

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVE

January 16, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 16, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 72: Rep. Bradley, District No. 79, sponsor, stated House Bill No. 72 was a cost saving measure authorizing a trial judge to permit the impanelment of a six-person trial jury in any civil action. In civil actions, a jury may, in the discretion of the trial judge, consist of six persons and two-thirds of the jury may render a verdict. She pointed out that in Missoula the average cost per year spent on juries for civil cases was \$11,000.00 and the amount for criminal cases was \$92,000.00.

PROPOSERS: LINDA ANDERSON, Lewis and Clark County Commissioner, and representing the Montana Trial Lawyers Association, stated about \$1,000.00 per trial could be saved if the bill was passed.

JOSEPH GARY, Judge from Billings, stated in the Billings area, the bill could save \$30,000.00 to \$40,000.00 a year. Some trials may still require a 12-person jury, but the majority of the trials could be conducted with a six-person jury in order to save money.

KARL ENGLAND, Montana Trial Lawyers Association, stated the members of his association were use to, and comfortable with, a 12-person jury. Now, with the changes in the Federal Court system, they have worked with six-person juries. There are differences in working with a six-person jury but the cost saving measure, and the discretionary provision in the bill, did not cause them problems.

PAT MELBY, representing the State Bar of Montana, supported HB 72 but felt it was important that the judges and attorneys had the ability to have a 12-person jury when advisable.

OPPOSERS: JIM ROBISCHON, Montana Liability Coalition, opposed the bill because the economy involved was very minimal. Based on the present jury fee, the maximum economy would be \$78.00 per day. The average civil trial ran about four days. Juries today are being asked to do more than

ever before. HB 72 would make a drastic and chilling change in the present law.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 72: Rep. Miles stated she was having trouble understanding the difference between 2(a) and 2(b) and asked Rep. Bradley to explain the difference. Rep. Bradley said that 2(a) basically said there will not be any more than 12 people and 2(b) says that in a civil trial there will be no more than six, so, (a) is the maximum and (b) is the minimum. Rep. Mercer pointed out that 2(a) stated an agreement between the parties and the judge wanting 12 jurors. If the parties request six jurors, then the judge would set the jury at six. 2(b) stated the parties request a six-person jury and the judge tells them there will be a 12-person jury.

Rep. Meyers asked Mr. Robischon if, for economy purposes, it was not better to pay six people and not 12 people, especially after sitting in a courthouse for three days and then having the case dismissed. Mr. Robischon stated that is the same as if a verdict came in after three days. He said there certainly would be a savings. Rep. Miles asked Mr. Melby what he meant when he said he was representing the State Bar Association. He stated the State Bar was a unified Bar Association of the Supreme Court and the by-laws are adopted by the Supreme Court, representing plaintiff attorneys and defense attorneys. Rep. Miles also asked him if he was authorized to support the bill and he said that the executive board of the association felt comfortable with the issue.

Rep. Giacommetto asked Judge Gary if he would rather have the option of a six or 12-person jury or be mandated to have one or the other. Judge Gary stated he liked the discretionary position.

Rep. Hannah asked Rep. Bradley if there were other states who operated with the procedure. Rep. Bradley stated she could not answer the question.

Rep. Bradley closed the hearing on HB 72.

HOUSE BILL NO. 135: Rep. Addy, District No. 94, sponsor, stated there are three jury bills in this session and HB 135 mandates a six person jury in civil cases only. He said that he wished to speak to the concerns raised about how rich a cross section of the community would be attained with the process used now versus this process. It must begin, not with the number of people that will end up on the jury, but the number of people who are called from the community to respond to a call of jury duty. There was a tremendous reluctance for people to take time out of their lives for

jury duty. In cases of misdemeanor, a trial jury may consist of 12 persons or any number less than 12 upon which the parties may agree in open court. The first six people who appear as their names are drawn and called, approved as indifferent between the parties, and not discharged or excused, must be sworn and constitute the jury to try the issue.

There were no proponents for HB 135.

OPPONENTS: JIM ROBISCHON, Montana Liability Coalition, stated this was a drastic change in the present system and the best of both worlds was to take the dollar limit off the statutes; thereby permitting the parties and the courts the opportunity to select a six-person jury that was appropriate and the best economy of the case.

KARL ENGLAND, Montana Trial Lawyers Association, explained the association would rather have a discretionary choice than mandatory six person jury. That was why they prefer HB 72 over HB 135.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 135: Rep. Rapp-Svrcek asked Rep. Addy what the difference was between his bill and Rep. Bradley's bill. He stated there was a policy argument. Rep. Addy pointed out that jurors were called from the voter's register when Rep. Rapp-Svrcek asked him where the jury names were pulled from.

Rep. Rapp-Svrcek asked Rep. Addy to briefly state his reasoning, again, for his wanting to reduce the size of the jury. Rep. Addy stated that it is a balancing act; deciding if the economic reasons are worth the loss of airness in jury verdicts. You gain more than you lose. Rep. Addy closed the hearing on HB 135.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO 79: Rep. Hannah moved DO PASS. Rep. Cobb asked if HB 79 had to be passed by federal mandate. Rep. Mercer stated HB 79 was mandated by the Federal Government. Rep. Addy moved an amendment on page one, line 17, regarding insurance through the employer. Rep. Hannah questioned inserting the language that Rep. Addy proposed. Rep. Daily stated he supported Rep. Addy's amendment because it was headed in the right direction since it was the intent of the Department of Social Services that the only time this would take effect was when insurance was reasonably available. Rep. Mercer pointed out that HB 79 was not the best bill, but it was mandated and Rep. Addy's amendment would help people from being subjected to harassment from the department. Rep. Giacometto explained HB 79 stated the cost

was not to exceed 5% of the net income and it should protect most people. Rep. Cobb said that he supported Rep. Addy's amendment because the department did not have the man power to be looking for insurance companies for people. Question was called on the amendment and a voice vote was taken. The motion carried 16-2. Rep. Daily moved the bill, DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 79 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 82: Rep. Hannah moved DO PASS. Rep. Darko moved the amendments on page 1, line 21, 22 and 24; page 2, line 14 and 25; page 3, line 21. Question was called and voice vote was taken. The motion CARRIED unanimously. Rep. Keller moved to give rule making authority to the Department of SRS. Question was called and a voice vote was taken. All members voted in favor of the motion with the exception of Reps. Hannah and Daily dissenting. The motion CARRIED 16-2. See attached amendments. Rep. Addy moved DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 15-3 with Reps. Mercer, Cobb and Brown dissenting. HB 82 DO PASS AS AMENDED.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 9:43 a.m.



EARL LORY, Chairman

DAILY ROLL CALL
 JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 16, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

January 16,

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Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL 82

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

REP. LORY

Chairman

1. Page 1, lines 21, 22, and 24.

Following: "department"

Insert: "of social and rehabilitation services"

2. Page 2, line 14.

Following: "department"

Insert: "of social and rehabilitation services"

3. Page 2, line 25.

Following: "The department"

Insert: "of social and rehabilitation services"

4. Page 3, line 21.

Following: "state, the department"

Insert: "of social and rehabilitation services"

5. Page 3.

Following: line 22

Insert: "NEW SECTION. Section 2. Extension of authority.

Any existing authority of the department of revenue or the department of social and rehabilitation services to make rules on the subject of this act is extended to the provisions of this act."

MS
FIRST

reading copy (WHITE)
color

WITNESS STATEMENT

NAME Pat Melby H BILL NO. 72
ADDRESS 723 5th DATE 1/16/86
WHOM DO YOU REPRESENT? State Bar of Mont
SUPPORT _____ OPPOSE AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Tim Robischon BILL NO HB72
HB135
ADDRESS Helena DATE _____
WHOM DO YOU REPRESENT? Mont. Liability Control
SUPPORT _____ OPPOSE AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

