

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on Jan. 18, 1989, at 8:05 a.m.

ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. Budd Gould due to illness

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 107

Presentation and Opening Statement by Sponsor: Rep. Spaeth, House District 84 presenting HB 107 as an act to raise filing fees in justice and small claims court. He stated that the Justice Dept. is not asking for this money for any particular reason, rather it is due to the increase in cost for processing complaints. This law will help compensate counties for the increased costs that are incurred by the justice court.

List of Testifying Proponents and What Group They Represent:

Gordon Morris, Montana Association of Counties

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Gordon Morris testified in favor of HB 107 on behalf of the counties throughout Montana as supporting Rep. Spaeth.

Questions From Committee Members: Rep. Addy addressed the issue of mixing funding between the state and county. His question was if this was true to Justice Court as well. Mr. Morris responded by stating that it is

funded entirely through the County.

Rep. Hannah questioned Rep. Spaeth as to what was exactly being filed and what was being required on the part of the county. Rep. Spaeth stated that the Justice Court follows the same procedures as the County Court but because of the increase in the case loads they must raise the fees.

Rep. Brown questioned Mr. Morris as to what an approximate percentage of total funding of Justice Courts and Counties would be. Mr. Morris guessed that 50% would come from fines, 10% comes from fees, and the remaining 40% comes from property taxes.

Closing by Sponsor: Rep. Spaeth closed.

DISPOSITION OF HOUSE BILL 107

Motion: Rep. Nelson made a DO PASS motion, seconded by Rep. Strizich.

Amendments, Discussion and Votes: Rep. Addy moved to strike section 2 from the bill, motion seconded by Rep. Wyatt. As a substitute motion Rep. Addy then moved to amend pg. 2, line 5; strike 15 and insert 10. Motion seconded by Rep. Strizich.

A vote was taken on Rep. Addy's proposed amendments and CARRIED with Rep. Hannah voting No.

Recommendation and Vote: Rep. Addy moved DO PASS AS AMENDED, motion seconded by Rep. Darko.

Discussion: Rep. Hannah feels that this bill is constructive, as he has seen over the years more fee bills enter the counties and local governments, attracting more attention to them. What used to be functions that were handled through the general fund are now being transferred over to fees and charges, still maintaining the general level of taxes.

Rep. Addy expressed that this is not being shifted onto the people who need the court services, ultimately this is being shifted to the non-prevalent party.

A vote was taken on the DO PASS AS AMENDED motion and CARRIED with Rep. Hannah voting No.

DISPOSITION OF HOUSE BILL 13

Motion: A DO PASS motion was made by Rep. Darko, seconded

by Rep. Wyatt.

Amendments, Discussion and Votes: Rep. Mercer proposed amendments shown as EXHIBIT 1. Motion seconded by Rep. Eudaily.

Rep. Hannah questioned Rep. Mercer as to the wording of the amendments "purposely, knowingly, or either or both, as an element of the offense". Rep. Mercer stated that if a person gets a bodily injury from someone or something that was purposely inflicted, such as a motor vehicle, it would not be covered under the current law. However, when all motor vehicle accidents are excluded there is a guide created to then use a car as a weapon. This type of an accident would not be covered under the crime victims act because the law has excluded all motor vehicle victims. HB 13 would allow for coverage under this type of an accident due to the fact that it is not a negligent crime such as a D.U.I.

Rep. Addy offered a friendly amendment to strike the word "all" on pg. 6, line 16. A vote was taken and CARRIED unanimously.

Rep. Boharski presented to the committee proposed amendments shown as EXHIBIT 2, motion seconded by Rep. Stickney. Rep. Addy made a substitute motion on pg. 1, line 11 to strike everything from the semi-colon to line 14 semi-colon. Page 7, section 4, strike all the new language. Motion seconded by Rep. Strizich.

Rep. Addy stated that he feels there is a reason that we levy 18% of the fines assessed in bails forfeited to this fund and that is to assist victims of crime. Putting this money into the general fund means taking it away from victims of crime.

Rep. Mercer, in opposition to Rep. Addy's motion as well as Rep. Boharski's motion stated that he feels this is a self defense action by the crime victims act people. The intent is to put the amount of \$200,000.00 into the fund so that people will not steal or rob from the fund below that amount. He feels that the money should be left in the fund unless there is an emergency reason for withdrawing from it.

Rep. Hannah stated that if the language of this bill is not left the way that it is there could be a movement toward reducing the amount of 18%. He feels there would be a greater possibility to maintaining the money towards the use that it is intended to by leaving the

language and percentage of the bill the way that it currently is. Rep. Wyatt spoke in agreement with Rep. Hannah.

Rep. Brown stated that he agrees with Rep. Addy's logic, but would be willing to try going with the language as proposed because of the robbing of the fund in the past. It gives one more piece of the statute to point to. It is the legislatures intent that this fund should not be subject to raid and opposes both proposed amendments.

A Roll Call Vote was taken on Rep. Addy's substitute amendment at the request of Rep. Brooke and FAILED with 6 ayes, and 11 nays.

Rep. Boharski requested of the committee to withdraw his proposed amendments.

Rep. Eudaily moved to amend pg. 11, line 15. Strike section 4, insert section 5. Motion was seconded by Rep. Stickney.

Rep. Addy offered a substitute amendment to prohibit any money from being withdrawn allocated to the victims compensation fund to be used for the general fund. Motion was seconded by Rep. Wyatt.

Rep. Hannah offered to the committee an additional substitute amendment to strike Rep. Addy's substitute motion and insert \$500,000 instead of \$200,000. Motion seconded by Rep. Brown.

Rep. Brooke stated that she was under the impression that the amount of \$200,000 was for fiscal year 1988. She was questioning whether it was for fiscal year '88 or if it was for the biennium. Cheryl Bryant stated that it was for fiscal year '88 and the amount for the biennium was roughly similar.

Rep. Brown withdrew his second to Rep. Hannah's motion, Rep. Brooke seconded.

A vote was taken on Rep. Hannah's substitute motion to replace \$200,000 with \$500,000 both in the title and on page 7, line 14. A Roll Call Vote was taken and the motion FAILED with 7 ayes, and 10 nays.

A Roll Call Vote was then taken on Rep. Addy's substitute motion to prohibit any money from being withdrawn allocated to the victims compensation fund to be used for the general fund. Motion CARRIED 9 to 7.

Recommendation and Vote: Rep. Addy moved DO PASS AS AMENDED, motion seconded by Rep. McDonough. A voice vote was taken and CARRIED unanimously.

DISPOSITION OF HOUSE BILL 108

Motion: Rep. Addy made a DO PASS motion, seconded by Rep. Wyatt.

Amendments, Discussion and Votes: Rep. Addy moved to strike paragraph 6 of the Addy, Mercer, and Rice amendments and substitute paragraph 1 of the Mercer amendment. Motion seconded by Rep. Mercer. A vote was taken and CARRIED unanimously.

Rep. Addy then moved to remove the 75,000 people per county requirement in paragraph 1 and strike all amendments contained in subsection 2. Motion seconded by Rep. Hannah.

A vote was taken on Rep. Addy's proposed amendments and CARRIED with Rep. Eudaily and Rep. Stickney voting No.

Recommendation and Vote: Rep. Addy moved DO PASS AS AMENDED, seconded by Rep. Wyatt. Motion CARRIED unanimously.

DISPOSITION OF HOUSE BILL 103

Motion: Rep. Brooke moved to reconsider action on HB 103, motion seconded by Rep. Nelson.

A vote was taken by the committee to reconsider previous action taken on HB 103. Motion CARRIED unanimously.

A DO PASS motion was made by Rep. Brooke, motion seconded by Rep. Strizich.

Amendments, Discussion and Votes: Rep. Brooke proposed to amend HB 103 to reinsert the language of Lines 19-21, motion seconded by Rep. Rice. A vote was taken on the amendment and CARRIED unanimously.

Recommendation and Vote: Rep. Brooke moved DO PASS AS AMENDED, motion seconded by Rep. Strizich. The motion was voted on and CARRIED unanimously.

ADJOURNMENT

Adjournment At: 9:42 a.m.



REP. DAVE BROWN, Chairman

DB/je

1508.MIN

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date Jan. 18, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD			X
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

January 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 107 (first reading copy -- white) do pass as amended .

Signed: 
Dave Brown, Chairman

And, that such amendment reads

1. Page 2, line 5.
Strike: "\$15"
Insert: "\$10"

STANDING COMMITTEE REPORT

January 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 13 (first reading copy -- white) do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 11.

Strike: "A"

Insert: "NO"

2. Title, line 12.

Strike: "OVER \$200,000"

3. Page 4, lines 8 and 9.

Following: "death" on line 8

Strike: "was" through "inflicted" on line 9

Insert: "occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely, knowingly, or either or both, as an element of the offense"

4. Page 6, line 16.

Following: "claimant"

Insert: ", provided that the division has made reasonable efforts to obtain from the claimant a release of the records or information"

5. Page 7, line 13.

Strike: "except that a"

Insert: "and no"

6. Page 7, line 14.

Strike: "in excess of \$200,000"

7. Page 11, line 15.

Strike: "4"

Insert: "5"

STANDING COMMITTEE REPORT

January 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 108 (first reading copy -- white) do pass as amended.

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 4.
Strike: "REQUIRING"
Insert: "ALLOWING"
2. Page 1, lines 15 and 16.
Strike: "with" on line 15 through "population of" on line 16
3. Page 1, lines 16 and 17.
Strike: "75,000" on line 16 through "or more" on line 17
4. Page 1, line 17.
Strike: "shall"
Insert: "may"
5. Page 1, line 25.
Strike: "not meeting the requirements in subsection (1)"
Following: "may"
Insert: "only"
6. Page 2, line 2.
Strike: "two-thirds"
7. Page 2, lines 11 and 12.
Strike: ", during" on line 11 through "to the" on line 12
8. Page 3, lines 16 through 18.
Strike: "The" on line 16 through "record." on line 18
9. Page 4, line 8.
Following: "law"
Insert: "unless a party requests a trial anew on appeal or unless the district court orders a trial anew in the interests of justice"

STANDING COMMITTEE REPORT

January 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 103 (first reading copy -- white) do pass as amended.

Signed: 
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 5.

Strike: "PAYMENT"

Insert: "PREPAYMENT"

2. Page 1, line 22.

Following: line 21

Insert: "(2) In civil actions, the jurors' fees must be taxed as costs against the losing party."

Renumber: subsequent subsections

Amendments to House Bill No. 13
Introduced Copy

Requested by Rep. Mercer
For the Committee on the Judiciary

Prepared by John MacMaster
January 14, 1989

1. Page 4, lines 8 and 9.

Following: "death" on line 8

Strike: "was" through "inflicted" on line 9

Insert: "occurred during the commission of an offense defined in
Title 45 that requires the mental state of purposely,
knowingly, or either or both, as an element of the offense"

2. Page 6, line 16.

Following: "claimant"

Insert: ", provided that the division has made all reasonable
efforts to obtain from the claimant a release of the records
or information"

JAN. 18, 1989

HB 13-Rep. Quilley

Amendments to House Bill No. 13
Introduced Copy

Requested by Rep. Boharski
For the Committee on the Judiciary

Prepared by John MacMaster
January 14, 1989

1. Title, line 12.

Strike: "MAY"

Insert: "MUST"

2. Page 7, line 15.

Strike: "may"

Insert: "must"

Amendments to House Bill No. 108
Introduced Copy

Requested by Reps. Addy, Mercer, and Rice
For the Committee on the Judiciary

Prepared by John MacMaster
January 17, 1989

1. Title, line 4.
Strike: "REQUIRING"
Insert: "ALLOWING"
2. Page 1, lines 15 and 16.
Strike: "with" on line 15 through "population of" on line 16
3. Page 1, lines 16 and 17.
Strike: "75,000" on line 16 through "or more" on line 17
4. Page 1, line 17.
Strike: "shall"
Insert: "may"
5. Page 1, line 25.
Strike: "not meeting the requirements in subsection (1)"
Following: "may"
Insert: "only"
6. Page 2, line 2.
Strike: "two-thirds"
7. Page 2, lines 11 and 12.
Strike: ", during" on line 11 through "to the" on line 12
8. Page 3, lines 16 through 18.
Strike: "The" on line 16 through "record." on line 18
9. Page 4, line 8.
Following: "law"
Insert: "unless a party requests a trial anew on appeal or unless
the district court orders a trial anew in the interests of
justice"

Amendments to House Bill No. 103
Introduced Copy

Requested by Judiciary Committee member
For the Committee on the Judiciary

Prepared by John MacMaster
January 18, 1989

1. Title, line 5.

Strike: "PAYMENT"

Insert: "PREPAYMENT"

2. Page 1, line 22.

Following: line 21

Insert: "(2) In civil actions, the jurors' fees must be taxed as
costs against the losing party."

Renumber: subsequent subsections

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 107DATE JANUARY 18, 1989SPONSOR REP. SPAETH

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>Gordon Morris</i>	<i>MAC</i>	✓	
<i>Wally Jewell</i>	<i>MT. MAG. ASSOC</i>		X
<i>Mike Sherwood</i>	<i>MTLA</i>		
<i>Jonene Zinne</i>			

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 18, 1989

BILL NO. HB 13

NUMBER 1.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN	X	
REP. OLE AAFEDT		X
REP. WILLIAM BOHARSKI		X
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY		X
REP. PAULA DARKO		X
REP. RALPH EUDAILY		X
REP. BUDD GOULD		
REP. TOM HANNAH		X
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH	X	
REP. JOHN MERCER		X
REP. LINDA NELSON		X
REP. JIM RICE		X
REP. JESSICA STICKNEY		X
REP. BILL STRIZICH	X	
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN		X

TALLY

6

11

Julie Emge
Secretary

Dave Brown
Chairman

Motion: Rep. Addy's substitute motion to amend page 1,
line 11 + page 7, section 4. Motion seconded by
Rep. Strizich + FAILED.

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 18, 1989

BILL NO. HB 13

NUMBER 2.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN		X
REP. OLE AAFEDT		X
REP. WILLIAM BOHARSKI		X
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY		X
REP. PAULA DARKO	X	
REP. RALPH EUDAILY		X
REP. BUDD GOULD		
REP. TOM HANNAH	X	
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH		X
REP. JOHN MERCER		X
REP. LINDA NELSON		X
REP. JIM RICE		X
REP. JESSICA STICKNEY		X
REP. BILL STRIZICH	X	
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN	X	

TALLY

7 10

Julie Emge
Secretary

Dave Brown
Chairman

Motion: Rep. Hannah's substitute motion to replace
\$200,000 with \$500,000 both in the Title & on
page 7, Line 14. Motion seconded by Rep. Brooke
& FAILED.

ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 18, 1989

BILL NO. HB 13

NUMBER 3.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN	X	
REP. OLE AAFEDT		X
REP. WILLIAM BOHARSKI		X
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY	X	
REP. PAULA DARKO		
REP. RALPH EUDAILY		X
REP. BUDD GOULD		
REP. TOM HANNAH		X
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH	X	
REP. JOHN MERCER		X
REP. LINDA NELSON	X	
REP. JIM RICE		X
REP. JESSICA STICKNEY	X	
REP. BILL STRIZICH	X	
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN		X

TALLY

9 7

Julie Enge
Secretary

Dave Brown
Chairman

Motion: Rep. Addy's substitute motion to prohibit any money from being withdrawn allocated to the victims compensation fund to be used for the general fund.
Motion CARRIED.