

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 17, 1981

The forty-fifth 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 HOUSE BILL 713:

TO ADOPT THE UNIFORM ARBITRATION ACT
AND TO CONFORM OTHER STATUTORY PRO-
VISIONS THERETO.

Rep. Fabrega, House District 44, Great Falls, presented the bill, saying it only applies to commercial arbitration.

John McCabe supported the bill as legal counsel for the National Conference of Commissioners on Arbitration in Chicago. He said that the key section of the bill is Section 4, and he said that the difference between existing law and this bill is that under current law arbitration cannot be agreed upon in contract before the dispute arises. This bill would allow this, and would also allow enforcement of arbitration in a court of law, vacation of awards should an arbiter not do his job, and appeals from the arbitration.

Bill Corbett, from the faculty of the law school in Missoula, supported the bill, saying that currently the only solution is time-consuming litigation.

Chad Smith, representing the Montana School Board Association, added his support to the bill because of the building delays and added costs that result from drawn-out disputes.

H. S. Hanson, representing the Montana Technical Council, supported the bill for previously given reasons.

J. C. Weingartner supported the bill on behalf of the State Bar of Montana.

Don Smith, Great Falls attorney, supported the bill as shown on his attached testimony sheets, speaking of his experience with IFG Leasing Co.

Leland Walker, representing the American Society of Civil Engineers, Northern Testing Laboratories, supported the bill,

telling of his experience as an arbitrator in bringing about swift, satisfactory settlements.

Tom Harrison, appearing on behalf of IFG Leasing, supported the bill. He said that he had helped to establish the arbitration panel for fee disputes while on the Judiciary Committee of the State Bar of Montana.

Mike Meloy, representing the Trial Lawyers Association, pointed out that this is a broad piece of legislation, and he is concerned about the language in insurance contracts as it relates to injuries suffered by the insured. This bill might remove such settlements from the court system, and hearings before juries. He said that the Supreme Court probably would not construe this law in such a way as to prevent the injured party from having a jury trial, and he was not terribly worried over this possibility, but still felt that it should be mentioned. He suggested amending Section 3 addressing a personal injury case.

In closing, Rep. Fabrega said that the repealers at the end of the bill indicated more changes than they actually represent.

John McCabe said that currently no one could arbitrate on a tort unless agreement was reached after an accident. He added that this act would not change that situation, and that the only thing that could be arbitrated is the relationship between the insurer and the insured.

Senator Mazurek discussed the situation as it relates to insurance companies, and asked if other states have dealt with this. Mr. McCabe said three states have excluded insurance, and two have excluded tort claims, so that generally insurance claims have not been excluded.

Senator Crippen asked whether, in situations where one of the parties disagrees with the arbiter's finding, there is anything dealing with the charge that the arbiter did not adhere to the claims of the contract. Mr. McCabe pointed to Section 15 as the portion of the bill dealing with this situation, and added that Section 16 provides for modification and correction of the award. Senator Crippen questioned whether the situation he described would be adequately covered by those sections.

Senator Mazurek asked Mr. Hanson if the state specifies arbitration in accepting bids, and was told that at the time a contract is made arbitration can be either included or excluded, and is usually included.

Senator Berg asked if this bill would prohibit people from going to court to settle a dispute, and if the intent is to shorten the time taken to settle disputes. Mr. McCabe said that in situations where a contract is entered into, arbitration

would be necessary in the case of a dispute, and added that the record is definitely one of shortened time on settling such disputes when arbitration is used.

CONSIDERATION OF HOUSE BILL 396:

TO ADOPT THE REVISED UNIFORM ENFORCE-
MENT OF FOREIGN JUDGMENTS ACT.

Rep. Anderson, District 16, Flathead County, presented the bill, saying that under current law if a debtor leaves the state, the creditor must then file a new action to determine whether the action is authentic. This bill seeks to change that situation by allowing for reciprocity between Montana and other states. He said that the Department of Revenue favors the bill.

John McCabe supported the bill, stating that the Constitution provides for reciprocity between states, and that this act tries to provide a simple, quick procedure for providing relief to creditors, while still not depriving the debtor of any of his rights.

J. C. Weingartner supported the bill on behalf of the State Bar.

Senator Mazurek said that when the judgment comes in and immediately becomes a lien, two problems arise: is the lien valid, and can the property be released to another state.

Mr. McCabe said that when the law has been passed in other states it has resulted in smoothly-handled actions.

David Niss asked why the act does not apply to equitable actions, and Mr. McCabe said that he did not know the answer.

Senator Anderson asked if there was a sweep of states outside Montana imposing the act upon this state, as had been alleged by opponents of the bill. Mr. McCabe replied that Montana creditors are already benefiting from the uniformity acts adopted by all the states surrounding Montana.

CONSIDERATION OF A COMMITTEE BILL REINSTITUTING SMALL CLAIMS
COURTS:

Senator Anderson pointed out that Archie Alexander was visiting the Capitol today, and was available to the committee if they wished to discuss the matter of reinstituting the small claims courts of Montana. The committee reacted favorably, and Mr. Alexander and John Maynard were brought into the meeting.

Mr. Alexander introduced himself to the committee as a business law teacher at M.S.U. at Bozeman, and a fourteen-year practicing

private attorney before he turned to teaching. He added that he has made a specialty of studying the small claims courts and their satisfactory record. He described such courts as the ones which really do the most for the common people, who, in effect, lose their right to a court hearing when these courts are eliminated. He said that the small claims courts were recently eliminated because present law dictates that there be no trial de novo in district court. He said that a simple amendment saying there must be a right to a trial de novo in the district court would remedy the situation. He quoted statistics indicating a definite trend toward increasing use of the small claims courts.

John Maynard agreed with Mr. Alexander's remarks, and said that the people of Montana find this type of court very important.

Senator Halligan suggested that the issue be started at once if that was the desire of the committee, and Senator Anderson said that he would go to the leadership in the Senate with the prepared bill drafting request, and would report back to the committee.

Senator Anderson scheduled an executive meeting for this upcoming Saturday, and for Monday and Tuesday of next week.

DISPOSITION OF HOUSE BILL 396:

Senator Berg moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 535:

Senator Berg moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 537:

Senator Berg moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 621:

Senator Mazurek moved that the bill be amended twice, changing "may" to "shall", as shown on the attached Committee Report, and his motion passed unanimously. He then moved that the bill be CONCURRED IN AS AMENDED, and this motion passed unanimously.

DISPOSITION OF HOUSE BILL 208:

Senator Crippen moved that the bill BE NOT CONCURRED IN, and his motion passed over Senator S. Brown's opposition.

FURTHER DISCUSSION OF HOUSE BILL 209:

Senator S. Brown said that he does not like the idea of forcing the jurors to travel to another location and be inconvenienced by the trial. He moved that the bill be not concurred in, and the motion failed in a tie vote, with Senators B. Brown, Mazurek, O'Hara, Crippen, and Anderson voting against the motion.

A handwritten signature in cursive script, reading "Mike Anderson".

Mike Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date March 17, 1981

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: John M. McCabe DATE: Mar. 17

ADDRESS: Su. 510, 645 N. Michigan, Chicago 60611

PHONE: 312-321-9710

REPRESENTING WHOM? NCCUSL

APPEARING ON WHICH PROPOSAL: H.B. 713, H.B. 396

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bill Corbett

DATE: MARCH 17 1981

ADDRESS: LAW School Univ. of Montana, Missoula

PHONE: 243-4741

REPRESENTING WHOM? My self

APPEARING ON WHICH PROPOSAL: HB 713

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: H S Hanson DATE: 3/17/81

ADDRESS: HOLLYN

PHONE: _____

REPRESENTING WHOM? MT TECHNICAL COUNCIL

APPEARING ON WHICH PROPOSAL: HB-713

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

COMMENTS: _____

1) Will allow CONTRACT DOCUMENTS
to SETTER DISAGREEMENTS

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: C. J. [illegible] DATE: 5/17/21

DATE: 5/17/81

ADDRESS: 1121

PHONE: 442-766

REPRESENTING WHOM? State Bar of MN

APPEARING ON WHICH PROPOSAL: 396 713

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SUMMARY OF TESTIMONY TO SENATE JUDICIARY COMMITTEE

submitted by

DONALD S. SMITH
Associate General Counsel
IFG Leasing Company
March 17, 1981

My company is in favor of the adoption of the Uniform Arbitration Act because it allows agreements to arbitrate future disputes. Current Montana law prohibits contractual agreements to arbitrate future disputes.

We became aware of the advantages of the Uniform Arbitration Act through the course of business dealings in other states. Our contracts provide for the arbitration of future disputes in those states where it is permissible.

Quicker Resolution of Disputes

Attorneys representing us in Oregon and Washington report that a normal legal action within the judicial system will take from one and one-half to three years for a decision. The time length will vary depending on the case load of the particular forum.

In contrast, they report that arbitration normally resolves a similar dispute within two to three months.

Lower Overall Legal Expenses

Local office personnel often represent our company in smaller or uncomplicated disputes. The attorneys concentrate their time on the larger more complex cases. Arbitration has fewer time delays during the prosecution of a case, which saves time as well as allowing attorneys to use their time more productively.

Expert Arbitrators

Arbitrators are generally experts in the field and have a grasp of the technical aspects and relevant issues at hand. Informal arbitration hearings conducted by expert arbitrators usually require less than four hours to complete.

Uniformity of the Act

Adoption of the Uniform Act will bring Montana into conformity with the modern arbitration law of the United States Government and 36 of its sister states.

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Larry Warner DATE: _____

ADDRESS: Helena, MT

PHONE: 449-2852

REPRESENTING WHOM? D.O.R.

APPEARING ON WHICH PROPOSAL: HB 396

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

COMMENTS: Will encourage other states
to adopt UEFI acts, which
will benefit Montana

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

COMMITTEE ON JUDICIARY

HB 713

HB 396

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Bill Corbett	My Self	HB 713	✓	
Mike Murray	MTLA	HB 713		
Karl ...	LIV of Montana	observing		
Bill Orr		observing		
Barbara Poyman		"		
Tom Harrison	JFG Leasing	713	✓	
Larry Wambing	D.O.R.	HB 396	✓	
Respect Tolper	American Society of Civil Engineers Northern Test Lab. Lubbock	713	"	
Chad Smith	Mont Sch Bas Gen	713	✓	
H S Harrison	MT TECHNICAL COUNCIL	713	✓	

(Please leave prepared statement with Secretary)

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STANDING COMMITTEE REPORT

March 17, 19 31

MR. **PRESIDENT:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **396**

ANDERSON (MAZUREK)

Respectfully report as follows: That **HOUSE** Bill No. **396**

~~XXXXXX~~
~~DO PASS~~

BE CONCURRED IN

STANDING COMMITTEE REPORT

..... March 17, 19 81

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 535

HUENNEKENS (BERG)

Respectfully report as follows: That HOUSE Bill No. 535

~~DEPARY~~

BE CONCURRED IN

STANDING COMMITTEE REPORT

March 17, 1931

MR. **PRESIDENT:**

We, your committee on **JUDICIARY**

having had under consideration **HUENNEKENS (TVEIT)** **HOUSE** Bill No. **537**

Respectfully report as follows: That **HOUSE** Bill No. **537**

REPORT
BE CONCURRED IN

STANDING COMMITTEE REPORT

March 17, 19 81

MR. **PRESIDENT:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **621**
MEYER (ANDERSON)

Respectfully report as follows: That..... **HOUSE** Bill No. **621**
third reading copy, be amended as follows:

1. Page 20, line 10.

Following: **"(2)"**

Strike: **"may"**

Insert: **"shall"**

2. Page 20, line 12.

Following: **"prosecution"**

Strike: **"may"**

Insert: **"shall"**

And, as so amended,
~~DO PASS~~

BE CONCURRED IN

G.C.

STANDING COMMITTEE REPORT

March 17, 1981

MR. **PRESIDENT:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **208**

Respectfully report as follows: That **HOUSE** Bill No. **208**

~~BE NOT CONCURRED IN~~
BE NOT CONCURRED IN

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submitted by

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NAME: Tom Harrison DATE: 3/17/81

ADDRESS: 2225 11th Ave. Helena

PHONE: 442-6350

REPRESENTING WHOM? IFG Leasing

APPEARING ON WHICH PROPOSAL: HB 713

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

45,