

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 24, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Thursday, January 24, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Rep. Gould who had been previously excused.

CONSIDERATION OF HOUSE BILL NO. 246: Hearing commenced on HB 246 with Rep. Connelly, its chief sponsor, testifying. She said what this bill basically does is ask for authority to the court to seize a driver's license on conviction requiring mandatory suspension.

Larry Majerus, administrator for the Motor Vehicle Division, testified in support of the bill. He told the committee that this bill was requested by the department because over the last few years there has been an enormous increase in the their workload largely due to the increase of enforcement of DUI's. As a result, they have had to suspend more licenses.

There being no further proponents nor opponents present to testify on the bill, Chairman Hannah opened the floor up for questioning.

In response to a question of Rep. Eudaily's, Mr. Majerus said there is not authority in the law for judges to suspend. The judge does not actually do any suspending or revoking of driver's licenses in DUI cases.

There being no further questions, hearing closed on HB 246.

CONSIDERATION OF HOUSE BILL NO. 286: Rep. Les Kitselman, chief sponsor of this bill, spoke in favor of the bill. Rep. Kitselman stated that this bill is a bill that takes care of a problem that has arisen with the theft of utilities. He referred to an incident that happened in Billings. This bill defines what bypassing is, what the individuals are, what tampering means, what utilities mean, what services mean and then simply states that the utility companies would be able to recover reasonable values after a person has been found liable of a theft. He referred to page 3, line 3 to 6 stating that this simply says that the utilities can receive up to three times the reasonable value of the utility's services actually provided and shall award to the utility its costs, reasonable

attorney fees, etc.

John Alke, representing Montana-Dakota Utilities, stated his support for the bill. He said the meat of the bill is really spelled out in section 4 of the bill. He feels that litigation is critical. It is not intended to actually be used against our customers, but rather it is intended to act as a deterrent from attempting to steal utility services. He said that there is a very small group of people who do this who do it at the expense of the other customers. He also said this tampering is a highly dangerous and deadly thing to be involved in. Mr. Alke informed the committee that the county attorney has a workload that will not permit them to prosecute these people.

Mike Zimmerman, attorney for the Montana Power Company, appeared and spoke in favor of this bill. He passed around pictures that show different meters that are being tampered with. He said the power company supports this bill because tampering and theft is a problem -- and the problem that results is that the remaining customers must pick up this additional cost that they would not otherwise have to do. He believes this bill will provide a public policy signal that meter tampering will not be tolerated in this state. Not only will it deter theft in tampering, it will also provide a safety factor to keep people from tampering with the deadly force of electricity.

David Dietrich, attorney for Pacific Power and Light, also testified in support of the bill. He informed the committee that in 1984 there were 24 incidents of meter tampering in the Kalispell area. None of these were prosecuted by the county attorney's office. The problem that remains is that there is not an adequate civil remedy.

There being no further proponents or opponents present to testify on the bill, and Rep. Kitselman closing, the floor was opened to questioning from the committee.

In response to a question asked by Rep. Rapp-Svrcek, Mr. Alke said they determine how long the meters have been tampered with by computing on the low side the electrical usage of the home and the number of people living in that home.

Rep. Rapp-Svrcek requested Rep. Kitselman to state his reasoning behind the three times the reasonable value of the utility services. Rep. Kitselman they calculate this on the low side, and he further feels this is not unreasonable.

There being no further questions, hearing concluded on HB 286. Chairman Hannah called an executive session at this time.

ACTION ON HB 246: Rep. Addy moved that HB 246 DO PASS. The motion was seconded by Rep. Hammond. There being no discussion and the question being asked, the motion passed with Rep. Brown dissenting.

ACTION ON HB 286: Rep. Grady moved that HB 286 DO PASS. Rep. Eudaily seconded the motion. Discussion followed.

Rep. Rapp-Svrcek stated that he has a few problem with the bill. He does agree with the intent of the bill; however, he questions being able to charge a customer, and being able to receive from the customer three times the reasonable value of the utility services given the fact that the utilities cannot really come up with an accurate amount of what services were used.

Rep. Mercer moved to amend the bill by deleting section 5 of the bill. He also wishes to amend page 2, line 5 by adding after "service" the words, "with the intent to obtain the utility service at less than its reasonable value."

Rep. Keyser spoke against the motion. He said that by adding the word intent, you have placed an absolute and almost an impossible burden upon these companies of going into court. He spoke strongly against adding the word intent and feels that by doing so, the bill will be hurt.

Rep. Rapp-Svrcek spoke in favor of Rep. Mercer's amendment. He feels that this language would only protect someone who inadvertently damages their meter.

Rep. Montayne feels that if anything should be amended, the penalties should be made stiffer.

Representative Miles said she has a lot of problems with this bill as far as the liability portion of the bill especially where it concerns other occupants of the building the meter is being tampered with. She stated further that she had no problem as to the intent of this legislation.

Rep. Krueger moved that HB 286 BE TABLED until further action can be taken on it perhaps tomorrow. The motion to table failed 7-9 after having been seconded by Rep. Rapp-Svrcek. (See roll call vote)

The committee considered the previous motion made by Rep. Mercer to include on page 2, line 5 the intent language as previously stated. The motion was seconded by Rep. Eudaily and a roll call vote was taken. The motion failed 4-12.

Rep. Mercer further moved that HB 286 be amended to delete section 5 in its entirety. Rep. Eudaily seconded the motion, and discussion followed.

Rep. Grady spoke against this amendment while Rep. Addy offered his support for the amendment. The question was called and the motion carried unanimously.

Rep. Addy offered another amendment which would amend page 3, line 4, after "provided" strike ", and" and place a "." in lieu thereof and on line 5, strike, "including" and insert, "in addition, the court shall award the prevailing party its costs including reasonable attorneys fees incurred in maintaining or defending the action." Rep. Addy is trying to make this a reciprocal item to be recovered by the prevailing party.

Rep. Hannah explained the intent of the amendment which would give both parties an equal standing as far as payment of costs, attorneys fees to the prevailing parties.

Rep. Mercer spoke in opposition of the amendment. He thinks the legislature should carefully consider what they are doing when they provide these attorney fees. He says this would not give the people incentive to settle their disputes out of court. He stated that Rep. Addy's amendment is needed, but after it is adopted, Rep. Mercer wishes to propose an amendment which would pull attorneys fees out. The question was called for, and the motion to adopt Rep. Addy's amendment was carried with Reps. Eudaily and Grady dissenting.

Rep. Krueger moved to amend on page 3, line 2 by striking the word "shall" and inserting in lieu thereof the word, "may"; also strike the word, "for" and insert "up to". He said this amendment would allow the court to provide treble damages as he so desires up to three times the reasonable value. So basically, the amendment would give the court discretionary authority.

Both Reps. Bergene and Grady spoke in opposition of the amendment. Rep. Grady feels that the amendment would take the intent question out. He feels that the deterrent would be taken away if the amendment were adopted. Also speaking in opposition of the amendment was Rep. Montayne.

Rep. Krueger feels that his proposed amendment would benefit both parties and that the deterrent would not be taken away.

It was Rep. O'Hara's feeling that the utility companies would be conservative in their estimates. They are going to be very careful that they can prove what the damages were. He feels that Rep. Krueger's amendment would take out the incentive. Rep. Keyser also spoke against the amendment.

A roll call vote was taken on this motion. Motion failed 13-3. (Rep. Rapp-Svrcek seconded this motion.)

Rep. Keyser further moved to amend page 3, line 4 following the word, "provide" by striking lines 4, 5, 6, 7, and 8 in their entirety. Rep. Miles seconded the motion.

Rep. Addy spoke in opposition to the motion to amend. He said that by striking this language, you are not making it less likely that the power companies are going to bring these actions -- you are making it less likely that the poor innocent consumers are going to defend themselves.

Rep. Mercer stated that any time we extend attorney fees, we should be careful. He pointed out the fact that courts are already overly crowded with litigation and that people should be encouraged to resolve their differences outside the court system.

Rep. Rapp-Svrcek did agree with Rep. Mercer in that the courts are definitely overcrowded; however, he feels we should provide an equal footing between the power companies and the defendants. It was Rep. Keyser's opinion that the defendant has a lot of recourses against the power companies if they are charged wrongly.

Rep. Krueger moved a substitute motion to amend line 4, of page 3, after the newly adopted language, "in addition, the court shall" to strike the word "shall" and insert in lieu thereof the word, "may". The motion was seconded by Rep. Addy. The amendment would allow the award of the prevailing costs in the discretion of the court. The motion passed with Rep. Montayne dissenting.

Discussion was held on Rep. Keyser's original amendment to delete lines 4, 5, 6, 7 and 8 in their entirety.

Rep. Grady feels that by deleting this portion of the bill will bring us back to the original intent of the bill.

The question was called and Rep. Keyser's motion carried 11-5. (See roll call vote.)

Rep. Grady moved that HB 286 DO PASS AS AMENDED. The motion was seconded by Rep. Keyser and carried 15-2. (See roll call vote.)

ADJOURN: There being no further business, the meeting adjourned at 9:45 a.m.



REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-24-85

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	✓		

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. HB 286 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: Motion was made by Rep. Krueger
to table the bill until further action could be
taken. Motion was seconded by Rep. Rapp-Svrcek:
Motion failed 7-9.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. HB 286 TIME 9:05

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: Motion was made by Rep. Mercer to amend on page 2,
line 5 of the bill by adding after "service" the words, "with
the intent to obtain the utility service at less than its
reasonable value." The motion was seconded by Rep. Eudaily,
and it failed 4 to 12.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85

BILL NO. 286

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: Rep. Krueger moved to amend page 3, line 2 by striking
the word, "shall" and inserting in lieu thereof the word,
"may"; the amendment would also strike, "for" and insert "up to".
Motion failed 13 to 3.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. H.B. 286 TIME 9:43

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: Rep. Keyser moved to amend page 3, line 4 following
the word, "provide" by striking lines 4, 5, 6, 7, and 8 in
their entirety. The motion was seconded by Rep. Miles and
carried 11 - 5.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. 286 TIME 9:45

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: Rep. Grady moved that HB 286 DO PASS AS AMENDED.

The motion was seconded by Rep. Keyser and carried 15-2.

VISITOR'S REGISTER

HOUSE

JUDICIARY

COMMITTEE

HOUSE BILL 246, 286

DATE 1-24-85

SPONSOR 246 (Rep. Connelly) 286 (Rep. Kitzelmeier)

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

Thursday, Jan. 24 19 85

SPEAKER:

MR.

JUDICIARY

We, your committee on

HOUSE

having had under consideration Bill No. 246

FIRST

reading copy (WHITE)
color

SEIZURE OF DRIVER'S LICENSE ON CONVICTION REQUIRING MANDATORY
SUSPENSION

HOUSE

Respectfully report as follows: That Bill No. 246

--DO-PASS--

STANDING COMMITTEE REPORT

January 24 1985

SPEAKER:
MR.

JUDICIARY

We, your committee on

having had under consideration **HOUSE** Bill No. **286**

FIRST reading copy (**WHITE**)
color

**PROVIDING CIVIL PENALTY FOR BYPASSING OR TAMPERING WITH
UTILITY METER**

HOUSE **286**

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

Be amended as follows:

1. Page 3, line 4.
Following: "provided"
Strike: "and" through "case" on line 8.

2. Page 3, following line 3.
Strike: Section 5 in its entirety.

AND AS AMENDED

DO PASS