

MINUTES OF THE JUDICIARY COMMITTEE  
February 16, 1983 - P.M.

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 4:35 p.m. in room 224A of the capitol building, Helena, Montana. All members were present with the exception of Representative Iverson, who was excused. Brenda Desmond, Staff Attorney for the Legislative Council, was also present.

EXECUTIVE SESSION

HOUSE BILL 705

CHAIRMAN DAVE BROWN noted that both the subcommittees on State Administration and Judiciary met and have agreed on the intent of some amendments to this bill. Ms. Desmond passed out the proposed amendments. See EXHIBIT A.

REPRESENTATIVE SPAETH moved that the bill DO PASS. REPRESENTATIVE ADDY seconded. REPRESENTATIVE SPAETH moved the amendments. REPRESENTATIVE DARKO seconded.

REPRESENTATIVE SPAETH commented that one of the problems is that the cost-of-living increase keeps going into the judge's retirement; that is why it throws off all the actuarial tables and essentially what the subcommittees agreed to do through the proposed amendments is change the system with respect to a new judge coming into the system. Under the bill as amended, a new judge will retire at the salary he last had in the system. He explained that they also increased from 30 to 32 per cent the amount going to the counties.

REPRESENTATIVE HANNAH asked if this affects any judges currently retired. REPRESENTATIVE SPAETH replied no, that these judges have retired under the existing retirement system and the changes would only apply to the new judges coming into the system.

REPRESENTATIVE RAMIREZ wondered if this was clearly within the title of the bill. REPRESENTATIVE SPAETH responded that Lois, the staff person for State Administration, felt that it was and that it was borderline, he supposed, but he thought that it was within the title.

REPRESENTATIVE ADDY wondered if Mr. Steve Brown participated in the drafting of the amendments. REPRESENTATIVE SPAETH answered that he was sure that the judges were not enamored or excited over the whole thing, but it was something that Mr. Brown indicated that they were going to have to live with.

The motion carried with REPRESENTATIVE RAMIREZ, REPRESENTATIVE ADDY and REPRESENTATIVE JENSEN voting no.

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REPRESENTATIVE SPAETH moved that the bill DO PASS AS AMENDED.  
REPRESENTATIVE CURTISS seconded the motion.

REPRESENTATIVE JENSEN wondered on page 2, line 22, if 33 per cent was just another best guess. REPRESENTATIVE SPAETH replied that it is a little of best guessing, but he talked with Mr. Nachtsheim of the retirement system and that is what they came up with as very, very, very rough figures. He stated that it is their intention to see if they cannot come up with better figures as this bill progresses along the line. He commented that the overall bill is very important because the retirement system is going to go on the rocks if they don't do something and he said there may be some additional changes when it gets into the Senate.

REPRESENTATIVE HANNAH asked if this would stabilize this fund in the future. REPRESENTATIVE SPAETH replied that that is the problem they have with the amendments - they do not know what it does. He explained that the actuarial tables are complicated, they do not know about the judges coming into the system, younger judges are coming into the system and he said that it may be much more than a band-aid approach; it may have helped solve the problem for a longer period of time than they had originally expected. He added that they just do not have the data right now to see what all the ramifications are.

REPRESENTATIVE RAMIREZ said that he felt that there was a real serious question; obviously we have to have this bill, but we are really changing this bill very markedly. He indicated that it is difficult for a lawyer to stand up and defend the judges because everyone thinks they are defending them out of self-interest; but he did not think that they were given an adequate hearing for such a material change; there are reasons why judges' retirement systems might be different from retirement systems for other people and despite the fact that everyone believes that judges make a great deal of money, they don't make as much as lawyers in private practice as a rule. He continued that what you pay a judge depends on the quality of the judge you get and he thought there is room for improvement and they are making a very dramatic change in this retirement fund.

CHAIRMAN DAVE BROWN pointed out that they can kill this bill or pass it and hope that there is enough information when it gets to the Senate.

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REPRESENTATIVE SPAETH informed the committee that the judges did retire at a set salary at one time; they have been trying to get information as to why the cost-of-living increase was put in and why the change was made. He commented that by the time this gets to the Senate and by the time it comes back here, this may be an entirely different bill. He said that State Administration was pretty adamant about putting it in here.

REPRESENTATIVE EUDAILY noted that if we did not put it in, the figures they have in this bill will take care of their unfunded liability and for their projections in the future. He believed that the only thing that he can see they are doing by adopting these amendments, is that the Senate could have a hearing and these judges can come and cry. He did not feel that it would hurt to have the amendments go over to the Senate this way.

A vote was taken on the motion and the motion carried unanimously.

#### HOUSE BILL 478

REPRESENTATIVE HANNAH moved that this bill DO PASS. REPRESENTATIVE RAMIREZ seconded the motion. REPRESENTATIVE ADDY moved that this bill DO NOT PASS. This motion was seconded by REPRESENTATIVE JENSEN.

REPRESENTATIVE ADDY said that this was the second good faith bill that was put in and it duplicates the language in HB 381; and the people that testified said that this was not the way to go. REPRESENTATIVE HANNAH replied that there is a dispute over the proper place where the good faith exception should be - in rules of evidence or rules of search and seizure. He said that HB 478 puts it under rules of evidence. He continued that he felt there was really no fundamental difference in which section it was in.

REPRESENTATIVE KEYSER made a substitute motion that this bill be tabled. REPRESENTATIVE CURTISS seconded the motion. The motion carried with REPRESENTATIVE RAMIREZ and REPRESENTATIVE HANNAH voting no.

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HOUSE BILL 250

REPRESENTATIVE ADDY moved that the bill DO PASS. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE ADDY moved that the bill be amended on page 1, line 15, following "for" insert "not less than" and on line 16, following "hours" insert "or more than 60 days" on page 1, line 23, strike "consecutive" on line 24, strike "30 days" and insert "6 months" and on page 2, lines 4 and 5, strike "30 consecutive" and insert "90". REPRESENTATIVE JENSEN seconded the amendments.

REPRESENTATIVE ADDY explained that this bill does state a mandatory minimum, which is truly a minimum; this gives the judge discretion to impose a sterner penalty and gives him discretion on the second penalty with regard to consecutive days. He informed the committee that in Sunday's Billings Gazette, there was a whole article concerning overcrowding at the city jail; the city judge is no longer sentencing anybody to jail as they are not letting them in; they are sharing jail facilities with Hardin and Laurel; and by allowing the judge to sentence for seven days to be served on weekends or evenings, it allows the judge a bit more creativity. He also indicated that he did feel that six months in certain aggravated situations is not too much.

REPRESENTATIVE DARKO spoke in favor of the amendments, saying that they are basically a one-industry community; if the workers are put in jail, it interferes with their ability to work; they are fired and not only does the person who has been put in jail suffer, but the family also. She thought that by the sentence not being served consecutively, it would be of a benefit.

REPRESENTATIVE JENSEN commented that he particularly liked the first amendment, as the testimony from the judges is that they would like some control on the first offense - they would not only have 24 hour minimum, but would also have some additional control. He thought that up to sixty days could steer these people into some kind of program of one kind or another. He commented that without the authority, the judges would put somebody in jail; and 24 hours later, they will be out and, in many cases, abusing again.

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REPRESENTATIVE KEYSER commented that he did not mind the first amendment, but he had some problems with the second one, because they are talking about the second conviction of driving under the influence of alcohol; the judge is going to put him in there for one day, lets him out for three, then going to send him up to Hardin the second day, then bring him back and he finally gets his seven days in. He did not feel that this is the deterrent that is being sought in this bill. He thought that the public wants a deterrent; and for a second conviction, he did not feel that that was too steep.

REPRESENTATIVE EUDAILY noted that if they adopt that second amendment, they will have to change the title too.

REPRESENTATIVE ADDY indicated that if the judge, on a second conviction for DUI, didn't feel that the conviction was necessary, the prosecutor could charge them with something else; and he thought that they should have that second DUI on their records. He said that if you sentence someone to jail for seven consecutive days because of DUI, who are you going to let go. He said that is what the judges are going to be facing, but he felt that seven consecutive days would put an administrative burden on the judges.

REPRESENTATIVE KEYSER commented that he thought the counties should face up to the problems they are having. REPRESENTATIVE ADDY emphasized that he agreed with that and he has been arguing that for the last two years.

REPRESENTATIVE SPAETH expressed surprise that his justice of peace and his city judge, who are law-and-order judges, were very distressed with this and thought it was a terrible thing. He said they did not have trouble with the adding on, but they were distressed with the consecutive days; they essentially wanted some flexibility as they have a good working relationship with the alcoholic program; and they said that, if we do that to them, they will essentially not be sending anyone to jail. He asserted that they do believe in punishing these people.

REPRESENTATIVE HANNAH commented that he was confused, since they killed a bill a few weeks ago relating to chastising judges for not sentencing people according to statutes; now

we hear that the judges are saying that they are not going to obey the law; and they are not going to put people in jail. He contended that a judge has a responsibility and his responsibility is to sentence people according to the law. He thought the legislature's responsibility is to decide whether we want to put sentencing requirements on the books; and if there is a jail problem, that is the responsibility of the county.

CHAIRMAN DAVE BROWN declared that by passing bills like this and a lot of others that we have had in this session, that we are totally ignoring the administrative burden that is placed on local governments; and he felt that we place them in an impossible position. He stated that he also has problems with the first amendment relating to 24 consecutive hours and not leaving that up to the judge. He explained that the Continental Oil Refinery in Billings has a very strong alcoholic treatment program and the bulk of the cases (those individuals picked up for DUI or a violation that resembles DUI) are sentenced by the judge to a mandatory alcohol treatment program and there is a major network that goes on between the employer, the employee and the court system. He felt that this serves justice but that individual is given a chance for correction; and in passing bills like this, they are selling some people down the river and he did not feel that they should do this.

REPRESENTATIVE ADDY said that they know how he feels about mandatory minimum sentences, but he thought that this is truly a minimum, at least for the first offense. He explained what he is trying to propose here is something that is slightly disagreeable with everything they could pass. He felt that they should send a message out of here that alcohol abuse is not going to be an excuse.

REPRESENTATIVE KEYSER moved that they segregate the amendments. A vote was taken on the first amendment on page 1, lines 15 and 16, following "for" insert, "not less than" and following "hours" insert "or more than 60 days". The motion carried with 13 voting aye and 5 voting no. See ROLL CALL VOTE.

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A vote was taken on the second amendment, on page 1, line 23, strike "consecutive" and on line 24, strike "30 days" and insert "6 months". The motion carried with REPRESENTATIVE RAMIREZ, REPRESENTATIVE DAVE BROWN, REPRESENTATIVE SEIFERT, REPRESENTATIVE FARRIS, REPRESENTATIVE IVERSON and REPRESENTATIVE KEYSER voting no.

A vote was taken on the third amendment, on page 2, lines 4 and 5, strike "30 consecutive" and insert "90". The motion carried with 12 voting aye and 6 voting no. See ROLL CALL VOTE.

REPRESENTATIVE EUDAILY said that he had something written down but he can't remember - a medical escape clause on the top of page 2 and on lines 19 and 20. REPRESENTATIVE ADDY said that the one area in which a judge can exercise some discretion is if he finds that the imposition of jail sentence will impose a risk to a defendant's physical or mental wellbeing; and some witnesses indicated that they would need a note from the doctor.


REPRESENTATIVE JENSEN replied that he did not think that was unreasonable in the light of at least one recent jail death.


REPRESENTATIVE SEIFERT wondered if judges are usually so available that the 24 hours would not be up before they could get in touch with a judge. REPRESENTATIVE ADDY replied that that would be part of the pre-sentencing report, and this would be available at the time of sentencing.

REPRESENTATIVE JENSEN commented that if someone had attempted suicide, the judge might want to take that into consideration before they put him in jail.

A vote was taken on the DO PASS AS AMENDED. The motion carried with REPRESENTATIVE SEIFERT, REPRESENTATIVE DAVE BROWN, REPRESENTATIVE FARRIS and REPRESENTATIVE IVERSON voting no.

The meeting adjourned at 5:16 p.m.

  
DAVE BROWN, Chairman

  
Alice Omang, Secretary

ROLL CALL VOTE ----- HOUSE JUDICIARY COMMITTEE

	Date: 2/16 No: HB 250 1st Amend. 3rd Amend.	Date: No:	Date: No:	Date: No:	Date: No:
BROWN, Dave	no	no			
ADDY, Kelly	yes	yes			
BERGENE, Toni	no	yes			
BROWN, Jan	yes	yes			
CURTISS, Aubyn	yes	yes			
DAILY, Fritz	---	---			
DARKO, Paula	yes	yes			
EUDAILY, Ralph	yes	yes			
FARRIS, Carol	no	no			
HANNAH, Tom	yes	yes			
IVERSON, Dennis	no	no			
JENSEN, James	yes	yes			
KENNERLY, Roland	yes	yes			
KEYSER, Kerry	yes	no			
RAMIREZ, Jack	yes	no			
SCHYE, Ted	yes	yes			
SEIFERT, Carl	no	no			
SPAETH, Gary	yes	yes			
VELEBER, Dennis	yes	yes			
13-5		12-6			



COMMITTEE

HOUSE JUDICIARY

ROLL CALL VOTE -----

	Roll Call Date: No:	Roll Call Date: No:	Roll Call Date: No:	Roll Call Date: No:	Roll Call Date: No:	Roll Call Date: No:
	RD 250. HB 250					
BROWN, Dave	yes	no				
ADDY, Kelly	yes	yes				
BERGENE, Toni	no	yes				
BROWN, Jan	yes	yes				
CURTISS, Aubyn	yes	yes				
DAILY, Fritz	-	-				
DARKO, Paula	yes	yes				
EUDAILY, Ralph	yes	yes				
FARRIS, Carol	no	no				
HANNAH, Tom	yes	yes				
IVERSON, Dennis	no	no				
JENSEN, James	yes	yes				
KENNERLY, Roland	yes	yes				
KEYSER, Kerry	yes	yes				
RAMIREZ, Jack	yes	no				
SCHYE, Ted	yes	yes				
SEIFERT, Carl	no	no				
SPAETH, Gary	yes	yes				
VELEBER, Dennis	yes	yes				

13-5 Nov 6 Nov

Proposed Amendments to HB 705

1. Title, line 5.

Following: "ACT"

Insert: "REDEFINING FINAL SALARY FOR FUTURE MEMBERS OF THE  
JUDGES' RETIREMENT SYSTEM;"

2. Page 1.

Following: line 14

Insert: "Section 1. Section 19-5-101, MCA, is amended to read:

"19-5-101. Definitions. Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Accumulated deductions" means the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(3) "Beneficiary" means the person whom the contributor nominates by written designation, duly acknowledged and filed with the board.

(4) "Board" means the public employees' retirement board.

(5) "Contributor" means any person who has accumulated deductions in the fund standing to his credit.

(6) "Final salary" means:

(a) for a member joining the retirement system before July 1, 1983, the annual current salary for the office retired from.; or

(b) for a member joining the retirement system on or after July 1, 1983, the annual salary for the office retired from as of the date of retirement.

(7) "Fund" means the Montana judges' retirement system agency account.

(8) "Involuntary retirement" means a retirement not for cause and before retirement age.

(9) "Member's annuity" means payments for life derived from contributions made by the contributor.

(10) "Penalty retirement age" means 70 years of age.

(11) "Retired judge" means any judge or justice in receipt of a retirement allowance under this chapter.

(12) "Retirement allowance" means the state annuity plus the member's annuity.

(13) "State annuity" means payments for life derived from contributions made by the state of Montana."

Renumber: subsequent sections.

3. Page 2, line 22

Strike: "30%"

Insert: "32%"