

MINUTES FOR THE MEETING  
JUDICIARY COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

January 28, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Monday, January 28, 1985, at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 426: Rep. Gary Spaeth, sponsor of the bill, testified in support of its passage. He informed members that the bill was introduced at the request of the Public Service Commission. This bill applies not only to the Public Service Commission, but applies to all administrative action. He said it is a relatively simple bill. Essentially, if a decision has been issued before an administrative body -- and that decision is final, then an individual has the remedy of going to district court to appeal that decision. This is set out in the administrative procedures. But, when a person goes into district court and because the final decision had been issued before an administrative body, the individual may want to have the decision set aside. At present, there is no criteria for requesting the district court to set aside such a decision. This bill would essentially require that if an individual wants a preliminary injunction modifying the decision of the administrative body, the requirements would have to be met as set out in 27-19201.

Opal Winebrenner, staff attorney for the Montana Public Service Commission, testified in support of the bill. She said the commission needs this bill, and related an experience demonstrating that need. A copy of her testimony was submitted and is attached hereto, marked as Exhibit A.

Karla M. Gray, representing the Montana Power Company, testified in support of HB 426. She said the power company thinks that 98% to 98.5% of the judges in the state probably apply those standards as set out in 27-19201 in some fashion anyway. She said the company is more concerned with the procedural requirements that would be included if this bill were to pass, so that other parties could get notice in order to participate in hearings.

There were no additional proponents, nor any opponents.

Rep. Spaeth made closing comments. He said that the main argument in favor of HB 426 is that the bill is detailed, but it also sets out the procedure for a person to set aside an agency decision. He feels it is good for both the utilities and their opponents.

Hearing closed on HB 426.

CONSIDERATION OF HB NO. 425: Rep. Spaeth, chief sponsor of HB 425, testified before the committee. He said this bill was introduced at the request of the Montana Treasurer's Association in support of the Montana County Assessor's Association. The purpose of the bill is to provide means to collect taxes on leasehold improvements after the taxes have been allowed to go delinquent. At the present time, when the owner of the leasehold improvements allows his taxes to become delinquent, the delinquent taxes are only a lien on such improvements and cannot be collected except through that procedure set out for real property taxes. That procedure takes approximately three years. The purpose of this legislation allows the delinquent taxes to become a lien on the improvement itself as though it were personal property and upon all other personal property in the possession of the delinquent taxpayer. Essentially, it would speed up the collection process.

Proponent Charles Graveley appeared on behalf of the Montana County Treasurer's Association and the County Assessor's Association. He said that as the law currently stands, the taxes are a lien only against those improvements. If an individual is declared bankrupt, or if he goes out of business and disposes of those leasehold improvements, the county is essentially without a remedy or without property to seize in order to pay those delinquent taxes. They are treated as though they are taxes on delinquent property. He further stated that the county treasurer must every year on or before the last Monday in June publish a list of all property upon which county taxes are delinquent, and post them for sale. The sale is conducted in July.

The personal property taxes that are allowed to become delinquent, the treasurer can then direct the sheriff to levy upon and sell the personal property within 30 days after they become delinquent. Mr. Graveley said he feels by making those taxes on leasehold improvement

be treated as if those leasehold improvements were personal property, that the treasurer's office on behalf of the county and behalf of the state would have a stronger lever to use to collect the delinquent taxes.

Mr. Graveley stated that the counties, local governments and the state are short of revenue, and this bill does nothing more than give them a handle with which to collect the taxes. It does not increase anyone's taxes; it does not place them at any greater risk. It offers a protection for local and state government.

There were no further proponents nor any opponents.

Rep. Spaeth made a brief closing statement.

Chairman Hannah opened the floor to questions from the committee.

In response to a question from Rep. Keyser, Mr. Graveley told the committee there is another bill correcting an error that occurred the last time that particular section (15-24-202) of law was amended. It was the intent the last time it was amended to apply to both improvements and mobile homes.

Rep. Mercer said he feels leasehold improvements should be treated more like real property for purposes of taxes. He feels that it would be much more sensible to treat leasehold improvements like real property and only require the lien to apply in that respect.

Mr. Graveley said this bill does not give the treasurers any more authority than they currently have with respect to other personal property. He further stated that delinquent taxes upon personal property in all other situations except leasehold improvements are a lien also upon all real property that is owned. All HB 425 would do is put the taxes owing on leasehold improvements in the same category as all other personal property. Mr. Graveley said very rarely is any personal property sold for taxes.

Rep. Montayne stated a concern with the new section on page 12. He wanted to know if and what additional rules would be applied.

Rep. Spaeth said most of the bills have this provision if there is a remote possibility of there being a rule-making authority. He feels there will not be any major problems in this bill because there will not be any major rule-making changes.

Rep. Hannah asked if Rep. Spaeth had any objections to striking that section of the bill. Rep. Spaeth said he saw no problem with striking that section. He said such a provision was routinely being tacked on to legislation.

Hearing closed on HB 425.

CONSIDERATION OF HOUSE BILL 408: Rep. Gary Spaeth, chief sponsor of this bill, testified in support of it. He said this bill is relatively simple in what it does, and is a good concept. He said the bill would encourage settlement of litigation.

Karl Englund, representing the Montana Trial Lawyers Association, testified as a proponent. This bill would change the current law which now provides that interest on judgment accrues from the date of the judgment. This bill would provide that interest accrues from the date of filing of the claim. The Trial Lawyers Association supports the bill for two major reasons: first, it is not uncommon for individuals who have been involved in litigation to have to borrow money to make it through the period between the time when an injury occurred and the time the judgment is awarded. The interest on the money they borrow is charged whether they are awarded a judgment or not. Second, this bill is a tool to help settle cases before they reach trial. The whole notion of recovery in a personal injury action is to make the injured person whole as a result of the litigation over the injury that was suffered.

Mike Meloy, serving on the board of directors for the Montana Trial Lawyers Association, testified in support of the bill. Mr. Meloy said the bill will encourage early filing of claims and he feels that it will provide incentive to settle litigation quickly.

There were no more proponents, and Chairman Hannah asked for opponents to state their opinions on HB 408.

Glen Drake, representing the American Insurance Association, testified against the bill. Mr. Drake said he does not believe this bill will help settle cases. He said the sole purpose of this bill is to increase the amount of judgments. He further stated that if the committee believes juries award sufficient amounts of damages in their decisions, then the bill should not be passed.

There being no further opponents, Rep. Spaeth closed, and the floor was opened to questions.

In response to a question by Rep. Rapp-Svrcek, Mr. Meloy said he disagrees with Mr. Drake that a jury is now able to award interest on any sums they consider to be due and owing. He feels this bill will help speed the settlement of claims because there would be no incentive to wait for trial.

In response to a question by Rep. Krueger, Mr. Meloy said that an insurance company usually assigns a value to a case. Most insurance companies will set aside the amount of money they think the case is worth. He said that 80% to 90% of those cases are settled.

Rep. Mercer asked if Rep. Spaeth feels that the date of the service of the process, rather than the date of the filing of the action is fair. Rep. Spaeth said he had no problem with solving that problem so there is no three-year delay.

Hearing closed on HB 408.

CONSIDERATION OF HB 40: Rep. Tom Hannah, sponsor of this bill, testified in support of it. He stated that this is a bill designed to adopt the "Leon case" which was recently ruled on by the United States Supreme Court in relation to evidence that is admissible. This bill is an attempt to take the language out of the Leon case -- the two primary points that were made by the Supreme Court -- and to codify them in Montana law. The exclusionary rules deal with evidence that is taken under search warrant and is later excluded from use in court. Rep. Hannah read to the committee from United States codes.

Rep. Hannah said his intention is to lay this battle to rest. He said the legislature should try to keep it as narrow as possible and deal only with the Supreme Court's opinion and position on the matter.

There were no further proponents.

Steve Nardi, an attorney from Kalispell, testified in opposition to the bill. He said the bill is a very serious deviation and is an assault on the Montana Constitution. The remedy being sought does not solve the problem, he said.

Mr. Nardi said recent federal studies clearly show that only .04% of all criminal cases were defected by a suppression of evidence. He further stated that the bill would reward incompetent police officers and penalize efficient officers.

He went on to say that many of his police officer friends are not terribly excited about this bill. He said it would promote and attract police shenanigans.

Gary Overfelt, attorney for the American Civil Liberties Union, testified in opposition to the bill. He said that the bill encroaches on judiciary turf. He, too, encouraged the committee to read the "Leon decision." He said he feels that the bill would give police officers more rights to invade individual privacy. He said that until we are able to get a perfect police officer, it is imperative that we check the powers that they are given.

There being no further opponents, Rep. Hannah closed.

He said the studies are available that would show that it has a greater impact than the .04% indicated by Mr. Nardi. (Following further comments, the floor was opened to questions.) Rep. Hannah said the question that should be asked is, "Is there really a search for the truth?" "Are we trying to find out if we have a criminal out there, or aren't we?"

Rep. Addy said that to the extent that it does have a big impact, it is a fairly serious erosion of the Fourth Amendment. To the extent that it doesn't, it won't do anything more than make us feel better.

Rep. Bergene wondered if Rep. Hannah would agree that there could be a lot of problems with how "good faith" is interpreted and the frequency in issuing warrants.

Rep. Hannah said there is no doubt that there will be a period of time in which the court will decide what that actually meant. He said there would probably be some costs involved in nailing down all that the bill would mean.

Rep. Hammond wanted to know if Rep. Hannah agreed that issuance of search warrants was frequent. Rep. Hannah doesn't believe search warrants are easy to get.

Mr. Overfelt said he believes that justices of the peace very seldom reject an application for a search warrant.

In response to a question asked by Rep. Mercer, Mr. Nardi said that the problem he sees with justices of the peace is that they are basically untrained lay people. They have not had the training to make decisions on some of the very important issues involved.

There being no further discussion, hearing closed on HB 40.

Rep. Hannah informed the committee that executive action on HB 40 would not be taken until the committee has had a chance to review the Leon case.

ACTION ON HB 426: Rep. Addy moved that HB 426 Do Pass. The motion was seconded by Rep. O'Hara and discussion followed. After a brief discussion, the question was called and a roll call vote taken. The motion passed 12-6.

ACTION ON HB 425: Rep. Addy moved that HB 425 Do Pass. The motion was seconded by Rep. Hammond. Discussion followed. Rep. Montayne stated his support for this bill although he suggested that Section 7 of the bill be deleted. He said the department may take advantage of this extra privilege at a later time. On that basis, Rep. Montayne moved that Section 7 be stricken. The motion was seconded by Rep. Brown.

Rep. Eudaily had some questions with regard to deleting this material.

Rep. Addy said that if the committee changes the law to delete the material, the department cannot fully follow the intent unless it is given some extension of authority. He said what the committee had just done was exactly opposite what it tried to do.

Rep. Miles stated that she does not have any problem with the extension of authority that the bill would provide.

The question was called and the motion failed. Reps. Montayne and Hannah were the only two who voted in favor of the motion.

The question was further called to vote on the main body of the bill. The DO PASS motion as previously made carried, with Reps. Montayne and Hannah dissenting.

ACTION ON HB 408: Rep. Gould stated his opposition to passage of this bill. He said he feels that the bill goes against the basic principle that "a person is innocent until proven guilty." If a case is drawn out, and when that case is settled, the verdict is rendered, the judgment entered, there will be taken into consideration the amount of time since the case was filed in the eyes of the judge or the jury. He said he feels that would be considered.

Rep. Krueger argued that this bill would provide a definite incentive to settle litigation. The bill further allows any disputed claims to go to the conclusion of the jury. He feels that by placing an amount of 10% on the amount at the time of filing, we are encouraging defendants to examine the question of whether they are liable. It does not mean they are going to give away any of their rights to contest these actions. It just means they will take a closer look at it.

Rep. Mercer spoke against the bill. He moved to amend the bill on line 16 after the word "judgment" by inserting "against the party" and to further amend line 16 by striking "of" through "complainant" on line 18 in its entirety, and inserting, "a claim for relief is served on that party in civil action by the prevailing claimant." The motion was seconded by Rep. Keyser. Rep. Krueger suggested that the amendment be reflected in the title. The motion carried unanimously.

Rep. Brown further moved that HB 408 DO PASS AS AMENDED. The motion was seconded by Rep. Darko and discussion followed.

Questions were raised concerning whether in multi-party lawsuits if the party against whom the judgment is entered would be required to pay interest on the judgment. It was generally agreed that the interest amount would be added to the judgment, and the fact that more than one party could be responsible for the judgment would not increase the interest.

Rep. Mercer spoke against passage of the bill for various reasons. He said that the bill would not remedy the problem. He said it encourages the filing of litigation and reduces the incentive to settle cases out of court.



Rep. Brown said the bill would not encourage more frivolous cases to be filed in the courts. He said it would balance things out, and that he supports the bill even more with the newly adopted amendment.

Rep. Addy said the bill would not encourage claims to be filed "half-cocked" as Rep. Mercer suggested. The bill does not shift the incentive away from the plaintiff. He said he feels that the incentive would be placed on the defendant to settle.

Rep. Mercer stated that claims don't necessarily have to be frivolous to cause the problems which he referred to. He said that as soon as a dispute becomes apparent, the bill would give people an incentive to file a case as soon as possible.

Rep. Rapp-Svrcek questioned when liability has been established in most of these cases, why should the defendant have to bear the costs of interest? Rep. Mercer stated that there are many cases when the liability question has not been established.

The question was called and a roll call vote taken. Because of a tie vote, the bill will leave committee WITHOUT RECOMMENDATION.

ADJOURNMENT: There being no further business before the committee, the meeting was adjourned at 11:20 a.m.

  
Rep. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-28-85

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 1/28/85

BILL NO. 426

TIME 10:10

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: Rep. Addy moved that HB 426 DO PASS. The motion  
was seconded by Rep. O'Hara and passed 12-6.

# ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1/28/85 BILL NO. 408 TIME 11:20

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: Rep. Brown moved that HB 408 DO PASS AS AMENDED. The  
motion was seconded by Rep. Darko. Due to a tie vote, the  
bill will leave committed WITHOUT RECOMMENDATION.

# STANDING COMMITTEE REPORT

January 28

19 95

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 426

FIRST reading copy ( WHITE )  
color

REQUIRE PRELIMINARY INJUNCTION SHOWING FOR COURT TO STAY  
AGENCY DECISION

Respectfully report as follows: That HOUSE Bill No. 426

DO PASS

# STANDING COMMITTEE REPORT

January 28 19 25

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 125

FIRST reading copy ( WHITE )  
color

**MAKING DELINQUENT TAXES ON LEASEHOLD IMPROVEMENTS A LIEN ON  
PERSONALTY**

Respectfully report as follows: That HOUSE Bill No. 125

DO PASS

# STANDING COMMITTEE REPORT

January 23, 1935

page 1 of 2

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 408

FIRST reading copy (WHITE color)

ALLOW INTEREST ON JUDGMENTS TO ACCRUE FROM DATE OF FILING CLAIM

Respectfully report as follows: That HOUSE Bill No. 408

be amended as follows:

1. Title, line 6.

Strike: "FILING"

Insert: "SERVICE"

Following: "CLAIM"

Insert: "FOR RELIEF"

Following: "PREVAILING"

Strike: "COMPLAINANT"

Insert: "CLAIMANT"

2. Page 1, line 16.

Following: "judgment"

Insert: "against a party"

DO PASS

Continued

January 28, 19 85

page 2 of 2

3. Page 1, line 16.

Following: "data"

Strike: "of" through "complainant" on line 18.

Insert: "the claim for relief is served on that party in a  
civil action by the prevailing claimant"

AND AS AMENDED  
WITHOUT RECOMMENDATION



## VISITORS' REGISTER

JUDICIARY

COMMITTEE

HOUSE BILL NOS. 408; 425; 426

DATE 1/28/85

SPONSOR Rep. Gary Spaeth

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Garle M. Gray	Butte	426	
Opal Winebrenner	PSC - Helena	426	
Gary Spaeth	HD 84		
Charles Dravley	Helena	HB 425	
MIKE WEROY	HELENA	408	
KATE ELLWOOD	MISSOULA	408	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



WITNESS STATEMENT

NAME OPAL Winebrenner BILL No. HB 426

ADDRESS ~~127~~ 2701 Prospect Ave DATE 1-28-85

WHOM DO YOU REPRESENT Mt. Public Service Commission

SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Exhibit A  
HB 408  
1/28/85

**PUBLIC SERVICE COMMISSION**

2701 Prospect Avenue • Helena, Montana 59620  
Telephone: (406) 444-6199

POSITION STATEMENT ON HOUSE BILL 426

The Montana Public Service Commission proposes that Section 2-4-702(3), MCA, "Initiating judicial review of contested cases," of the Montana Administrative Procedure Act, and Section 69-3-403(1), MCA, "Injunctive relief," of the Commission's utility statutes should be amended regarding how an administrative agency's decision is stayed. Section 2-4-702(3), MCA allows district courts to stay an agency's decision "upon terms it considers proper;" Section 69-3-403, MCA requires a "proper showing" for a decision to be stayed.

The Public Service Commission firmly believes that a party requesting a stay of an administrative agency's decision should be required to make a showing such as is required for preliminary injunctions, set out in Section 27-19-201, MCA, "When preliminary injunction may be granted." Further, the Commission believes the procedural steps required prior to issuance of a preliminary injunction should also be fulfilled. The First Judicial District has adopted the preliminary injunction criteria to determine whether an administrative agency's decision should be stayed; other Judicial Districts have not.

## Part 2

### Availability of Preliminary Injunction

**27-19-201.** When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) when it shall appear that the applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it shall appear that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

(3) when it shall appear during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) when it appears the applicant has suffered or may suffer physical abuse by a spouse under the provisions of 40-4-106.

History: En. Sec. 83, p. 58, Bannack Stat.; re-en. Sec. 112, p. 154, L. 1867; re-en. Sec. 129, p. 52, Cod. Stat. 1871; re-en. Sec. 171, p. 79, L. 1877; re-en. Sec. 171, 1st Div. Rev. Stat. 1879; re-en. Sec. 173, 1st Div. Comp. Stat. 1887; amd. Sec. 871, C. Civ. Proc. 1895; re-en. Sec. 6643, Rev. C. 1907; re-en. Sec. 9243, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 526; re-en. Sec. 9243, R.C.M. 1935; R.C.M. 1947, 93-4204; amd. Sec. 1, Ch. 399, L. 1979; amd. Sec. 2, Ch. 180, L. 1981.

#### Compiler's Comments

*1981 Amendment:* Inserted subsection (5) relating to physical abuse by a spouse.