

MINUTES OF THE MEETING  
JUDICIARY COMMITTEE  
49th LEGISLATIVE SESSION -- SPECIAL SESSION II  
HOUSE OF REPRESENTATIVES

March 27, 1986

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Thursday, March 27, 1986 at 9:10 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Brown and Mercer who had been previously excused.

EXECUTIVE SESSION

ACTION AND DISCUSSION ON HB 9: Rep. Cobb moved that HB 9 DO PASS. The motion was seconded by Rep. O'Hara. Rep. Cobb further moved to adopt Amendment #1 of the proposed amendments submitted by the Department of SRS. (Exhibit #1):

Page 1, line 25

Following: "discretion"

Strike: "designate any level and duration of"

Insert: "provide such"

The motion was seconded by Rep. Gould and carried unanimously. Rep. Cobb moved that HB 9 DO PASS AS AMENDED. The motion was seconded by Rep. Keyser. Rep. Cobb explained why he did not like the wording of the other SRS amendments and further explained why he liked this bill. He thinks the legislature needs some discretion in making determinations. However, there is no guarantee if this bill is passed that the legislature will lower the standard of test as to why things are done.

Rep. Spaeth stated he had some problem with the language in the bill because he feels it will restrict the scope and duration of welfare programs.

Rep. Neill said she agrees with the wording of this bill because the bill doesn't use the word, "restrict." She doesn't see anything in this amendment that would indicate that the legislature doesn't care about people; but we as legislators do have a fiscal responsibility.

Rep. Keyser stated he wasn't sure that Amendment #2 as proposed by SRS isn't a good one. Rep. Cobb said he was concerned that 10 years from now a new test will be developed that would need constant revision.

3/27/86  
9:00 a.m.

Rep. Gould stated that he supports HB 9 because if something isn't done about limiting economic assistance, there won't be the social dollar available for rehabilitation programs in this state. He feels the bill is definitely necessary for that particular reason and will do the opposite of what the handicapped community thinks it will do. Rep. Hannah also stated his support for the bill. He said without the bill, we will be in the situation of where the questions of the handicapped community and limits in areas of those involved will be decided by the supreme court. He feels that it is the responsibility of the legislature to set these limits.

In response to a question asked by Rep. O'Hara, Mr. Cater stated that he feels the second amendment proposed by the Dept. of SRS (Exhibit 1) is the most critical of all the amendments. He said the supreme court, without this amendment, can still say that the middle tier test will be applied to welfare assistance. The supreme court determined that welfare is very important and it is provided for in the constitution. He feels that without this amendment, nothing is being done at all as the legislature will still not have the discretion to make those determinations.

Rep. O'Hara moved that Amendment #2 be adopted. The motion was seconded by Rep. Eudaily and further discussed. Rep. Cobb again stated his objection to this amendment. He doesn't feel we should completely take the supreme court's power away but rather share it with them. The question was called and the motion FAILED 4-13. (See roll call vote.)

Rep. Krueger doesn't understand why this bill was even introduced. He said the reason we are trying to pass a constitutional amendment is because we are perturbed with the supreme court because they didn't accept the legislation on this subject passed in the last session even though there was ample reason to believe it was unconstitutional on its face. The court, in its decision, doesn't say that the legislature cannot establish levels, but we as a legislative body have to make some examination of it.

Rep. Keyser feels that it is up to us as a legislative body to usurp the authority that is rightfully ours -- not to take any away from the supreme court but to at least keep the authority we have. The bill does not take away any of those services. It just allows the legislature to do what the legislature should do.

Rep. Miles agreed with Rep. Krueger's statements in saying that she disagreed with the language of this bill in that the bill's intent is to restrict the duration of economic assistance. Rep. Addy said that the supreme court, in striking down the limited general assistance law passed through this legislature last year did so on the question of a rationale basis. We can do by legislation anything that has a rationale relationship and furthermore consider the resources of the state in determining what is a necessary level of services. All the supreme court said by its previous ruling was "don't act irrationally -- don't act arbitrarily."

The question was called on the motion to pass as amended, and it CARRIED 10-8.

ACTION AND DISCUSSION ON HB 7: Rep. Addy moved that HB 7 DO PASS. The motion was seconded by Rep. Rapp-Svrcek. In response to a question asked by Rep. Miles, Brenda Desmond, staff attorney, stated there used to be some question as to whether or not a constitutional amendment could simply revive a law that had been declared unconstitutional. She said that she agrees with Mona Jamison's statement on Wednesday that this would not revive the old law. Ms. Desmond said that if this is a concern, one way of dealing with it is to move the date to January of 1987 which would clearly leave the existing law in place until that time. Rep. Krueger feels if we put in a delayed effective, we make it at the conclusion of the 1987 session which would allow us at least to have full hearings on it.

It was Rep. Miles' concern that local governments will be left in a real quandry for a couple of months as far as their liability insurance. She moved to amend the effective date to July 1, 1987. Rep. Gould made a substitute motion to TABLE HB 7 for the purposes of allowing Ms. Desmond to look into the effective date question. He also wished to listen to the testimony on HB 17 and make a comparison of it with this bill. The motion was seconded by Rep. O'Hara and FAILED due to a tie vote. (See roll call vote.) Rep. Miles withdrew her motion to amend the effective date.

In further response to Rep. Miles' question, Ms. Desmond said because subsection 1 is written in the positive, e.g. "the limits of civil liability shall be as provided by law by a 2/3 vote of each house of the legislature," Ms. Desmond believes that this means if the legislature has not established limits that there aren't any. She thinks that subsection 2 needs to be read in view of and together with subsection 1 of the bill.

Judiciary Committee

March 27, 1986

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Rep. Spaeth feels that this area of insurance for local entities is not going to be solved by going back in and placing limits. He feels that there are other areas the legislature needs to look at. All the local entities want this type of legislation, and he thinks it is constitutional integrity.

The question was called on Rep. Addy's motion, and it CARRIED 14-4. (See roll call vote.)

ADJOURNMENT: There being no further business, Chairman Hannah adjourned the meeting at 10:00 a.m.

  
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REP. TOM HANNAH, Chairman

DAILY ROLL CALL

JUDICIARY

COMMITTEE

SECOND SPECIAL 49th LEGISLATIVE SESSION -- 1986

EXECUTIVE SESSION

Date March 27, 1986

| NAME                           | PRESENT | ABSENT | EXCUSED |
|--------------------------------|---------|--------|---------|
| Rep. Tom Hannah, Chairman      | ✓       |        |         |
| Rep. Dave Brown, Vice-Chairman |         |        | ✓       |
| Rep. Kelly Addy                | ✓       |        |         |
| Rep. John Cobb                 | ✓       |        |         |
| Rep. Paula Darko               | ✓       |        |         |
| Rep. Ralph Eudaily             | ✓       |        |         |
| Rep. Budd Gould                | ✓       |        |         |
| Rep. Edward Grady              | ✓       |        |         |
| Rep. Kerry Keyser              | ✓       |        |         |
| Rep. Kurt Krueger              | ✓       |        |         |
| Rep. John Mercer               | ✓       |        | ✓       |
| Rep. Joan Miles                | ✓       |        |         |
| Rep. John Montayne             | ✓       |        |         |
| Rep. Jesse O'Hara              | ✓       |        |         |
| Rep. Bing Poff                 | ✓       |        |         |
| Rep. Paul Rapp-Svrcek          | ✓       |        |         |
| Rep. Gary Spaeth               | ✓       |        |         |
| Rep. Charlotte Neill           | ✓       |        |         |
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# STANDING COMMITTEE REPORT

March 27

19 86

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 9

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

Chairman

REP. TOM HANNAH

AMEND CONSTITUTION RELATING TO LEVEL AND DURATION OF ECONOMIC ASSISTANCE

BE AMENDED AS FOLLOWS:

1. Page 1, line 25

Following: "discretion"

Strike: "designate any level and duration of"

Insert: "provide such"

ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE 3/27/86

BILL NO. H.B. 9

NUMBER 9:30

| NAME                        | AYE | NAY |
|-----------------------------|-----|-----|
| BROWN, Dave (Vice-Chairman) |     |     |
| ADDY, Kelly                 |     | ✓   |
| COBB, John                  |     | ✓   |
| DARKO, Paula                |     | ✓   |
| EUDAILY, Ralph              | ✓   |     |
| GOULD, Budd                 |     | ✓   |
| GRADY, Ed                   | ✓   |     |
| KEYSER, Kerry               | ✓   |     |
| KRUEGER, Kurt               |     | ✓   |
| MERCER, John                |     | ✓   |
| MILES, Joan                 |     | ✓   |
| MONTAYNE, John              |     | ✓   |
| O'HARA, Jesse               | ✓   |     |
| POFF, Bing                  |     | ✓   |
| RAPP-SVRCEK, Paul           |     | ✓   |
| SPAETH, Gary                |     | ✓   |
| NEILL, Charlotte            |     | ✓   |
| HANNAH, Tom (Chairman)      |     | ✓   |
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TALLY

4      13

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

MOTION: Rep. O'Hara moved to adopt the following amendment proposed by  
the Department of SRS. On page 2 of HB 9, following line 4 insert "(2)

"The legislature may in its discretion set eligibility criteria for programs  
and services, admission to institutions and facilities as well as the du-  
ration and level of benefits and services. A law implementing this section  
does not violate this Constitution if it is supported by any rational basis."  
Renumber: subsequent sections.

The motion was seconded by Rep. Eudaily and FAILED 4-13.

ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE 3-27-86

BILL NO. H.B. 9

NUMBER 9: 95

| NAME                        | AYE | NAY |
|-----------------------------|-----|-----|
| BROWN, Dave (Vice-Chairman) |     | ✓   |
| ADDY, Kelly                 |     | ✓   |
| COBB, John                  | ✓   |     |
| DARKO, Paula                |     | ✓   |
| EUDAILY, Ralph              | ✓   |     |
| GOULD, Budd                 | ✓   |     |
| GRADY, Ed                   | ✓   |     |
| KEYSER, Kerry               | ✓   |     |
| KRUEGER, Kurt               |     | ✓   |
| MERCER, John                | ✓   |     |
| MILES, Joan                 |     | ✓   |
| MONTAYNE, John              |     | ✓   |
| O'HARA, Jesse               | ✓   |     |
| POFF, Bing                  |     | ✓   |
| RAPP-SVRCEK, Paul           |     | ✓   |
| SPAETH, Gary                | ✓   |     |
| NEILL, Charlotte            | ✓   |     |
| HANNAH, Tom (Chairman)      | ✓   |     |
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TALLY

10      8

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

MOTION: Rep. Cobb moved that HB 9 DO PASS AS AMENDED. The  
motion was seconded by Rep. Keyser and CARRIED 10-8.



# STANDING COMMITTEE REPORT

March 27

1986

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 7

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

REP. TOM HANNAH

Chairman

**SOVEREIGN IMMUNITY CONSTITUTIONAL AMENDMENT**

FIRST reading copy ( WHITE )  
color

ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE 2-27-86

BILL NO. H.B. 7

NUMBER 9:50 a.m.

| NAME                        | AYE | NAY |
|-----------------------------|-----|-----|
| BROWN, Dave (Vice-Chairman) |     |     |
| ADDY, Kelly                 |     | ✓   |
| COBB, John                  | ✓   |     |
| DARKO, Paula                |     | ✓   |
| EUDAILY, Ralph              | ✓   |     |
| GOULD, Budd                 | ✓   |     |
| GRADY, Ed                   | ✓   |     |
| KEYSER, Kerry               | ✓   |     |
| KRUEGER, Kurt               |     | ✓   |
| MERCER, John                |     |     |
| MILES, Joan                 |     | ✓   |
| MONTAYNE, John              |     | ✓   |
| O'HARA, Jesse               | ✓   |     |
| POFF, Bing                  |     | ✓   |
| RAPP-SVRCEK, Paul           |     | ✓   |
| SPAETH, Gary                |     | ✓   |
| NEILL, Charlotte            | ✓   |     |
| HANNAH, Tom (Chairman)      | ✓   |     |
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TALLY 8 8

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

MOTION: Rep. Gould moved that HB 7 BE TABLED. The motion was  
seconded by Rep. O'Hara and failed due a tie vote.

ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE 3-27-86 BILL NO. H.B. 7 NUMBER 10:00

| NAME                        | AYE | NAY |
|-----------------------------|-----|-----|
| BROWN, Dave (Vice-Chairman) | ✓   |     |
| ADDY, Kelly                 | ✓   |     |
| COBB, John                  |     | ✓   |
| DARKO, Paula                | ✓   |     |
| EUDAILY, Ralph              | ✓   |     |
| GOULD, Budd                 | ✓   |     |
| GRADY, Ed                   | ✓   |     |
| KEYSER, Kerry               | ✓   |     |
| KRUEGER, Kurt               |     | ✓   |
| MERCER, John                |     | ✓   |
| MILES, Joan                 | ✓   |     |
| MONTAYNE, John              | ✓   |     |
| O'HARA, Jesse               | ✓   |     |
| POFF, Bing                  | ✓   |     |
| RAPP-SVRCEK, Paul           | ✓   |     |
| SPAETH, Gary                | ✓   |     |
| NEILL, Charlotte            | ✓   |     |
| HANNAH, Tom (Chairman)      |     | ✓   |
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TALLY

14      4

Marcene Lynn  
Secretary

Tom Hannah  
Chairman

MOTION: Rep. Addy moved that HB 7 DO PASS. The motion was  
seconded by Rep. Rapp-Svrcek and CARRIED 14-4.

TESTIMONY OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES  
IN SUPPORT OF HOUSE BILL 9

The Department of Social and Rehabilitation Services supports House Bill 9 which has been introduced by Representative Cal Winslow. This amendment to Article XII, Section 3 of the Montana Constitution is essential in order to provide more discretion to the legislature in the adoption of statutes pertaining to public assistance benefits. On January 16, 1986 the Montana Supreme Court held unconstitutional those provisions of House Bill 843 (passed by the 1985 Montana Legislature) which restricted or denied public assistance to able-bodied persons under age 50 without dependent minor children. In its ruling the court developed a "middle-tier" test which should be applied to all public assistance legislation. This test requires that the state demonstrate two factors:

- 1) that its classification of welfare recipients . . . is reasonable; and
- 2) that its interest in classifying welfare recipients . . . is more important than the people's interest in obtaining welfare benefits.

The court went on to state that there should be a balancing of the rights infringed and the governmental interest to be served by such infringement. Saving money must be balanced against the interest of misfortunate people in receiving financial assistance from the state. For example, if the state were to terminate all "able-bodied" persons from the public assistance program it might meet the first portion of the court's test regarding "reasonableness". It is questionable, however, whether such legislation

would meet the second portion of the test which requires a balancing of the misfortunate welfare recipient's interest in receiving benefits with the state's interest in saving money and encouraging employment.

The Montana Supreme Court is the first court in the nation to establish a middle-tier (heightened scrutiny) test for welfare legislation. It is believed that the court will apply this test not only to the state general relief program but also to federal welfare programs (e.g. medicaid, AFDC, food stamps, etc.) administered by our state. Montana is not required by federal law to adopt these programs but if it does, the federal government will only reimburse the state if eligibility is determined in accordance with federal rules and regulations. In many instances it is unlikely that the federal eligibility rules would pass the higher middle-tier (heightened scrutiny) test adopted by the Montana Supreme Court. The "supremacy clause" would not preclude the application of the middle-tier test in Montana because the federal programs are optional rather than mandated by federal law. If Montana courts determine that a federal eligibility rules does not meet the higher standard of review, then 100% state funds must be used to pay for equivalent welfare assistance.

While House Bill 9 is a step in the right direction, SRS does not believe that it is complete enough to provide to the legislature the discretion normally accorded to it in the adoption of state laws. The Montana Supreme Court developed the middle-tiered test not because public assistance is a fundamental

right, nor because the sections in Article XII are prefaced with the word "shall" but rather because welfare assistance is "reference[d] in the Constitution". In order to place welfare assistance in line with the federal Constitution and the decisions of other state and federal courts it is essential that the equal protection test in Article II, Section 4 be returned to that of a "rational" basis test. The attached amendment to House Bill 9 spells out that rational basis test.

PROPOSED AMENDMENT TO HOUSE BILL 9  
Introduced Bill  
(Re: Amendment to Article XII, Section 3  
of the Montana Constitution)

1. Page 1, line 25.  
Following: "discretion"  
Strike: "designate any level and duration of"  
Insert: "provide such"
2. Page 2.  
Following: line 4  
Insert: (2) "The legislature may in its discretion set eligibility criteria for programs and services, admission to institutions and facilities as well as the duration and level of benefits and services. A law implementing this section does not violate this Constitution if it is supported by any rational basis."  
  
Renumber: subsequent sections
3. Page 2, line 14.  
Following: "legislature to"  
Strike: Remainder of line 14 and all of line 15.  
Insert: "Restrict the scope and duration of welfare programs."
4. Page 2, line 17.  
Following: "legislature to"  
Strike: Remainder of line 17 and all of line 18.  
Insert: "Restrict the scope and duration of welfare programs."

Submitted at the request of  
Department of Social and  
Rehabilitation Services

? ~~discretion~~ FOR amending the constitution to allow the legislature to restrict the scope and duration of welfare programs.

    
  

? ~~discretion~~ AGAINST amending the constitution to allow the legislature to restrict the scope and duration of welfare programs.