

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 31, 1985

The eighteenth meeting of the Senate Judiciary Committee was called to order at 10:08 a.m. on January 31, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: .All committee members were present.

CONSIDERATION OF SB 217: Senator Towe, sponsor of SB 217, stated this is a bill, although it really doesn't have much to do with unification of the court system, that grew out of what was discussed during meetings of subcommittee No. 3, which reviewed the unification of the court system. This proposal was presented to the committee in one of its most recent meetings. Some of the financial concerns were not resolved, so the committee decided not to support the bill at this time, so it does not come as a recommendation of the committee. Senator Towe stated he has worked on the financial considerations, and they have been resolved with the bar association. He believes this is an interesting concept and approach to a problem which plagues the industry in this state. There is a municipal court system that is on the books. That system is voluntary and only one county has chosen to use it (Missoula). It requires that the judge be a lawyer. This bill applies to all cities in the state with a population of 10,000 or more. We are changing on page 1, line 23, the word "may" to "must" so it would mandate that the municipal court system be adopted in all such cities. The city judge who is presently serving in a city court would be retained and would serve for the remainder of his term as a municipal court judge, whether he were an attorney or not. There is a provision for a removal proceeding. The purpose of this bill is to try and take some of the lesser matters out of the district court and into the municipal court and in effect creat a lower court system to take the burden off the district court. Senator Towe feels this is needed or we will have a tremendous push to add more and more district court judges all of the time. There is a provision for an appeal from the municipal court to the district court, but that appeal is confined to the record. That is different than justice court. Justice court appeals to district court are trials de novo. There would be a record kept in the municipal court. There must be one judge in each municipal court, and the legislature may create an additional judge. The judge would be elected by the voters of the city. Also, his jurisdiction would be district-wide for those things like permission for marriage, concealed weapons, and name changes, although it would still be a city judge. The judge serves for four

years. The municipal judge would receive an annual salary of 75% of the annual salary of the district judge. The municipal court would appoint his own clerk. There would be a personnel classification plan for the municipal court employees. Funding is provided through the state general fund appropriation to the supreme court. The city would send 70% of the fines, forfeitures, and fees to the state general fund. We are awaiting a fiscal note. Senator Towe wants to adjust that percentage so it will have no impact on either the cities or the state general fund. The balance of the bill simply goes into each of the areas previously discussed and adds municipal court so the municipal court does in fact have jurisdiction and that it corresponds to the previous new material. Senator Towe stated it makes more sense to handle smaller matters before a trained judge in a municipal court that is appealable only on the record to the district court; it makes sense in conservation of time; and there is less delay. He believes we are advancing the cause of justice and feels that's important to the people. The fact that other states have gone to a lower court system is indicative of the trend. He has not eliminated the justices of the peace with this bill because that is constitutional; and if the justices of the peace think they are going to be abolished, they will be here to argue, and that is politically impossible.

PROPOSERS: Mark Bryan, City Judge in Bozeman, appeared in support of SB 217. He is a practicing attorney in Bozeman and has been a member of the State Bar's Committee on Court Unification for the last couple of years. He stated the Chairman is Robert Sullivan, who is ill today and could not come personally. The State Bar Committee on Uniformity of Courts was formed in response to SJR 25. They have been meeting for the past two years. They were pleased when SB 217 was introduced by Senator Towe, because they felt that bill embodied the improvements that were discussed by the committee in its deliberations. They believe this solution has the least financial impact. Through this bill, we are looking at using the existing court structure and expanding the cities into the municipal court system. We are not looking at providing new court rules, staff, and equipment, because that is already there. This municipal court has the ability to handle some of the overflow from the district court. It is more economical. It is a better use of the district judge's time to have some of the lesser matters heard in a municipal court system. As a general rule, the city courts would be able to handle this additional workload without adding additional judges. We are not tampering with the justice of the peace court system, but we are making a step toward unification. We have the ability through this bill to give help to smaller towns. They are not increasing the qualifications of the judges in this bill, since they are lawyers now. We are not having a significant financial impact on the cities or towns, because cities generate more fines and forfeitures on the whole than it costs to run the court. In the earlier fiscal note

brought to the committee, there was no financial impact on the state. By creating a court of record, we are lessening the impact on the district court. This would eliminate some of the frivolous appeals where they are using the lower courts basically as a discovery tool. They support this bill because it allows for a mechanism to assist in handling overflow from the district court; it has little or no financial impact; it does not tamper with the justice system.; and it provides assistance to smaller towns.

OPPONENTS: Jim Jensen, representing the Montana Magistrates Association, appeared in opposition to SB 217. The Montana Magistrates Association consists of justices of the peace, city judges, and the one municipal judge in the state. They are opposed to SB 217 for a laundry list of reasons, but the most important one is this bill is a remedy to a problem that no one has identified. We have a problem in our system. We have had a study. Instead of looking at that system, we are adding a new layer of court which really does not resolve that problem. He is not sure those responsibilities should be given to the justices of the peace. He wonders if we need a judge with 75% of the salary of a district judge to make those decisions. He asked if we were attempting to do well with what we have or are we merely trying to do good. Donald E. Bjertness, City Judge for Billings, appeared in opposition to SB 217. His primary opposition to the bill stems from the fact that at this point of time, there is no more room for any more things to be handled in this court. In 1984, 26,000 cases were filed in his court; over 1,000 cases were set for trial; and over 40% of those cases were tried. He has considered asking for a change in the law to ask for more than one city judge in Billings. You are dealing with a district court relief bill. We are trying to rectify a problem in the district court by destroying another court. Billings would need a second full-time judge immediately. They would need a new courtroom. It recently cost the City of Billings \$250,000 to remodel the one it has. It costs approximately \$142,000 to run his court each year. 70% of the fees generated would be \$530,000. What personally offended him more than anything is providing a 75% salary of a district judge would give him a \$3,100 cut in pay, as his salary is \$38,890. He believes if you want to solve the problems of the district court system, you should not destroy the justice court system. Bernard F. McCarthy, Justice of the Peace for Lewis and Clark County and a practicing attorney half time, stated his inclinations are to oppose this bill, not because he is a justice of the peace, but because he has some experience in administration of the courts having worked for 19 months with the supreme court. He is not here representing the Montana Magistrates Association. He is opposed to this bill because in trying to relieve some of the pressures on the district court, this appears to be an attempt to move to an all-lawyer judicial system. He does not believe this solves the problems of the judicial system as it is a bandaid solution--it creates more problems

than it solves. We have to look at a unified system and state assumption of the court budget. He believes our system is outdated and antiquated. This bill may have good intentions, but it doesn't solve the problems. The problem that needs to be addressed is the state of Montana judicial system is old and hasn't been looked at enough to solve the problem. This bill creates an additional problem. It creates an additional level of the courts that will within 16-18 months become overloaded. (See witness sheet attached as Exhibit 1.) Alec Hanson, of the Montana League of Cities and Towns, stated this bill would expand the jurisdiction of municipal courts into broad areas of family law. This expanded case load could require additional judges, courtrooms, and facilities. The real question before this committee is how can this court system be financed without serious consequence on either municipal finances or the fiscal fund. The committee's talking about this bill without a fiscal note is like taking a shot in the dark. If this bill would cause impact on the cities and towns, they would be opposed. Nathan Tubergen, Finance Director for the City of Great Falls, stated they are opposed to this bill because they haven't seen the fiscal note. If this bill were to pass, they would have to look at a parttime judge and an additional courtroom. Their judge would also have to take a cut in pay. Mike Young, Finance Director for the City of Missoula, stated they are not convinced we could work this thing out. Their opposition is minor and deals with the financial aspects. They don't mind taking the "junk" from the district courts. The bill does not provide the assurance they are not going to lose money. This will put the clerical employees in the court in the state pay plan, and state employees make more. Then other secretaries in other areas will want pay increases too. They need a better remedy than provided in Section 13 for negotiation with the court. Greg Jackson, representing the larger cities and counties in the state of Montana, stated they appreciate the attempt at improving the judicial system in the state of Montana. Their concerns are with regard to the fiscal impact on local government. He believes urban counties maintain district courts are not county courts; they are city courts.

QUESTIONS FROM THE COMMITTEE: Senator Crippen asked Judge Bjertness if he ever attended and testified at the interim committee on judicial court reform. Judge Bjertness responded he was never asked by anyone to attend. Senator Crippen asked if his objections to the caseload and financial aspects could be addressed in a satisfactory manner, did he feel this municipal court idea is a good one at this point in time. Judge Bjertness stated it was his personal opinion, no, as it is not addressing the problem about doing something about the entire judicial system in the state of Montana. Senator Crippen asked if he felt this were a bandaid approach that isn't even being covered by the bandaid. Judge Bjertness stated absolutely, as he feels the whole thing is premature. Senator Crippen asked if he felt the justice courts' jurisdiction should be expanded to the extent of the new areas of jurisdiction

that would come to the municipal court. Judge Bjertness responded he had no problem with what is being pulled off the district court. Senator Daniels asked what income the Billings court generated in a year. Judge Bjertness responded in 1984, \$774,088, which was lower than it had been in prior years. Senator Daniels asked Senator Towe what was the purpose in making the matter of courts mandatory rather than discretionary with the cities. Senator Towe responded this was the proposal the bar association came up with to try and improve the situation. The municipal court bill has been with us many years, and only one city has chosen to use it. They thought by making it discretionary, no one would opt to use it. Senator Towe stated he was afraid the bandaid would be reduced in size if we made it discretionary. Senator Daniels asked why he chose the population of 10,000. Senator Towe stated that is existing law. Senator Daniels asked what cities were between the population of 10,000 and 20,000. Senator Towe stated if we raised that figure to 20,000, we would lose Bozeman, Helena, and Kalispell. Mr. Hanson stated Kalispell, Miles City, Havre, Helena, and Bozeman are above 10,000, while Helena and Bozeman are above 20,000. Senator Mazurek asked what was the rationale for imposing a personnel classification system. Senator Towe stated he had no problem and the bar has no problem with leaving the total control to the cities in terms of the salaries of judges and their personnel. Senator Mazurek asked why the number of the judges was left to the legislature. Senator Towe stated that's something that can be negotiated, too. He has no problem with leaving it to the cities, but there is a state impact that would be involved. He believes we could leave the increase to the cities and not make that a matter of state legislation. Senator Daniels asked why he disenfranchised the people of the judicial district and left it to the cities to elect the judges. Senator Towe responded we would probably have more difficulty, because they would be disenfranchising the city in electing their own city judge if you added the counties in which the city was located. Also, since the bulk of the court's work would be for the city, it would be fairer to leave it to the city. Senator Crippen asked Senator Towe why we should continue working on a bandaid approach instead of going back and doing a study. Senator Towe stated pure practical politics dictate to the contrary, as you cannot make justices of the peace part of the lower court system because they are not lawyers. He thinks this is a very substantial bandaid on a system he thinks is bleeding substantially. Senator Blaylock asked Judge Bjertness where he felt our court system was so fouled up they think it should be revamped. Judge Bjertness stated reallocation of the district judges in different areas appropriate to setting up a level of court system which we are presently talking about such as in a number of other states. We should have a new level and have a funded by the area in which it comes. We should also consider our appeal procedure. Senator Blaylock asked if he would be in favor of giving the supreme court more administrative authority to move the district judges around. Judge Bjertness stated he

is not qualified to say. He believes the situation needs to be resolved, but it needs to be resolved in total and not a patch here and there. Senator Blaylock stated in the constitutional convention, of all of the articles they fought over the most, it was the judicial article. Senator Pinsoneault asked Judge Bjertness if he felt there were some magic about leather-back chairs and the other facilities. Judge Bjertness responded he worked in a closet for 15 years. Senator Pinsoneault asked how much time Mr. McCarthy spent on justice of the peace matters. Justice McCarthy responded one-half of each day. Senator Pinsoneault then asked about his salary. Justice McCarthy stated just under \$16,000 a year. He works half time, but is on call full time, so he gets paid for three-quarter time.

CLOSING STATEMENT: Senator Towe stated he would like to point out that they want to work this bill out so there will be the minimum financial impact, so they are willing to adjust the 70%. He believes the big costs are not in providing for the judges but providing for the employees. If the state picks up a larger portion of that, it will probably be providing the city a service. In addition to the fines now being received, there would be additional fines coming, because there would be additional fines from the county. That would provide more money for the city to expand that court. If a judge is only spending two hours of his day or even half a day, we can bring in some of the outside work to take that burden off the district court and the city court can absorb it without new personnel. He has no problem with adjusting the salaries or taking that out altogether and letting the cities have full control of it. He also has no problem with letting the pay plan proposal be up to the city, and he thinks that would improve the bill. Senator Towe stated we should talk about the system as a whole. People questioned whether we had a problem. He believes we have a problem that came out in the meetings. We have a justice of the peace system we are not likely to change. No matter how badly it is needed, he does not believe that will happen, so let's forget about changing it since it will not be done in this state. Given that assumption, we need to determine what can be done, and that is what the committee looked at. He believes this is the best suggestion that is in the realm of possibility. He thinks maybe we should change it to 20,000 people and see how it works. But if we can use this existing statute and bring in a substantial part of the district judge's jurisdiction at this time, then he thinks we can generally conserve time for the more important jurisdictional matters for the district court.

Hearing on SB 217 was closed.

ACTION ON HB 109: Senator Mazurek stated if you had a jury trial and were convicted, this bill would require you to pay the jury costs as well. He believes you should be able to have a jury trial and not pay

for it. Senator Towe stated he was more concerned about restitution to the victim than payment of the costs. Mr. Petesch stated what is proposed is to clarify a conflict in the statutes. Section 46-18-232, MCA, states the court may require a convicted person to pay normal costs that are recoverable in any action, including costs of jury service. One section says you can, and the other says you can't. Senator Towe moved the committee recommend HB 109 BE CONCURRED IN. Senator Daniels stated if you have a court appointed attorney, you are required to make an affidavit stating you don't have any resources with which to pay an attorney; therefore, it's a somewhat useless act to require you have to pay the costs of a jury. If you don't have enough money to pay an attorney, you don't have enough money to pay the jury. Mr. Petesch stated the court may not sentence a defendant to pay those costs unless he is able to pay them. Senator Daniels stated he is philosophically opposed to a defendant's paying the costs of a jury when he is tried. The motion to recommend HB 109 BE CONCURRED IN failed (see roll call vote attached as Exhibit 2). Senator Shaw moved the committee recommend HB 109 BE NOT CONCURRED IN. The motion carried (see roll call vote attached as Exhibit 3).

ACTION ON SB 185: Senator Towe moved SB 185 be amended as follows:

Page 1, line 21.

Following: "attorneys' fees"

Insert: "not to exceed 3% of the amount due on the obligation,
both principal and interest, at the time of default"

Senator Mazurek suggested the word "customary" should be deleted. He stated there is some question as to what that 5% applies, and that question even exists in the current law. He stated the 1% applies to the total principal balance and all delinquencies. Senator Shaw asked who this relief bill was for. Senator Mazurek responded lawyers and bankers. He also stated there is no question that a person who plays this out reaps the benefit and the bank or the attorney has to pay. The motion to amend SB 185 carried (see roll call vote attached as Exhibit 4). Senator Crippen moved to amend SB 185 as follows:

Title, lines 4 and 5.

Following: "REASONABLE"

Strike: remainder of line 4 through "CUSTOMARY" on line 5

Page 1, line 20.

Following: "reasonable"

Strike: "and customary:"

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The motion carried unanimously. Senator Brown moved SB 185 be recommended DO PASS AS AMENDED. The motion carried with Senators Crippen, Mazurek, and Shaw voting in opposition.

There being no further business to come before the committee, the meeting was adjourned at 12:00 p.m.


Committee Chairman

DATE 1-31-85
Judiciary

56 217

(Please leave prepared statement with Secretary)

NAME: BERNARD F. McCarthy DATE: 1/31/85

ADDRESS: 228 Broadway L+C County Courthouse

PHONE: 443-1010 X202 or 443-4010

REPRESENTING WHOM? JUSTICE OF THE PEACE - HELENA (SELF)

APPEARING ON WHICH PROPOSAL: SB 217

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

COMMENTS: The problem the STATE BWC is addressing here is the
OVERLOAD IN THE DISTRICT COURTS. WHAT IS DESIRED IS AN ALL
LAWYER SYSTEM. THIS PROPOSAL PROVIDES A BAND-AID SOLUTION
TO A SEVERE CRISIS IN THE COURTS IN MONTANA, AND
FRANKLY, I DO NOT BELIEVE THE PROBLEM IS SOLVED BY THIS BILL
ADDRESSING THE WORKLOAD OF THE DISTRICT COURTS DOESN'T
SOLVE THE WORKLOAD OF THE ENTIRE SYSTEM AND THE
INEFFICIENCY OF AN OUTDATED AND ANTIQUATED SYSTEM.
GALL OF WE NEED A REVIEW AND REVISION OF
THE ENTIRE COURT SYSTEM.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 013185

BILL NO. SB 217

(Type in Committee Name, secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 013185 House Bill No. 109 Time 11:37

NAME	YES	NO
Senator Chet Blaylock	X	
Senator Bob Brown	X	
Senator Bruce D. Crippen		X
Senator Jack Galt		X
Senator R. J. "Dick" Pinsoneault	X	
Senator James Shaw		X
Senator Thomas E. Towe	X	
Senator William P. Yellowtail, Jr.		X
Vice Chairman		X
Senator M. K. "Kermit" Daniels		X
Chairman		X
Senator Joe Mazurek		X

Cindy Staley
Secretary

Mazurek
Chairman

Motion: HB 109 to ~~be~~ be concurred in

(include enough information on motion—put with yellow copy of committee report.)

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 013185

BILL NO. HB 109

(Type in committee name, secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 01/31/85 House ~~Senate~~ Bill No. 109 Time 11:38

NAME	YES	NO
Senator Chet Blaylock		X
Senator Bob Brown		X
Senator Bruce D. Crippen	X	
Senator Jack Galt	X	
Senator R. J. "Dick" Pinsoneault		X
Senator James Shaw	X	
Senator Thomas E. Towe		X
Senator William P. Yellowtail, Jr.	X	
Vice Chairman	X	
Senator M. K. "Kermit" Daniels	X	
Chairman	X	
Senator Joe Mazurek		

Cindy Staley
Secretary

Mazurek
Chairman

Motion: HB 109 be not concurred in

(include enough information on motion—put with yellow copy of committee report.)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 01/31/85
BILL NO. HB 109

(All committee names, secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 013185 Senate Bill No. 185 Time 11:55

NAME	YES	NO
Senator Chet Blaylock	X	
Senator Bob Brown	X	
Senator Bruce D. Crippen		X
Senator Jack Galt	X	
Senator R. J. "Dick" Pinsoneault	X	
Senator James Shaw		X
Senator Thomas E. Towe	X	
Senator William P. Yellowtail, Jr.	X	
Vice Chairman		
Senator M. K. "Kermit" Daniels		X
Chairman		
Senator Joe Mazurek		X

Cindy Staley
Secretary

Mazurek
Chairman

Motion: Amend SB 185 add 3 1/2

(include enough information on motion—put with yellow copy of committee report.)

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 013185

BILL NO. SB 185

STANDING COMMITTEE REPORT

January 31

1985

MR. PRESIDENT

JUDICIARY

We, your committee on

having had under consideration..... **SENATE BILL** No. **185**

first reading copy (white)
color

REVISE FEE ALLOWANCE ON DISCONTINUANCE OF FORECLOSURE - SM TRACT FINANCE ACT.

Respectfully report as follows: That..... **SENATE BILL** No. **185**

be amended as follows:

1. Title, lines 4 and 5.

Following: "REASONABLE"

Strike: remainder of line 4 through "CUSTOMARY" on line 5

2. Page 1, line 20.

Following: "reasonable"

Strike: "and customary"

3. Page 1, line 21.

Following: "attorneys' fees"

Insert: "not to exceed 3% of the amount due on the obligation, both principal and interest, at the time of default"

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

January 31

19 35

MR. PRESIDENT

We, your committee on **JUDICIARY**

having had under consideration **HOUSE BILL** No. **53**

third reading copy (**blue**)
color

(SENATOR SHAW)

AUTHORITY OVER AND POWERS OF PEACE OFFICER HELPING ANOTHER JURISDICTION.

Respectfully report as follows: That **HOUSE BILL** No. **53**

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

January 31

1985

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 109

third reading copy (blue)
color

(SENATOR DANIELS)

REMOVE STATUTORY CONFLICT ON CHARGING COSTS TO CONVICTED DEFENDANTS.

Respectfully report as follows: That HOUSE BILL No. 109

NOT BE CONCURRED IN

~~XXXXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.