

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

March 4, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 4, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members present with the exception of Rep. Hannah.

SENATE BILL NO. 57: Senator Halligan, District No. 29, stated this bill came from the sheriff's office and he referred to Katherine J. Good to explain the bill.

PROponents:

Katherine J. Good, from the Missoula County Sheriff's Department, testified this bill is presented to revise and update the civil process codes and regulations. The first section of the bill amends the deadline for paying sheriff fees to the county treasury from the first Monday of the month to the tenth day of the month. The third section relates to a writ of execution, and the service thereof, and specifies a 60 day return deadline. Section four relates to a writ of execution, also, which would allow the sheriff's office the option of returning a writ of execution to the officer, agent, or attorney directly to the court as is required under the codes now. The common practice, today, regarding the returned writ of execution and the one attorneys prefer, is that the sheriff's office is to make the disbursement of the recovery to them which is then easier to disperse funds and make the return to the same place. The attorneys would be responsible for returning the documents to the court. The current code does not allow this option. She explained section five changes the notice of sale posting requirements. She felt the word "township" should be changed to "county". Sections six, seven, eight, and nine amends the abandon vehicle codes to remove the preservation requirements and changes it to just a storage requirement, This code would also change the requirement for publication for the notice of sale for abandoned vehicles to one week prior to the sale. Section ten changes the lien publication requirement to be consistent with the sale of personal property under court order making the publication requirement one week before the sale. Section 11 is a new code that allows the department to request a security for costs under a claim and delivery order.

There were no further proponents and no opponents. There were no questions from the committee.

Senator Halligan closed the hearing on Senate Bill No. 57.

SENATE BILL NO. 49: Senator Thayer, District No. 19, Chief Sponsor, stated this bill comes from the joint interim subcommittee on liability issues and it basically is an act to abolish civil liability actions against officers, directors and volunteers of nonprofit corporations. He stated this does not apply to any willful or wanton misconduct. He explained nonprofit corporations means an organization exempt from taxation and qualify under section 501(c) of the Internal Revenue Code or corporations admitted under the Montana Nonprofit Corporation Act. The main reason this bill was being presented was that the cost for nonprofit corporations obtaining this kind of coverage was just prohibited and the availability is terribly hard to get. It has been very difficult to find people to serve on the boards because of the fact they do not want to be sued for their personal assets under the current situation.

PROPONENTS: Bill Leary, representing the Montana Hospital Association, supported this bill on behalf of the 500 hospital trustees who served the licensed hospitals in the state.

Chris Volinkaty, Lobbyist for the Developmentally Disabled People for the state of Montana, stated currently the developmentally disabled people are receiving community services from 56 nonprofit corporations who benefit greatly from this bill.

Lyle P. Nagel, President of the State of Montana Volunteer Firefighters Association, felt the bill was very important and urged support.

Jo Brunner, representing the Montana Water Association, stated the irrigation district and the water user facilities were either without liability for their officers or were paying such premiums as to be prohibitive. She submitted written testimony. (Exhibit A).

Lorna Frank, representing the Montana Farm Bureau, went on record in support of the bill.

Carol Mosher, representing the Montana Cattle Women and the Montana Stock Growers, supported the bill.

Bob Phfer, Vice President of the Montana Credit Union League, representing 108 of Montana's credit unions, stated the credit unions were nonprofit member owned and controlled

financial cooperatives and each member had one vote regardless of the number of shares or deposits he or she held without proxy voting. Credit unions were established by federal and state legislations to allow pulling of resources and to provide for a special society need. As a service orientated cooperative, volunteers are a very important part of the structure. The bill protects and limits liability of those who serve without compensation.

Kathy Irigoien, representing the State Auditor's Office, stated the State Auditor wished to go on record in support of SB 49, because the insurance department had received numerous complaints about the shortage of liability insurance for directors, officers, and volunteers. The Montana insurance department urged the bill be given a favorable consideration.

Joe Upshaw, representing the Association of Retired Persons, supported the bill.

Roger Young, President of the Great Falls Area Chamber of Commerce, stated the legislation would be helpful in alleviating the insurance liability problem.

Dennis Lopatch, Attorney for Mountain Bell, supported the bill. He also stated he was asked by the Montana Coalition to go on record as supporting the measure.

Karl England, Montana Trial Lawyers, Association, supported the bill. He submitted amendments. (Exhibit B).

There were no further proponents or opponents to SB 49.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 49: Rep. Eudaily asked Senator Thayer about amending the last paragraph regarding the words "employees". Senator Thayer explained rather than try to amend the last section of the law, the words "and shall be immune from civil liability as provided in Section 1" be added so the employees are not exempt. Senator Thayer referred the question to Karl England. Mr. England explained 35-2-411 was a provision that is in our law and it is designed to deal with the obligation of the corporation itself. Rep. Eudaily stated he could understand if it did not refer back to Section 1, which said they would only be liable for wilfull and wanton misconduct. Mr. England felt there was no need to add lines 14 and 15 to the existing statutes.

Rep. Addy asked Senator Thayer to comment on the third amendment offered by the Trial Lawyers Association. The Senator stated he had not had a chance to look over the

amendments but stated off-hand, he would probably object to the amendment.

Rep. Addy asked Mr. Leary if all the hospitals are 501(c) organizations or could they be. He stated there are two hospitals that are for profit organizations and all the other 58 in the state are nonprofit and are 501(c)3 providing extensive amounts of charity services. Mr. Leary explained the proposed amendment could be simply solved by removing the word "or" on line 24 and substitute the words "and id" stating the hospitals would then be under the 501(c) category.

Rep. Addy also asked Mr. Lopatch what he thought of the third amendment. Mr. Lopatch said he had not done enough work with the trade association to be familiar with whether or not they all go through the step of obtaining 501(c) status. Senator Thayer closed the hearing by stating he was a little touchy about the "uncompensated" amendment and asked the proposed amendments be studied very carefully before acting on them.

SENATE BILL NO. 256: Senator Jacobson, District No. 36, was requested by the Department of Social and Rehabilitation Services having to do with the divorce statues pertaining to custody investigations and contested custody proceedings. The department had been getting a lot of requests for court ordered custody investigations in private divorce proceedings where there is a custody dispute. Currently, there are a number of licensed social workers in private practice, qualified to conduct these investigations but because the department did not charge a fee, they are being ordered by the courts to conduct these investigations. The department hoped, with the proposed amendments, they can charge a reasonable fee for their time spent. The department proposed to amend the statutes so, instead of collecting the costs after the final order, they would be able to charge a fee for the investigation before initiating the investigation. It was estimated the department is conducting about 200 of these every year with an average length of time for the investigations at about 25 hours. The time spent by the social worker doing this is time taken away from other protective services to both children and adults. They hope this will cut down on the requests and allow them to also charge a reasonable fee.

PROPOSERS: John Madsen, Department of Social and Rehabilitation Services, (SRS), stated it was clearly the department's intent to get out of the business of doing custody investigations except in those cases where, in certain communities throughout the state, there are no other people available to do investigations or the people are indigent.

In those cases, the department would be willing to do custody investigations for a reasonable fee as the bill stated, "to be determined by the court".

No further proponents and no opponents.

Senator Jacobson closed the hearing on Senate Bill No. 256.

SENATE BILL NO. 144: Senator Blaylock, District No. 43, stated under the criminal code, those cases where a felony is involved and a mental disease or defect is raised as a defense in the case, the court has three ways to sentence a defendant. First, the defendant can be found to be unfit to proceed at a hearing because of the mental disease or defect and be placed in an appropriate institution. Secondly, the defendant can be found not guilty by reason of mental disease or defect and the court can order him committed to the custody of the superintendent of the Montana State Hospital for custody, care, and treatment. Thirdly, the defendant, after being found guilty, can be sentenced for treatment to the director of the Department of Institutions and placed in an appropriate institution for definite period of time, not to exceed the maximum term of imprisonment that could be imposed under other sections of the criminal code. Under the first two types of sentencing, the Department of Institutions can have standing before the court. Under the third type of sentencing, the department can not have court standing, only the defendant can. This has been found to raise great difficulties. The department would like standing, to allow its' professional people to come before the court to say the defendant has reached that point where he can be sent back to prison if he still has time to serve.

PROPOSERS: Curt Chisholm, Department of Institutions, stated he supported the bill. He did feel it was important to point out the department needs the standing before the court in order to go back and state the individual no longer needs the services of the Montana State Hospital and recommend to the court the defendant served the remaining part of his sentence in the Montana State Prison or the defendant be paroled. he also stated the bill changed the standard that allowed the department's professionals to go back to the court. The law currently states the professional must prove the defendant is cured. This is a tough standard to meet, especially when you are dealing with mental disease or defect. The department suggested the language be changed and used the same language that is used in the civil code. He agreed with proposed amendments that the Attorney General's office would submit.

Kim Kradolfer, Assistant Attorney General for the state of Montana, submitted proposed amendments. (Exhibit A). She urged support of the bill with the proposed amendments.

No further proponents, no opponents and no questions.


Senator Blaylock closed the hearing on Senate Bill No. 144.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 57: Rep. Giacometto moved SB 57 Be Concurred In. Rep. Eudaily questioned the language on page 13, section 11, regarding where the money was coming from. Rep. Mercer stated it would be the party who was seeking execution. Rep. Eudaily wondered if there would be any costs the counties might have to incur. Rep. Hannah stated the requirements under the bill were statutory requirements and did it mean we now had to pay the sheriff to do those things in section 11. Rep. Mercer stated Rep. Hannah's understanding was fairly accurate. He stated currently, if the sheriff is asked to sell some property of someone you had a judgment against, the sheriff withheld from the proceeds whatever his costs were. The bill is saying, the sheriff is not sure if he would have enough proceeds from the sale to cover his costs and you have made the judgment to execute on the property so, he now wants a bond. The sheriff does not want to get stuck for the costs and this should eliminate the sheriff from ever getting stuck. Rep. Hannah felt this would also eliminate many of the smaller judgments from being acted upon because the sheriff would feel it was not worth it to him to collect it. Rep. Hannah moved to strike Section 11 from the bill. Rep. Darko felt the language used should be enough. Rep. Giacometto stated he felt Rep. Hannah was correct. Question was called and voice vote was taken on the original motion. Thirteen members voted in favor of the motion and two voted in opposition. The two voting in opposition were Rep. Eudaily and Rep. Hannah. SB 57 BE CONCURRED IN.

ACTION ON SENATE BILL NO. 256: Rep. Daily moved Be Concurred In. Question was called and a voice vote was taken. The motion carried unanimously. SB 257 BE CONCURRED IN.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 9:50 a.m.



Earl Lory, Chairman

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 4, 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

MARCH 4,

19 57

Mr. Speaker: We, the committee on JUDICIARY
report **57**

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Chairman

75
STANDING COMMITTEE REPORT

MARCH 4,

19 **57**

Mr. Speaker: We, the committee on **JUDICIARY**

report **HOUSE B. 256**

- do pass
- do not pass

- be concurred in
- be not concurred in

- as amended
- statement of intent attached

Chairman

TRINO

BLUE

reading copy (_____)
color

EXHIBIT B
DATE 3-4-87
SB # 49

PROPOSED AMENDMENT TO SENATE BILL 49 - THIRD READING COPY

Page 1, Line 16

Following: "No"
Insert: "Uncompensated"

Page 1, Line 21

Following: "misconduct."
Insert: "The immunity granted by this subsection does not apply to the liability of a non-profit corporation."

Page 1, Line 24

Following: "1954"
Delete: "or a corporation incorporated or admitted under the Montana Non-profit Corporation Act"

EXHIBIT H
DATE 3-4-87
SB # 144

PROPOSED AMENDMENT TO SB 144, FIRST READING IN THE HOUSE

*asst.
attny.
general*

1. Page 2, lines 9 through 11

STRIKE: "that the defendant ~~has-been-cured-of~~
no longer suffers from the mental disease
or defect OR IS NOT CONSIDERED A DANGER TO
HIMSELF OR OTHERS."

INSERT: " : (a) that the defendant no longer suffers
from a mental disease or defect;

(b) that the defendant's mental disease
or defect no longer renders him
unable to appreciate the criminality
of his conduct or to conform his conduct
to the requirements of law; or

(c) defendant suffers from a mental disease
or defect which makes him a danger to
himself or others but either there is
no treatment available for his mental
disease or defect or he refuses to
cooperate with treatment."

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE
BILL NO.

49

DATE

March 4, 1987

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Cris Volinkey	PD	✓	
Jo Bauman	MADA	✓	
Bob P. [unclear]	Mont Credit Unions League	✓	
Lorale Mosher	Mont. Cattle Women Mont. Stockgrowers	✓	
Lyle P. Nagel	Mont. St. Vol Firefighter Assn	✓	
Lorna FRANK	MONT. FARM BUREAU	✓	
Bill Leroy	MONT. Hosp. Assn	✓	
Brenda Schye J	Mont Cultural Advocacy	X	
Louis Maas	Self	X	
KATHY IRIGOIN	State Auditor	X	
Roger Young	Great Falls Chamber of Commerce	X	
[unclear]	AARP	X	
Roger McBlend	INDEPENDENT INS AGENTS ASSOC. OF MONT	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

