

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 11, 1985

An Executive Session of the Judiciary Committee was called to order by Chairman Hannah on Friday, January 11, 1985 at 9:00 a.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: Roll call was taken. All members were present with the exception of Representative Brown who had been previously excused by Chairman Hannah. Representative Brown informed the chairman as to how he wishes to vote on the following bills to be decided before the committee today.

ACTION ON HOUSE BILL NO. 115: Representative Gould moved that HB 115 DO PASS. The motion was seconded by Representative O'Hara. Representative Miles, chief sponsor of HB 115, made a substitute motion TO TABLE the bill. The motion was seconded by Representative Hammond. She explained to the committee her reasons for the motion to table. She had talked with several clerk and recorders along with the health department. They relayed to her that they were concerned in that this bill would create problems by completely opening all death certificates up for review by the public. The clerk and recorders would also be required to define portions of the law dealing with what an applicant's tangible interest is in the data. She is further concerned about the constitutional question this bill presents. She informed the committee that she intends to redraft further legislation dealing with this matter. With that, roll call vote was taken TO TABLE the bill. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 106: Representative Keyser moved that HB 106 DO PASS. The motion was seconded by Representative Gould, and the chairman opened the meeting for discussion on this particular bill.

Representative Eudaily was concerned about the clarity of the language and whether or not it set out to solve the problem it was originally designed to. Representative Krueger stated that he opposes the passage of this bill based on a single problem that arose in Kalispell.

It was Representative Addy's opinion that the people have made their decision when electing a district judge. Representative Mercer also feels that this is a very good bill in that the people of the state of Montana would make the decision in whether or not they wish former judges, (who have been defeated in the last election) to be prohibited from deciding judicial cases. Representative Montayne had a few questions concerning the present law regarding the disqualifications of judges which Representative Addy adequately addressed.

Representative Addy moved to amend HB 106 as follows: Page 2, line 14 and page 2, line 18 by striking, "prohibiting" and inserting in lieu thereof, "continuing to permit". Motion was seconded by Representative O'Hara.

Representative Eudaily moved for a substitute motion to strike "prohibiting" on lines 14 and 18 and insert in place of it, "allowing". Representative Mercer seconded the substitute motion. Representative Eudaily then moved to withdraw his motion. Representative Darko pointed out that the title of the bill would need to be amended in order to be consistent with the proposed amended bill. A few of the members suggested that the title be amended on line 8 by striking the word, "from" and inserting in lieu thereof the word, "to" and on line 9, striking the word, "serving" and inserting in lieu thereof the word, "serve".

Representative Keyser stated that he opposes all motions to amend and feels the original language is adequate. Representative Gould agree with Representative Keyser, but he thought the amendment proposed by Representative Addy in the proposed new section would probably be better than the original language. Representative Montayne agreed with Representative Keyser in that he felt the original language would be well understood by the people of Montana. Representative Eudaily felt the language in the title of the bill should be left as is.

Representative Miles spoke briefly against the bill. She feels that we should not be able to prohibit the Supreme Court from calling in a former judge who was defeated in the last election to try a case. She thought that elections vary and some former judges, even though not presently elected to serve as a judge, are very capable to handle cases.

Chairman Hannah asked for a roll call vote to be taken on the previous motion to pass the bill. Due to a tie vote, the bill will be sent to the floor without recommendation.

ACTION ON HOUSE BILL #83: Representative Gould moved that HB 83 DO PASS. Representative Hannah seconded the motion and further opened the meeting up for discussion. Representative Rapp-Svrcek stated that he opposed Representative Gould's motion for a do pass. He feels that the bill would allow a sheriff or peace officer to enter a domicile where damages are taking place when a restraining order would solve the problem. Representative Montayne opposes the passage of this bill for the reasons that this is a one landlord bill. He said that he feels this bill would jeopardize the renters in Montana as a whole.

Representative Eudaily had questions relating to amendments pertinent to 70-24-423. Chairman Hannah informed the committee that this particular section did not apply to the issues in the bill.

Representative Bergene entertained a substitute motion for HB 83 DO NOT PASS. The motion was seconded by Representative Rapp-Svrcek. Discussion followed. Representative Keyser stated that the bill basically doesn't do anything and won't get the job done that it intends to do. The question was called and a roll call vote was taken on the DO NOT PASS motion. The motion carried with Representative Hannah dissenting. Representative O'Hara suggested that perhaps the Montana Realtor's Association be contacted about preparing a more workable piece of legislation.

ACTION ON HB 50: Representative O'Hara moved that HB 50 DO PASS. Representative Addy seconded the motion and discussion followed. Representative Addy moved to amend the bill on page 2, line 3 and line 4 by striking, "or in a recreational vehicle as defined in 61-1-132". Motion was seconded by Representative Hammond. Representative Addy further proposed to amend page 2, line 15 by striking: "less than \$100 or"; page 2, line 17, strike: "less than \$300 or"; page 2, line 19, strike: "less than \$500 or". Chairman Hannah suggested that we find out how many members are really interested in passing the bill before making amendments.

Representative Gould expressed his opposition to the passage of HB 50. Representative Addy moved that the bill be tabled. The motion was seconded by Representative Krueger, and a roll call vote was taken. The motion failed 8 to 10. Representative Gould moved for a substitute motion that HB 50 DO NOT PASS. The motion was seconded by Representative Grady. Representative Gould feels that the bill is not needed, and that the present procedure is sufficient. Representative Grady spoke in favor of the substitute motion stating that he feels there are sufficient laws dealing with open container. Representative Keyser also stated his approval of Representative Gould's motion. He feels that this bill could be abused in some areas, and he also feels that the present DUI laws are getting the job done. He said that many towns throughout Montana have adopted laws dealing with this problem.

Both Representatives Poff and Mercer approved of the alternate motion. Representative Mercer felt that while the we are trying to stop people from drinking and driving, we would be punishing the other passengers in the car if this bill were passed.


It was Representative Miles' opinion that the bill would not address the problem any more clearly. With that, the question was called and roll call vote taken. The previously made DO NOT PASS motion was carried with Representatives Bergene, O'Hara and Hannah dissenting.

ACTION ON HOUSE BILL NO. 69: Representative Eudaily moved that HB 69 DO PASS. The motion was seconded by Representative Hammond and further discussed. Representative Eudaily pointed out that the only problem he had with the bill was its language on page 3, line 10 through 12. He stated that he was unclear as to what this language actually means. Representative Hannah feels that this portion of the bill is very broad and needs to be better defined.

Representative Keyser stated that he had a problem with the language on page 2, line 20-21 in that it opens the doors for the SRS to come in under any circumstance and have the right to videotape. He feels the bill goes way beyond the title, and the title doesn't allow for this extended authority. Again, he stated his concern for the rights of the accused and said that the videotape from the initial videotaping session should not be present as evidence because the defendant and the defendant's attorney were not present when the tape was made and were thus unable to have the opportunity to cross-examine the victim. Representative Krueger has the same concern. Representative Hammond pointed out that this bill sides with children more than it does with the accused.

Representative Krueger made a substitute motion that HB 69 DO NOT PASS. The motion was seconded by Representative Grady. Representative Addy made a further motion TO TABLE the bill. He informed the committee that if the bill were tabled the measure could be refined. The motion was seconded by Representative Montayne. The motion being non-debatable, a roll call vote was taken. The motion TO TABLE the bill was carried with Representative Grady and Rep. Rapp-Svrcek dissenting.

ADJOURN: Upon motion of Representative Keyser, said motion seconded, Chairman Hannah adjourned the meeting at 9:30 a.m.


TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1/11/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)			✓
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

January 11 1933

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 106

FIRST reading copy (WHITE)
color

PROHIBITING ASSIGNMENT OF CERTAIN RETIRED JUDGES FOR TEMPORARY SERVICE

Respectfully report as follows: That HOUSE Bill No. 106

WITHOUT RECOMMENDATION

~~XXXXXX~~
DO PASS

ER 11/15/5

STANDING COMMITTEE REPORT

January 11

1985

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 50

FIRST reading copy (WHITE)
color

OPEN CONTAINER LAW

Respectfully report as follows: That HOUSE Bill No. 50

DO NOT PASS

~~NOT PASS~~

JR 11/1/85

STANDING COMMITTEE REPORT

January 11 1935

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 83

FIRST reading copy (WHITE)
color

RESTRAIN TENANT FROM DAMAGING PROPERTY DURING NOTICE OF TERMINATION PERIOD

Respectfully report as follows: That HOUSE Bill No. 83

DO NOT PASS

DOX PASS

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/11/85

BILL NO. 115

TIME 8:15

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)		
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Representative Miles moved to table HB 115. The motion
was seconded by Representative Hammond, and the motion carried
unanimously.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

8:45

DATE 1-11-85

BILL NO. 106

TIME

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	✓
John Cobb		✓
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould	✓	
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser	✓	
Kurt Krueger		✓
John Mercer	✓	
Joan Miles		✓
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff		✓
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Representative Keyser moved that HB 106 DO PASS. The
motion was seconded by Representative Gould. Due to a split vote,
bill will be sent to the floor without recommendation.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-11-85 BILL NO. 83 TIME 9:00

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Representative Bergene moved that HB 83 DO NOT PASS.

Motion was seconded by Representative Rapp-Svrcek and carried
with Representative Hannah dissenting.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/11/85 BILL NO. HB 50 TIME 9:10

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould		✓
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	✓
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff		✓
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Representative Addy moved that HB 50 BE TABLED. Motion
was seconded by Representative Krueger. Motion failed.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/11/85 BILL NO. HB 50 TIME 9:20

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene		✓
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Representative Gould moved that HB 50 DO NOT PASS.

Motion was seconded by Representative Grady and carried.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/11/85 BILL NO. HB 69 TIME 9:30

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff	✓	
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)		
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Representative Addy moved to TABLE HB 69. Motion was
seconded by Representative Montayne and carried.