

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

February 14, 1985

The twenty-ninth meeting of the Senate Judiciary Committee was called to order at 10:13 a.m. on February 14, 1985, by Chairman Joe Mazurek in Rooms 413-415 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Towe, who was excused.

CONSIDERATION OF SB 313: Senator Kermit Daniels, sponsor of SB 313, stated this bill requires a constitutional amendment and will return the state of Montana to its former glory where we had one senator per county, and some very small counties provided some very excellent senators. Senator Daniels thinks there is an imbalance in the state of Montana at the present time. He doesn't think the rural areas are being represented to the extent they should be. Traditionally, the county government and the county boundaries have been the center of governmental activity. All of our county officials are in the particular county seats. We now have people that have very casual contact with the county officials who in effect are up in the Senate representing those people. He finds there are small towns like Philipsburg that haven't had representation since the reapportionment program. The interests of Lewis and Clark and Powell Counties are so diverse, Senator Daniels doesn't think one person can properly represent them. He believes neither is being adequately represented. The districts are too large for any centralization. He doesn't think it's proper that the large cities are so well represented and are riding roughshod over the rural population.

PROPOSERS: None.

OPPOSERS: Phil Campbell, representing the Montana Education Association, appeared in opposition to the bill. They believe it seems to do away with the basic principle of one person, one vote. They believe a more appropriate way to get at this problem would be to change the number so senators would represent a smaller group, but as the bill is drafted, they stand in opposition to it.

QUESTIONS FROM THE COMMITTEE: Senator Yellowtail asked if this would affect the Senate only and not the House. Senator Daniels responded yes. Senator Pinsoneault stated he is in support of it because he comes from a small rural area. He asked if when the change were made to have only 50 senators, was it a small thing or was there an overwhelming

demand for it. Senator Daniels responded the change was due to the United States Supreme Court case of Reynolds v. Simms. In 1972, it was considered that was the way it had to go. It was a literal application of the Reynolds case. Senator Yellowtail asked why the Reynolds case didn't affect the United States constitution. Senator Daniels stated it was by virtue of some legal jargon. Senator Brown stated the fourteenth amendment has a clause that guarantees equal protection to all citizens. The Reynolds and Baker cases say if you have one house of the legislature apportioned on the basis of population, then those in the larger counties don't get equal protection of the laws while those in the smaller ones do. They get around it on the federal level because it says each state is entitled to two senators and as many representatives as it has population for. Senator Blaylock stated he was a strong advocate of going to the system we have now. Although what Senator Daniels stated about there having been some excellent rural senators is true, he has also seen some that weren't. He believes the rural areas are being well represented by the urban senators. However, he sees no equity in small counties having the same voting power as large counties.

CLOSING STATEMENT: None.

Hearing on SB 313 was closed.

CONSIDERATION OF SJR 19: Senator Richard Manning, sponsor of SJR 19, presented written testimony in support of this resolution (see Exhibit 1.)

PROPOSERS: Bob Severson, President of the Great Falls Local Postal Workers Union, stated the Hatch Act was passed in 1939 and restricts political involvement of federal employees which would influence or interfere in elections. Mr. Severson introduced an exhibit which indicated some of the things they could and could not do (see Exhibit 2). The people on the floor in the postal service are scared to go out and find out what they can do. They virtually sit back in the closet. Congressman Clay has a bill in to repeal the Hatch Act. They would like this committee to consider passing this bill so Washington will know how the Senators in Montana feel.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked Mr. Severson if when he went to work for the postal service he was made aware of the Hatch Act provisions. Mr. Severson responded yes. Senator Pinsoneault asked if anyone had compelled him to remain in the employment of the postal service if he felt this were a restriction on his rights. Mr. Severson stated no, but he would like to be able to go out and support a candidate. Senator Pinsoneault asked if there are gray areas in the law that bothered him or would he prefer the law be repealed altogether.

Mr. Severson stated some of the language in it could be repealed. Senator Brown said it stated on Exhibit 2 you cannot serve as a delegate to a political party convention. He questioned whether this included the regional caucuses. Mr. Severson stated he believes they can participate in these. Senator Brown asked if they could go beyond the caucus. Mr. Severson stated no.

CLOSING STATEMENT: Senator Manning stated he worked for 24 years in the Great Falls Fire Department. When he first started, local restrictions required they had to adhere to certain rules and regulations. He felt it was a restriction on some of his rights guaranteed by the federal constitution. No matter what political party a federal employee belongs to, he should be entitled to this right.

Hearing on SJR 19 was closed.

CONSIDERATION OF SB 331: Senator Chris Christiaens, sponsor of SB 331, stated this bill was introduced at the request of the Human Rights Commission (see written testimony attached as Exhibit 3).

PROPOSERS: Anne MacIntyre, Administrator of the Human Rights Commission, appeared in support of this bill and stated the commission has requested this bill for purposes of clarification (see written testimony attached as Exhibit 4 and proposed amendments attached as Exhibit 5). Karl Englund, on behalf of the Montana Trial Lawyers Association and on behalf of himself personally, testified he has found the commission staff to be very good, quite overworked, and it takes a great deal of time for them to review cases under their normal statutory scheme. Any legislation that helps relieve a burden for the staff that can be handled by a private party allows the staff to be free for its own work. The problem simply is they are vastly overworked. If this will help eliminate some of those problems, it will be a step in the right direction. Mr. Englund stated he was going to suggest the same amendment as Ms. MacIntyre relating to injunctions so we have clear legislative intent that the court can exercise all of its powers in enforcing its orders. (See also written testimony submitted by Lorraine Gillis on behalf of the Montana Farm Bureau Federation in support of SB 313 attached as Exhibit 6.)

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Crippen asked if when we talk about orders we are talking about the final order of the commission. Ms. MacIntyre responded yes. Senator Crippen asked if this commission is a quasi-judicial body. Ms. MacIntyre responded yes. Senator Crippen asked if this practice were consistent with other such bodies created in the law. Ms. MacIntyre responded she hasn't researched that particular

question. It is her understanding that quasi-judicial bodies that have to look to courts for enforcement of their orders. Mr. Englund stated the commission is different from most boards which we have in the state because it involves disputes between private citizens. At the end of that, you end up with an order where the state of Montana is not a party. Senator Mazurek asked if this would save the commission any money. Ms. MacIntyre responded she doesn't feel they will save any money. When they receive an enforcement action, it is something they must juggle in and make the time to do while something else sits on the back burner. She believes the only savings would be the staff resources. Senator Mazurek asked if this saves staff time, which is in effect money. Ms. MacIntyre responded yes. Senator Mazurek asked why they needed the effective date. Ms. MacIntyre stated she felt the immediate effective date was appropriate because it would clarify that all of the existing cases before the commission would fall within this change. They have about 300 open cases right now. Removing the effective date would defeat some of the purpose. Senator Mazurek asked if she really felt the amendments were necessary. Mr. Englund stated the amendments don't add any additional power to the courts. Senator Mazurek asked the same question about the word "party." Mr. Englund stated he had no problem with party. Senator Mazurek stated by deleting, we do not intend to eliminate the remedy of injunction.

CLOSING STATEMENT: Senator Christiaens stated he believes this bill is necessary as it will change something that is currently required by the commission to do by placing that responsibility on the party in whose favor the order has been entered. The cost savings would be in the commission's being relieved of this and being able to address some of that backlog of cases.

Hearing on SB 331 was closed.

ACTION ON SB 331: Senator Mazurek stated only a "party" can bring an action. Senator Crippen asked about third parties. Senator Mazurek stated a third person is not a party to the action. An amicus curiae is a friend of the court, but he is not a party. Senator Mazurek questioned why we need to inject some new term in here when it is already defined in the law. Senator Blaylock moved SB 331 be recommended DO PASS. Senator Mazurek questioned whether we needed the effective date. Mr. Petesch stated if we remove the immediate effective date, we still have the problem of the statute's providing only for an injunction up until the effective date. The motion carried unanimously.

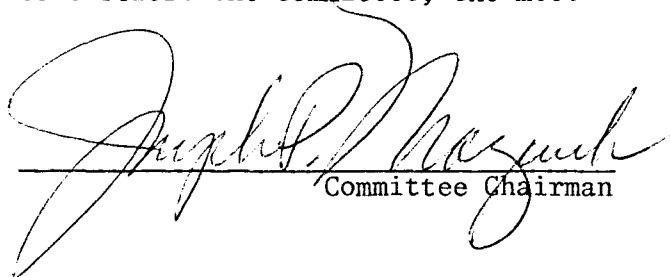
FURTHER CONSIDERATION OF SB 313: Senator Mazurek stated he would move on order of business No. 6 that SB 313 be printed and placed on second reading with no recommendation whatsoever. Senator Shaw stated if you

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want to eliminate a lot of your problems in state government, you should pass this bill. Senator Mazurek stated it would be further considered by the committee tomorrow.

FURTHER CONSIDERATION OF SJR 19: Mr. Petesch stated the Hatch Act also applies to state or local employees who are in a position funded by federal government. Senator Daniels moved SJR 19 be recommended DO PASS. The motion failed (see roll call vote attached as Exhibit 7). The committee decided to look at this bill again when the entire committee was present.

There being no further business to come before the committee, the meeting was adjourned at 11:17 a.m.

  
\_\_\_\_\_  
Committee Chairman

ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 02/4/85

NAME	PRESENT	ABSENT	EXCUSED
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		<del>X</del>
Senator Thomas E. Towe	/		X
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		



SENATE JOINT RESOLUTION 19

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, THE PURPOSE OF THIS RESOLUTION IS VERY SIMPLE AND STRAIGHT FORWARD.

ITS PURPOSE IS TO ATTEMPT TO MAKE THE CONGRESS AND SENATE OF THE UNITED STATES AWARE OF THE INJUSTICE THAT HAS BEEN CREATED BY THE ENACTMENT AND ENFORCEMENT OF CERTAIN PROVISIONS OF THE HATCH ACT.

MANY FEDERAL EMPLOYEES DO NOT ENJOY THE PRIVILEGES OF BEING TREATED LIKE 1st CLASS CITIZENS IN MANY INSTANCES.

YOU AND I CAN PUT POLITICAL DECALS ON OUR CARS AND IN OUR YARDS. WE CAN CONTRIBUTE TO POLITICAL PARTIES OR CANDIDATES WITHOUT FEAR OF RETALIATION. THESE PEOPLE ARE VERY LIMITED IN THIS AREA AS TO WHAT THEY CAN DO OR CANNOT DO.

THIS IS NOT A CHANGE OF LAW BUT AN EXPRESSION OF OUR FEELINGS IN REGARD TO THE FREEDOM OF RIGHTS OF OUR FELLOW CITIZENS.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 1  
DATE 021485  
BILL NO. SJR 19



## APWU HATCH CARD



Under the Hatch Act, which controls political activities of postal workers, **YOU MAY:**

- Register and vote.
- Contribute money to APWU-COPA.
- Display bumper stickers, buttons, and yardsigns.
- Conduct non-partisan registration and get-out-the-vote drives.
- Write to newspapers to express your individual opinion.
- Belong to political parties and vote in local meetings.
- Participate fully in non-partisan and ballot issue campaigns.

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Under the Hatch Act you may not engage in activities to benefit a candidate in partisan elections.

### **This Means You MAY NOT:**

- Solicit, handle, or disburse campaign contributions.
- Solicit votes door-to-door, by telephone, or by direct mail.
- Distribute partisan campaign materials.
- Plan or help organize partisan meetings.
- Lend your name for endorsements or ads.
- Serve as a delegate to political party conventions.

**Support your Voices in Politics (VIP) Program.  
Volunteer Today!**

APWU 100



SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 021485

BILL NO. SJR 19

Remarks of Senator Christiaens:

Senate Bill 331 is introduced at the request of the Human Rights Commission to clarify the provisions of law that govern proceedings to enforce orders of the Commission. Under present law, if the Commission issues an order in a contested case and one of the parties refuses to comply, the Commission staff is required to bring an action to enforce the order. The Commission does not object to having its staff bring actions to enforce its orders in appropriate cases, such as those cases where the Commission's order enjoins a practice forbidden by law. The Commission does object to the use of its staff for what amounts to private collection activity of back pay awards and seeks the passage of this bill to insure that such an enforcement proceeding can be initiated by the prevailing party in the case before the Commission. The bill would also permit the Commission staff to bring an enforcement proceeding when it is deemed appropriate.

*Strike the phrase*  
In addition, this bill would clarify what might be construed to be a conflict in the laws administered by the Commission. Sections 49-2-506 and 49-3-309, MCA, give the Commission authority to award monetary damages, such as back pay. Sections 49-2-508 and 49-3-311, MCA, state that an order of the Commission can be enforced "by injunction." It is unclear how an order to pay monetary damages can be enforced by injunction. The Commission seeks this amendment to the law so that its orders can be enforced by any appropriate order of the district court.

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EXHIBIT NO. 3  
DATE 021485  
BILL NO. SB 331

Clarification of these statutes by the legislature will relieve the Commission staff of responsibilities which are more properly placed with the party in whose favor the Commission has entered an order.

Furthermore, the legislature can eliminate the ambiguity inherent in limiting the enforcement power of courts to enforcement "by injunction", thereby avoiding future litigation to obtain clarification. I encourage your favorable consideration of Senate Bill 331.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 021485

BILL NO. SB 331

Testimony of Anne L. MacIntyre in support of SB 331

Chairman Mazurek, members of the Committee: I am Anne MacIntyre, administrator of the Human Rights Division. I am here today in support of SB 331.

The Human Rights Commission has requested the amendment of sections 49-2-508 and 49-3-311 for purposes of clarification.

In each instance in the past year in which the Commission staff has initiated an enforcement proceeding, the only matter at issue was the failure of the Respondent to pay a monetary award. While there have been only three such actions filed by the Commission staff in that year, it somehow seems inappropriate that the limited energies and resources of the Commission staff should be expended to enforce money judgments for private individuals. The Commission is strongly interested in seeing that its orders are enforced but, in the typical case, where the Commission finds that an individual has been discriminated against but there is no apparent ongoing pattern or practice of discrimination, the Commission believes there is sufficient private incentive to insure enforcement of a monetary award.

In addition, the Commission is concerned about the use of the phrase "by injunction" in these enforcement provisions and asks that the legislature clarify these provisions by striking the phrase "by injunction." It would be truly unfair and unfortunate for a person to

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DATE 02/14/85  
SB 331

pursue his or her case all through the contested case process established by law for hearing before the Commission, then be forced to litigate the question of whether a court could enforce an award by the Commission of affirmative relief such as reinstatement or back pay. While the equities in such a scenario would seem to favor the person attempting to enforce the order, and I find it difficult to imagine a court refusing to enforce such an order, my own philosophy of statutory constitution favors elimination of statutory ambiguities by the legislature rather than interpretation by the courts.

Since this bill was introduced, I have received several comments from others who have suggested some minor amendments. I have drafted proposed amendments for your consideration.

First, I was asked whether any person would be considered "a party" who could enforce a Commission order. This was not my intent in drafting this bill. Since sections 49-2-508 and 42-3-311 are part of a statutory scheme involving the rights and remedies of parties to a case, I felt it would be clear from the context who "a party" is. By adding the words "to a case before the Commission", the section is clarified further.

Second, it was suggested to me that if the phrase "by injunction" were stricken someone might argue that the legislature intended to eliminate the power of the court to utilize injunctions. This matter is clarified by the addition of the words "by any appropriate order."

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 4  
DATE 021485  
BILL NO. SB 331

Mr. Chairman, I thank the committee today, and I urge that you recommend SB 331 do pass. I will be happy to answer any questions you may have.

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EXHIBIT NO. 4  
DATE 02/14/85  
BILL NO. SB 331

Proposed amendments, SB 331  
First reading copy

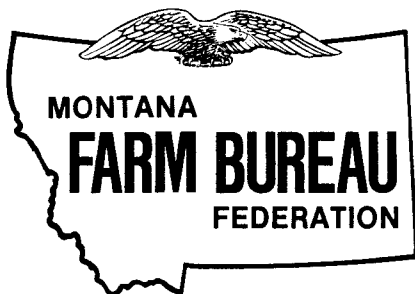
Page 1, line 16  
Following: or a party  
Insert: to a case before the commission

Page 1, line 20  
Following: ~~by injunction~~  
Insert: by any appropriate order

Page 1, line 24  
Following: or a party  
Insert: to a case before the commission

Page 2, line 3  
Following: ~~by injunction~~  
Insert: by any appropriate order

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 5  
DATE 02/4/85  
BILL NO. SB 331



502 South 19th

Bozeman, Montana 59715

Phone (406) 587-3153

TESTIMONY BY: Lorraine Gillies

BILL # SB 313 DATE 2/14/85

SUPPORT xxxxxx OPPOSE \_\_\_\_\_

Mr. Chairman, Members of the Committee:

For the record, I am Lorraine Gillies, and I'm representing Montana Farm Bureau Federation.

Montana Farm Bureau is in full support of SB 313. We have long advocated that the Senate be made up of one member per county, since this representation gives our legislature a body that speaks more clearly for each area of common interest. Each county has unique problems and concerns, and these should be addressed individually as well as collectively.

We urge the Committee to give this bill a due pass recommendation. Thank you.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 6  
DATE 021485  
BILL NO. SB 313

Lorraine Gillies  
SIGNED



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

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 021485 SJR Bill No. 19 Time 11:16

NAME	YES	NO
Senator Chet Blaylock	X	
Senator Bob Brown		
Senator Bruce D. Crippen		X
Senator Jack Galt		X
Senator R. J. "Dick" Pinsoneault		X
Senator James Shaw		X
Senator Thomas E. Towe		
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: SJR 19 be recommended Do Pass

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

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 021485

BILL NO. SJR 19

# STANDING COMMITTEE REPORT

February 14

85

..... 19.....

MR. PRESIDENT

We, your committee on..... **JUDICIARY** .....

having had under consideration..... **SENATE BILL** ..... No. **331** .....

**first** reading copy ( **white** )  
color

**PRIVATE ENFORCEMENT OF HUMAN RIGHTS COMMISSION ORDERS.**

Respectfully report as follows: That..... **JUDICIARY** ..... No. **331** .....

DO PASS

~~DO NOT PASS~~

.....  
**Senator Joe Mazurek**

Chairman.