

MINUTES OF THE MEETING
SENATE LOCAL GOVERNMENT COMMITTEE
MARCH 10, 1981

The meeting of the Local Government Committee was called to order by Chairman George McCallum on the above date in Room 405 at 12:30 p.m.

ROLL CALL: Senator Thomas came in late, all other members were present.

CONSIDERATION OF HOUSE BILL NO. 413:

AN ACT TO ALLOW A COUNTY OFFICER WHO IS PAID
ON A PER-DAY BASIS TO BE PAID HIS PER-DAY
RATE OF PAY FOR ATTENDANCE AT CONVENTIONS,
MEETINGS, OR OTHER GATHERINGS OF PUBLIC
OFFICERS.

Representative Bertelsen, District No. 27, said a county officer is allowed no means of payment when he goes out of his own county to attend meetings. Some counties do pay the officers anyway but the auditors write them up. It is part of the officers' duties, they would not be at the meetings if they were not county officers. This solves a simple problem by allowing them a day's pay for public business.

There were no opponents of the bill appearing before the committee.

Senator McCallum then called for questions from the committee.

Senator Van Valkenburg thought the committee should change the words "may be" on line 9, page 2, to "is".

Debbie Schmidt said it would be somewhat unclear as to if it is discretionary.

Senator O'Hara asked if, in the past, they have been going to these meetings and have not been paid.

Representative Bertelsen said in some cases that was correct.

Senator O'Hara asked if this would ever be abused.

Representative Bertelsen said he did not think so. This is strictly for conventions and district meetings.

Senator O'Hara asked if they would be paid for coming to the legislature to lobby.

Representative Bertelsen said he thinks that would be eliminated.

Senator O'Hara asked who makes out their checks.

Representative Bertelsen answered that the checks were made out by the clerk and recorder.

Senator O'Hara said the clerk and recorders are under the officers. You need to have a check and balance system.

Senator McCallum asked about per diem.

Representative Bertelsen said they are not as concerned about that.

CONSIDERATION OF HOUSE BILL NO. 390:

AN ACT TO ALLOW THE USE OF ANY PUBLIC
BUILDING AS A POLLING PLACE.

Representative Winslow, District No. 65, said this problem was brought to him by a small town outside Billings where schools had been used for polling places. Because of cramped quarters it was hard to continue the polling function there. They checked around and put the polling place in a store. This is allowing any public building to be requested to be used for polling places. We want to open it up for the people running elections so they will have more buildings to choose from. It is disruptive in the school situation.

There were no opponents of the bill appearing before the committee.

Senator McCallum then called for questions from the committee.

Senator Hammond asked if you were deleting jails and hospitals.

Representative Winslow said this opens it up for any public building.

Senator Van Valkenburg asked what the current restrictions were.

Representative Winslow said he did not think there were any. They want to put it in the statutes so people realize their building may be requested to be used for polling.

Senator McCallum asked if we pass this bill would they then negotiate to see what building they would use.

Representative Winslow answered yes.

Senator O'Hara asked what the present law was.

Representative Winslow said there is none. This is putting it on the books.

Debbie Schmidt asked if this should be any publicly "owned" building.

Representative Winslow said that was the intent.

CONSIDERATION OF HOUSE BILL NO. 402:

AN ACT TO INCREASE THE FEES PAID TO
WITNESSES IN CERTAIN JUDICIAL PROCEEDINGS.

Representative Keedy, District No. 18, said this bill simply increases fees paid to witnesses in some court cases. There has not been an increase in the fee system for at least 10 years. In light of current economic conditions, they are sadly out of date. On page 1, line 16, the fee for witnesses appearing before any court of record would be paid \$25 per day instead of \$10. On page 2, line 6, witnesses in courts not of record would receive \$15 per day instead of \$3. The third part of the bill on page 2, line 20, is the main part of the bill. It allows the court to determine what level of compensation should be made for people appearing as expert witnesses, such as doctors or engineers. Most experts would be reluctant to get involved in such a case because of the low compensation. This bill provides authority. The balance of the bill is designed to bring into line the witness fees paid to persons outside the state of Montana or someone in Montana who may receive a summons to appear in a sister state to provide testimony. This provides the same level of compensation. In civil cases the fees are taxed against the losing party. There would be no fiscal impact in situations of that kind. There are some amendments that should be added. Jim Nugent of the city of Missoula has those amendments.

Jim Nugent of the city of Missoula said they have a municipal court in Missoula which is a court of record. Their jurisdiction covers misdemeanor fines. One amendment is to provide that the witness will receive only a portion of pay if their attendance is only required for less than 3 hours a day. (See attached Exhibit A.)

Representative Keedy said he totally agrees with the amendments.

Tom Honzel, County Attorneys Association, said they have run into a problem with witness fees. The present law provides \$10 per day in courts of record and those fees were set a long time ago. People they would call to testify would have to take a day off work or find a babysitter and were very reluctant to come in when they found out how much they were going to receive. They do have to come in because they received a subpoena. Judges have taken the position that expert witnesses are to be paid the same as other witnesses. They have a tough time explaining to the professionals that they only get \$10 per day. They have also tried to provide in the bill that if you are called to testify in another state, you have to be paid what you

would be in this state. They are trying to make it uniform in all instances.

There were no opponents of the bill appearing before the committee.

Senator McCallum then called for questions from the committee.

Senator McCallum asked if the county pays for most witnesses.

Mr. Nugent said the judges discourage filing civil cases in municipal court.

Senator McCallum asked how much this would cost the county or city.

Representative Keedy said he does not know of any way to adequately estimate that, it would depend on the caseload in the county and the witnesses called.

Senator McCallum asked if it would be five times the cost for the judicial system if we went from \$3 to \$15.

Representative Keedy said he did not think so. The amendments would provide for a maximum of considerably less than \$15 for most witnesses.

Senator Hammond asked if they were having difficulty getting witnesses because of the money situation.

Representative Keedy said there is considerable reluctance on the part of the witnesses to take the time and trouble when the compensation is so small.

Senator Hammond thought many of the witnesses would have an interest in the case anyway, both in civil and criminal cases.

Representative Keedy agreed.

Senator Hammond asked if they always felt they had to be paid. We are trying to pay everyone for everything even if they were going to be there anyway.

Representative Keedy said in many cases you don't have to pay anyone to get them into court.

Senator Hammond said he has a difficulty in seeing that one witness is more important than the other just because of his training in a field.

Mr. Honzel sited, for example, a forensic pathologist. If he was a normal witness for a crime he would be paid as a normal

witness. If he was asked to perform an autopsy on a homicide victim and we were asking him to testify on his findings, we are asking him to provide a service and we should pay him for such.

Senator Hammond said the witness who may have been an eyewitness has been asked to provide a service also.

Mr. Honzel said a lot of people have a problem with the distinction.

Senator Ochsner asked who pays the fines, the court or the county.

Mr. Honzel said in private litigation, the party pays. In criminal cases it is charged against the county.

CONSIDERATION OF HOUSE BILL NO. 358:

AN ACT TO CLARIFY WHO MAY AUTHORIZE A
PUBLIC DISPLAY OF FIREWORKS.

Representative Manning, District No. 35, said this bill is a simple change in the law. On page 1, line 11, they are changing "and" to "or". At present you have to contact the state fire marshal and a member of the local governing body to get a permit. This is changing it so you only have to get permission from one of those bodies.

Bruce Houston, deputy state fire marshal, said the only change is "and" to "or" to make it easier for local communities to give permits.

There were no opponents of the bill appearing before the committee.

Senator McCallum then called for questions from the committee.

Senator Van Valkenburg asked what would happen when the state fire marshal grants a permit and the city or county is not happy with that action.

Representative Manning said he doubted that anyone would go to the state fire marshal to get a permit.

Mr. Houston said the state fire marshal would let them know at the local level that they had issued a permit.

Senator Van Valkenburg said letting them know is one thing, getting their approval is another.

Mr. Houston said they would not go above the local authority.

Senator Hammond asked why it was "and" in the beginning.

Representative Keedy said someone was making it too strict.

CONSIDERATION OF HOUSE BILL NO. 357:

AN ACT TO CLARIFY THE STATE FIRE MARSHAL'S
AUTHORITY CONCERNING THE ALTERATION, REPAIR,
OR DEMOLITION OF BUILDINGS DECLARED TO BE A
PUBLIC NUISANCE.

Representative Manning was unable to attend the evening meeting to present this bill to the committee so Chairman McCallum allowed him to present the bill at this time and we would call for witnesses on it at the evening meeting.

Representative Manning, District No. 35, said the bill clarifies the state fire marshal's authority concerning alteration, repair or demolition of buildings declared to be a public nuisance. On line 16, page 1, they have changed "shall" to "may" due to the fact of fuel costs and tight budgets when a building falls into this category. This gives the people time to work with the local authority to persuade the owner to tear it down instead of doing it themselves.

Bruce Houston, deputy state fire marshal, said the main purpose of the bill is because of the monetary situation. If the fire marshal was to condemn a building, the owner would have a certain amount of time to destroy it and if he didn't, the fire marshal would have to.

There were no opponents of the bill appearing before the committee.

Senator McCallum then called for questions from the committee.

Senator O'Hara asked what would be done if you "may" proceed.

Mr. Houston answered that is where they work with the local authority and try to get the structure removed locally instead of the state coming in and having to do it.

Senator Van Valkenburg wanted to comment that by doing this we are watering down what is an order by a district court, making it meaningless.

Representative Manning said we are working with a procedure where the court says you will do this and gives you a prescribed time to do it but the legislature has not budgeted you money for it. We are trying to get the job done at the least cost and as soon as possible.

Senator Van Valkenburg said the reason there was an order was because the state fire marshal petitioned for the order. Now he is saying he doesn't want the order, just the power to do what he wants to do.

Senator Hammond asked if this would not affect cities and towns because they have a city fire marshal.

Representative Manning said that was right. This affects communities like Black Eagle where they have nothing but volunteer fire departments.

Senator McCallum asked if this would affect any of the towns.

Representative Manning said they use the statute but the state fire marshal would not have to work with them.

Senator McCallum asked if we adopt this bill, could that building just sit there.

Representative Manning did not think so. The state fire marshal's office has people out in the field to take care of such things.

DISPOSITION OF HOUSE BILL NO. 202: Senator Hammond said they are deleting something that was in the old law.

Senator Van Valkenburg said we would still have ambiguity if public places are to be included.

Senator Hammond moved the bill be concurred in as amended.

Senators O'Hara and Van Valkenburg were opposed, all others voted aye.

DISPOSITION OF HOUSE BILL NO. 358: Senator O'Hara moved the bill be concurred in.

The motion carried unanimously.

DISPOSITION OF HOUSE BILL NO. 402: Senator O'Hara moved the amendments be adopted.

Senator Ochsner said he felt this was too much of a raise.

Senator McCallum asked Senator Van Valkenburg who would pay if the loser in a civil case does not have the money.

Senator Van Valkenburg said in a civil case the prevailing party would have to pay.

Senator O'Hara's motion carried unanimously.

Senator O'Hara said he is willing to go along with it because there does seem to be a need. There is a problem when the witnesses come in and find out they will only receive \$10 a day.

Senator Ochsner said it is as much of a hardship on regular witnesses as it is on professionals.

Senator McCallum asked Senator Van Valkenburg if a witness who failed to appear in court after receiving a subpoena would be held in contempt of court.

Senator Van Valkenburg said he would have to appear. If you do not pay him, he will not answer the questions properly, he will say he does not know the answer.

Senator Hammond does not feel another \$10 will make a difference.

Senator Thomas said these people should have a civic responsibility.

Senator O'Hara motioned that Section 4 be struck from the bill.

Senator Hammond made a substitute motion that the bill be not concurred in.

Senators O'Hara and Van Valkenburg were opposed, all others voted aye.

DISPOSITION OF HOUSE BILL NO. 413: Senator Van Valkenburg made a motion to amend the bill on page 2, line 9, striking "may be" and inserting "is".

The motion carried unanimously.

Senator Hammond moved the bill be concurred in as amended.


The motion carried unanimously.

DISPOSITION OF HOUSE BILL NO. 390: Senator O'Hara made a motion to amend the bill on page 2, line 4 to strike "public" and insert "publicly owned". The motion carried unanimously.

Senator O'Hara moved the bill be concurred in as amended.

The motion carried unanimously.

The meeting was adjourned at 2:00 p.m.


Chairman George McCallum

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 3/10/81
12:30

NAME	PRESENT	ABSENT	EXCUSED
Senator George McCallum	✓		
Senator Jesse O'Hara	✓		
Senator H. W. Hammond	✓		
Senator J. Donald Ochsner	✓		
Senator Bill Thomas			✓
Senator Max Conover	✓		
Senator Fred Van Valkenburg	✓		

Each day attach to minutes.

DATE _____

MARCH 10, 1981

COMMITTEE ON

LOCAL GOVERNMENT

BILL NO. HB390

VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

MARCH 10, 1931

BILL NO. HB413

VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

NAME: Tom H. H. H. DATE: 3-10-81

ADDRESS: H. H. H.

PHONE: 443-5554

REPRESENTING WHOM? County Attorney

APPEARING ON WHICH PROPOSAL: HB 402

DO YOU: SUPPORT? / AMEND? OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

PROPOSED AMENDMENTS TO HOUSE BILL 402

1. Page 1, Line 11

Following: "record"

Insert: "except municipal courts"

2. Page 1, Line 14

Following: "record"

Insert: "Except municipal courts"

3. Page 2, Line 4

Following: "record"

Insert: "and municipal courts"

4. Page 2, Line 5

Following: "record"

Insert: "and municipal courts"

5. Page 2, Line 7

Following: "attendance"

Insert: ", unless the witness's actual attendance on any day
is for a period of less than three (3) hours in which
case the witness shall receive \$7.50.,"

6. Page 2, Line 11

Following: "record"

Insert: "and municipal courts"

7. Page 2, Line 13

Following: "record"

Insert: "and municipal courts"

8. Page 2, Line 14

Following: "attendance"

Insert: ", unless the witness's actual attendance on any day
is for a period of less than three (3) hours in which
case the witness shall receive \$7.50.,"

SENATE COMMITTEE ON LOCAL GOVERNMENT

Date _____ House Bill No. 707 Time _____

NAME	YES	NO
Senator George McCallum	✓	
Senator Jesse O'Hara	<u>Abstain</u>	✓
Senator H. W. Hammond	✓	
Senator J. Donald Ochsner	✓	
Senator Bill Thomas	✓	
Senator Max Conover		✓
Senator Fred Van Valkenburg		✓

Secretary, Gail Stockwell

Chairman, GEORGE MCCALLUM

Motion: to move amendments

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

HOUSE BILL NO. 357

Representative Richard E. Manning

A Bill for an Act Entitled: " An Act to Clarify the State Fire Marshal Authority Concerning the Alteration, Repair, or Demolition of Buildings Declared to Be a Public Nuisance; Amending Section 50-62-107 MCA."

50-62-107 MCA describes the procedures to be followed by the State Fire Marshal or local authorities in the removal of fire hazards that have been declared public nuisances. The word shall as used in the statute does not allow local authorities or the State Fire Marshal discretionary uses of local ordinances or statutes of other state agencies that in many instances addresses the problem of public nuisances in a better manner than does 50-62-107 MCA. To allow local authority and the State Fire Marshal some discretionary authority House Bill 357 changes the word shall to may.

HOUSE BILL NO. 358

Representative Richard E. Manning

A Bill For An Act Entitled: "An Act To Clarify Who May
Authorize a Public Display of Fireworks; Amending Section
50-37-107, MCA."

The present wording of 50-37-107 MCA requires a person or
an organization who sponsors a supervised public display
of fireworks to obtain permits from both local authority and
the State Fire Marshal. House Bill 358 would discontinue the
need for this duplication of effort and would allow either
local authority or the State Fire Marshal the authority to
grant permits for supervised displays of fireworks.

SENATE COMMITTEE ON LOCAL GOVERNMENT

Date 3/10/81 House Bill No. 202 Time 12:30

NAME	YES	NO
Senator George McCallum	✓	
Senator Jesse O'Hara		✓
Senator H. W. Hammond	✓	
Senator J. Donald Ochsner	✓	
Senator Bill Thomas	✓	
Senator Max Conover	✓	
Senator Fred Van Valkenburg		✓

Gail Stockwell
Secretary, Gail Stockwell

George McCallum
Chairman, GEORGE MCCALLUM

Motion: Senator Hammond moved the bill
be concurred in as amended.

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

SENATE COMMITTEE ON LOCAL GOVERNMENT

Date 3/10/81 House Bill No. 358 Time 12:30

NAME	YES	NO
Senator George McCallum	✓	
Senator Jesse O'Hara	✓	
Senator H. W. Hammond	✓	
Senator J. Donald Ochsner	✓	
Senator Bill Thomas	✓	
Senator Max Conover	✓	
Senator Fred Van Valkenburg	✓	

Gail Stockwell
Secretary, Gail Stockwell

George M. McCallum
Chairman, GEORGE MCCALLUM

Motion: Senator O'Hara moved the bill be
concurred in.

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

SENATE COMMITTEE ON LOCAL GOVERNMENT

Date 3/10/81 House Bill No. 390 Time 12:30

NAME	YES	NO
Senator George McCallum	✓	
Senator Jesse O'Hara	✓	
Senator H. W. Hammond	✓	
Senator J. Donald Ochsner	✓	
Senator Bill Thomas	✓	
Senator Max Conover	✓	
Senator Fred Van Valkenburg	✓	

Gail Stockwell
Secretary, Gail Stockwell

George McCallum
Chairman, GEORGE MCCALLUM

Motion: Senator O'Hara moved the bill be
concurred in as amended.

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

SENATE COMMITTEE ON LOCAL GOVERNMENT

Date 3/10/81 House Bill No. 402 Time 12:30

NAME	YES	NO
Senator George McCallum	✓	
Senator Jesse O'Hara		✓
Senator H. W. Hammond	✓	
Senator J. Donald Ochsner	✓	
Senator Bill Thomas	✓	
Senator Max Conover	✓	
Senator Fred Van Valkenburg		✓

Gail Stockwell
Secretary, Gail Stockwell

George McCallum
Chairman, GEORGE MCCALLUM

Motion: Senator Hammond moved the bill be
not concurred in.

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

SENATE COMMITTEE ON LOCAL GOVERNMENT

Date 3/10/81 House Bill No. 413 Time 12:30

NAME	YES	NO
Senator George McCallum	✓	
Senator Jesse O'Hara	✓	
Senator H. W. Hammond	✓	
Senator J. Donald Ochsner	✓	
Senator Bill Thomas	✓	
Senator Max Conover	✓	
Senator Fred Van Valkenburg	✓	

Gail Stockwell
Secretary, Gail Stockwell

George McCallum
Chairman, GEORGE MCCALLUM

Motion: Senator Hammond moved the bill be
concurred in as amended.

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

STANDING COMMITTEE REPORT

March 10

1931

MR. PRESIDENT

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 202

SIVERTSEN (Hammond)

Respectfully report as follows: That HOUSE Bill No. 202

third reading copy, be amended as follows;

1. Page 3, line 22 through page 4, line 1.
Following: "including" on line 22.
Strike: all language through "business;" on line 1.
Insert: ":",
Renumber: subsequent subsections.

And, as so amended,

BE CONCURRED IN

~~DO PASS~~

STANDING COMMITTEE REPORT

March 10

19 81

MR. PRESIDENT

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 358

MINING (BERG)

Respectfully report as follows: That HOUSE Bill No. 358

BE CONCURRED IN

~~XXXXXX~~

J.A.

STANDING COMMITTEE REPORT

March 10

19 21

MR. PRESIDENT

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 390

WINSLOW(O'HARA)

Respectfully report as follows: That HOUSE Bill No. 390,
third reading copy, be amended as follows:

1. Title, line 5.

Following: Line 4

Strike: "PUBLIC"

Insert: "PUBLICLY OWNED"

2. Page 2, line 4.

Following: "Any"

Strike: "public"

Insert: "publicly owned"

And, as so amended, BE CONCURRED IN

DOFPAS

J.A.

STANDING COMMITTEE REPORT

March 10

19 31

PRESIDENT

MR.

LOCAL GOVERNMENT

We, your committee on

HOUSE

having had under consideration Bill No. **402**

KEEDY (MCCALLUM)

HOUSE

Respectfully report as follows: That Bill No. **402**

4/1

BE NOT CONCURRED IN

~~DEPASS~~

STANDING COMMITTEE REPORT

March 10 19 81

MR. PRESIDENT

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 413

RETELSEN (O'HARA)

Respectfully report as follows: That HOUSE Bill No. 413,
third reading copy, be amended as follows:

1. Page 2, line 9
Following: "duties"
Strike: "may be"
Insert: "is"

And, as so amended, BE CONCURRED IN

~~DOXASX~~

P. Q.