3000

APPEARING ON WHICH PROPOSAL: 505-222

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME:

CHET DREHER

DATE:

2/6/81

ADDRESS:

1962 COLORADO GULCH

PHONE:

443-4888

REPRESENTING WHOM?

SELF

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

YES

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: DAVE GOSS DATE: 2/6/81

ADDRESS: P.O. Box 2519 Billings, MT

PHONE: 245-4111

REPRESENTING WHOM? Billings Chamber of Commerce

APPEARING ON WHICH PROPOSAL: SB 222

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

NAME: John Deanebeck DATE: 2-6-81

ADDRESS: 1217 Wilder Helena, Montana

PHONE: 442-6647

REPRESENTING WHOM? Energy Services Co

APPEARING ON WHICH PROPOSAL: 58-222

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: SCOT CURRY DATE: 2-6-81

ADDRESS: DECODE BLD, HELON

PHONE: 2-8070

REPRESENTING WHOM? MT. ASSOC OF ROGERS

APPEARING ON WHICH PROPOSAL: SS 222

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ☒

COMMENTS: IT IS MARK'S FEELING THAT THIS BILL REQUIRES ONLY THAT
THE STATE TO BE RESPONSIBLE IN BRINGING LAWSUITS
AGAINST PRIVATE PERSONS.

NAME: MARK STONE DATE: 5/5/71

ADDRESS: Union Co. N.C.

PHONE: _____

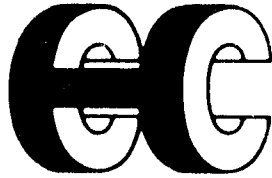
REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: 574 919 906

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



**HELENA AREA
CHAMBER OF
COMMERCE**

Exhibit A

STEWART BURWELL
Executive Director
201 E. Lyndale
Helena, Montana 59601
Telephone 406/442-4120

February 6, 1981

Senator Mike Anderson, Chairman
Senate Judiciary Committee
Room 331
State Capitol Building
Helena, Montana 59601

Dear Senator Anderson,

The Helena Area Chamber of Commerce is comprised of over six-hundred members. Nearly 500 of these members are small businesses which would be favorably affected by the passage of S.B. 222.

It is the opinion of the membership that when a small business has a justifiable complaint against a government entity, it should not be denied equal access to a court hearing because of the high cost of litigation. If there is a chance to recoup those costs should the litigation be favorable to the business, then we feel the dialogue between regulatory agencies and small business will improve. This bill will benefit the spirit of cooperation evidenced by the legislature and the executive branches during this new administration.

The Helena Area Chamber of Commerce is only one local organization out of nearly 80 chambers of commerce state-wide with similar memberships and interest in this particular legislation. In view of the gains to be made by small business in easier access to the courts, and the gains to be made by state agencies through better and more considered dialogue with small business, we urge that your committee give a favorable recommendation to S.B. 222.

Respectfully submitted,

Gerry G. Hudson

Gerry G. Hudson, President
HELENA AREA CHAMBER OF COMMERCE

GGH/mjt

(21)

2-6-89

BILL NO. 8727

SB 308
SB 306
SB 222
SB 305

Check One

Support	Oppose
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(Please leave prepared statement with Secretary)

STANDING COMMITTEE REPORT

.....February 6..... 19..21..

MR.PRESIDENT.....

We, your committee onJUDICIARY.....

having had under considerationSENATE..... Bill No. 308

Respectfully report as follows: That.....SENATE..... Bill No. 308

DO PASS

D. M.

STANDING COMMITTEE REPORT

February 6, 1951

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 305

Respectfully report as follows: That SENATE Bill No. 305

DO PASS

STANDING COMMITTEE REPORT

..... February 5, 1921

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 306

Respectfully report as follows: That SENATE Bill No. 306

DO PASS

S. M.

STANDING COMMITTEE REPORT

..... FEBRUARY 5, 19 31

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 182

Respectfully report as follows: That SENATE Bill No. 182
be amended as follows:

1. Title, line 3.
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 37-3-103, 37-3-103 AND"
2. Page 2, line 14.
Following: "warden"
Insert: "by the warden or another person who is trained to
administer the injection. The person administering the injection
is not required to be a physician, registered nurse, or licensed
practical nurse, licensed or registered under the laws of this or
any other state. The warden shall allow the execution to be
observed by such witnesses as the condemned person may choose,
not to exceed five in number"
3. Page 2.
Following: line 17
Insert: "Section 2. Section 37-3-103, MCA, is amended to read: "37-3-103
DO PASS:

continued

February 6, 1981

Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States veterans administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist; and

(m) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law; and

(n) the execution of a death sentence pursuant to 46-19-103(4).

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and may

continued

February 6, 1981

not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 3. Section 37-8-103, MCA, is amended to read: "37-8-103. Exemptions -- limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

- (a) gratuitous nursing by friends or members of the family;
- (b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;
- (c) nursing assistance in the case of an emergency;
- (d) the practice of nursing by students enrolled in approved schools of nursing or approved courses or by the graduates of such schools or courses pending the results of the first licensing examination scheduled by the board following their graduation;
- (e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length; provided that person does not represent or hold herself or himself out to be a nurse licensed to practice in this state;
- (f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;
- (g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof;
- (h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent such care may be provided by a parent or guardian;

(i) the execution of a death sentence pursuant to 46-19-103(4).

(2) This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana."

Renumber: all subsequent sections.

And, as so amended,
DO PASS

Pa.

Mike Anderson

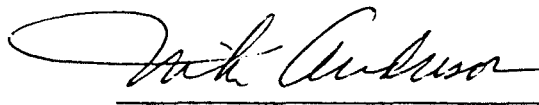
Chairman.

SENATE COMMITTEE JUDICIARY

Date February 6, 1981 SENATE Bill No. 182 Time

NAME	YES	NO
Anderson, Mike		✓
O'Hara, Jesse A.	✓	
Olson, S. A.	✓	
Brown, Bob	✓	
Crippen, Bruce D.		✓
Tveit, Larry J.		✓
Brown, Steve		
Berg, Harry K.	✓	
Mazurek, Joseph P.	✓	
Halligan, Michael	✓	


Secretary


Chairman

Motion: DO PASS AS AMENDED

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date February 6, 1981 SENATE Bill No. 182 Time

NAME	YES	NO
Anderson, Mike	✓	
O'Hara, Jesse A.		✓
Olson, S. A.	✓	
Brown, Bob		✓
Crippen, Bruce D.		✓
Tveit, Larry J.	✓	
Brown, Steve		
Berg, Harry K.	✓	
Mazurek, Joseph P.		✓
Halligan, Michael		✓

Robin Campbell
Secretary

Mike Anderson
Chairman

Motion: Amend bill as follows: Page 1, line 14, following
"inflicted", insert "at the choice of the condemned felon";
and on page 1, following line 15, insert "hanging or the"

(include enough information on motion--put with yellow copy of committee report.)