

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

49th Legislature Special Session III

Date June 24, 1986

NAME	PRESENT	ABSENT	EXCUSED
HANNAH, Tom (Chairman)	✓		
BROWN, Dave (Vice-Chairman)	✓		
ADDY, Kelly			✓
COBB, John	✓		
DARKO, Paula	✓		
EUDAILY, Ralph	✓ 8:45		✓
GOULD, Budd	✓		
GRADY, Ed	✓		
KEYSER, Kerry	✓		
KRUEGER, Kurt		✓	
MERCER, John	✓		
MILES, Joan	✓		
MONTAYNE, John	✓		
NEILL, Charlotte	✓		
O'HARA, Jesse	✓		
POFF, Bing	✓		
RAPP-SVRCEK, Paul	✓		
SPAETH, Gary	✓		

MINUTES OF THE MEETING  
JUDICIARY COMMITTEE  
49TH LEGISLATURE SPECIAL SESSION III  
HOUSE OF REPRESENTATIVES

June 24, 1986

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on June 24, 1986 at the hour of 8:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Eudaily and Rep. Addy who were previously excused. Rep. Krueger was absent. (Rep. Eudaily appeared approximately 8:45 a.m.)

CONSIDERATION OF SENATE BILL 7: Senator Fred Van Valkenburg, Senate District 30, sponsor, stated that SB 7 was introduced at the request of the Office of Budget and Program Planning to attempt to deal with approximately \$600,000 of the budget shortfall. Fifty deputy county attorneys came under the provision of SB 116 which was passed in the 1985 legislative session. He said that after the legislature adjourned last session, the magistrates filed a lawsuit in district court challenging the constitutionality of the fine that the legislature chose to utilize to pay for this particular program change. That lawsuit was dismissed last December. He further pointed out that the magistrates chose not to collect those fines. There appears to be no adequate way to enforce this at the state level. The state is now looking at about \$600,000 shortfall in income otherwise received. This bill will modify that particular loss.

Senator Van Valkenburg went through the sections of SB 7 and pointed out the changes that had been made. In summary, he stated that when SB 116 passed, it was done with the idea of enhancing the prosecution effort in this state. He feels that it is important to keep that structure in place. If the counties are made responsible for the payment of these salaries, at budget time the county commissioners will more likely make sure that judges are collecting the fines that the legislature has authorized.

PROPONENTS: Dave Hunter, Director of the Office of Budget and Program Planning, stated that this bill does two things: 1. It helps us solve the budget problem; 2. it provides the incentive at the county level for county commissioners, county attorneys and J.P.'s to enforce the law which will thus provide revenue.

Gordon Morris, Executive Director of the Montana Association of Counties, stated his support for this bill because it

returns the responsibility to the local level. He further stated that the association has always opposed the longevity provision as provided for in SB 116.

There being no further proponents or any opponents, Senator Van Valkenburg closed.

Chairman Hannah opened the meeting up for questions.

Rep. Brown wanted to know what the ripple effect would be by changing the word "case" to "charge." Sen. Van Valkenburg stated it would not have much of an effect in felony cases, but it would have more of an effect in misdemeanor cases. Rep. Brown also wanted to know what counties would be mostly impacted by passage of this bill. Senator Van Valkenburg pointed out that before SB 116 passed, the state did not contribute anything to the deputy county attorneys' salaries. He said it was unfair to say that counties will be impacted by the entire amount.

In response to a question by Rep. Brown, Senator Van Valkenburg stated that counties will not be subjected to a "trickle down" type of situation here; there is a revenue source to pick up the costs.

In response to questions relating to changing the wording of "case" to "charge," John Northey, attorney for the Legislative Auditor's Office said the word "charged" was picked because it is presently defined in the criminal code as meaning a conviction -- not just being charged.

Referring to the deleted subsection (4) on page 4, it was Rep. Miles' opinion that this material should not be deleted because she doesn't feel that the total charge and fine assessed should go beyond the maximum fine in the code. Mr. Northey said the purpose of deleting this material is that instead of adding the charge into the fine, judges will reduce the fine by the amount of the charge.

Rep. Brown stated that he is concerned that the J.P.'s and district court judges are put in a very difficult position of being long term debt collectors. Senator Van Valkenburg commented that 75% or more fines collected are paid by installment payments anyhow. He feels this is a question of equity.

Rep. Hannah asked what the impact would be if this bill fails to pass the House. Senator Van Valkenburg said there would be an additional minimum of \$610,000 of revenue shortfall for the state. He thinks counties will be getting a continued benefit of the state's payment of one-half of the salaries of deputy county attorneys and

further payment of additional salaries on part-time county attorneys. He pointed out that it would be particularly unfair in the case of Butte-Silver Bow wherein they collect those payments from the state and wouldn't have to contribute towards the expenses.

Rep. Darko wanted to know the breakdown of fines imposed from J.P. courts and district courts. She is concerned that most fines are collected at the J.P. court level. Senator Van Valkenburg didn't have that information available.

There being no further questions, Chairman Hannah closed the hearing on SB 7.

#### E X E C U T I V E   A C T I O N

Rep. Gould moved that SB 7 BE CONCURRED IN. The motion was seconded by Rep. O'Hara and discussed. Rep. Keyser moved to amend page 4, by striking, "AND MUST BE IMPOSED IN ADDITION TO ANY FINE" on line 10; furthermore amend by reinserting the deleted language beginning on line 12 through line 14; and renumbering the subsections accordingly. The motion was seconded by Rep. Brown and debated.

Rep. Miles argued against the motion to amend by saying this language would shift the cost and doesn't do what it is supposed to do. Rep. Mercer also opposed the amendment by saying the language is not necessary. He doesn't think of it as a fine but rather as an administrative surcharge.

The question was called on the motion to amend, and it FAILED 5-11. (See roll call vote.)

Rep. Brown made a substitute motion that SB 7 BE NOT CONCURRED IN. The motion was seconded by Rep. Darko. Rep. Brown stated that his problem with this legislation is that it really doesn't do anything. It offers a potential for more pressure at the county level; however, that pressure is now present. The courts do not feel the justice system should be one of revenue enhancement. He doesn't feel that SB 7 deals with the problem. Neither the legislation that was passed in 1985 or SB 7 solves the problem. It just bumps the problem from the state level to the local level.

Rep. O'Hara feels this bill is needed as a revenue source. Rep. Miles also stated her support for the bill. Although she has problems with the concept of the bill, she thinks the bill is important in the meantime because it straightens out the inequities of the system.

Rep. Mercer moved to amend the bill. (See attached exhibit 1 for amendments.) Rep. Brown withdrew his substitute motion of Be Not Concurred In and seconded Rep. Mercer's motion to amend.

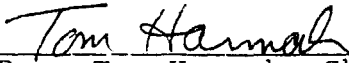
Rep. Spaeth stated his objection to these amendments. He pointed out that by adopting these amendments, we will lose \$610,000 from the general fund. There is no incentive now on behalf of the counties to do anything. He said that counties receive a windfall under the bill with Rep. Mercer's proposed amendments. Counties should have to shoulder some of this responsibility. Rep. Gould agreed with Rep. Spaeth by saying there will be no incentive with Rep. Mercer's amendments.

The question was called and the motion FAILED 6-11. (See roll call vote.)

Rep. Brown renewed his BE NOT CONCURRED IN motion. The motion was seconded by Rep. Mercer. Rep. Mercer spoke against the bill because he feels it will eliminate many deputy county attorneys around the state.

The question was called, and the motion FAILED 7-11. (See roll call vote.) Rep. Keyser further moved to revert back to the original motion of BE CONCURRED IN. The motion was seconded by Rep. O'Hara and CARRIED.

ADJOURN: On motion of Rep. Keyser, the meeting adjourned at 9:30 a.m.

  
Rep. Tom Hannah, Chairman

# STANDING COMMITTEE REPORT

June 24 19 86

Mr. Speaker: We, the committee on JUDICIARY  
report SB 7

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> do pass | <input type="checkbox"/> be concurred in     | <input type="checkbox"/> as amended                   |
| <input type="checkbox"/> do not pass        | <input type="checkbox"/> be not concurred in | <input type="checkbox"/> statement of intent attached |

REP. TOM HANNAH

Chairman

COUNTIES TO PAY DEPUTY COUNTY ATTORNEY SALARY AND TO  
KEEP FINE SURCHARGE

Third

Blue

reading copy ( )  
color

# ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE June 24, 1986 BILL NO. SB 7 NUMBER

9:05

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

TALLY

5

11

Marcene Lynn

Secretary

Tom Hannah

Chairman

MOTION: Rep. Keyser moved to amend page 4 by striking on line  
10 "AND MUST BE IMPOSED IN ADDITION TO ANY FINE" and furthermore  
by reinserting the deleted language beginning on 12 through 14 and  
renumbering the subsections accordingly. The motion was seconded  
by Rep. Brown and FAILED.

# ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE June 24, 1986

BILL NO. SB 7

NUMBER \_\_\_\_\_

9:22

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

TALLY

6

11

Marcene Lynn

Secretary

Tom Hannah

Chairman

MOTION: Rep. Mercer moved to amend the bill (see attached  
exhibit 1 for amendments). The motion was seconded by Rep.  
Brown and FAILED.



# ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE June 24, 1986 BILL NO. SB 7 NUMBER

9:25

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

TALLY

7

10

Marcene Lynn

Secretary

Tom Hannah

Chairman

MOTION: Rep. Brown moved that SB 7 BE NOT CONCURRED IN. Motion wa  
seconded by Rep. Mercer and FAILED.

AMENDMENTS TO SB 7:

1. Title, line 6.  
Strike: "DISTRIBUTION OF"  
Insert: "LAW GOVERNING"
2. Title, lines 7 and 8.  
Following: "BAIL;"  
Strike: "MAKING" through "FUNDS;" on line 8.
3. Title, line 9.  
Following: "SECTIONS"  
Strike: "7-4-2502,"  
Following: "46-9-301"  
Strike: ","
4. Page 1, following enacting clause.  
Strike: section 1 in its entirety  
Renumber: subsequent sections.
5. Page 5, line 15.  
Following: "~~section~~:"  
Strike: "(a)"  
Insert: "On or before the 19th day of each month, the county finance officer or treasurer shall remit to the state treasurer for deposit to the state general fund \$10 for each misdemeanor case and the greater of \$20 or 10% of the fine levied in each felony case. A county may retain up to 10% of the funds remitted to the state treasurer to cover only the costs of administering this section."
6. Page 5, following line 19,  
Strike: subsection (b) in its entirety.

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SB 7DATE June 24, 1986SPONSOR Sen. Van Valkenburg

NAME (please print)	<del>RESIDENCE</del> REPRESENTING	SUPPORT	OPPOSE
<i>Loran Morris</i>	<i>MHC</i>		

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.