

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on January 16, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Senators Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Mike Halligan, Bob Brown, Joe Mazurek, Loren Jenkins, R. J. "Dick" Pinsoneault, John Harp, and Bill Yellowtail.

Members Excused: Senator John Harp

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: None.

HEARING ON SENATE BILL 85

Presentation and Opening Statement by Sponsor: Senator Matt Himsl of Kalispell, representing District 3, stated the bill had been requested by the Department of Administration. Its purpose is to extend the application of the bond validating act and is proposed every two years. Bondholders will have the assurance of bonds being honored, he stated.

List of Testifying Proponents and What Group they Represent:

Marvin Eicholtz, representing Department of Administration, (Taxation)

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Marvin Eicholtz of the department of administration said it is important that the bill be passed to assure bondholders that bonds issued since the last session would be honored.

Questions From Committee Members: Senator Jenkins asked what was the reason for the "grandfathering" of the two years. Mr. Eicholtz said the department can't validate all past and future bonds, but the bill provides for payment on now coming due. This has to be done every session.

Closing by Sponsor: Senator Himsl closed the hearing stating the great importance of the bonds to the state of Montana. He said the total bonds, refunding, notes certificates and notes was \$448,846.007.

#### DISPOSITION OF SENATE BILL 85

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that Senate Bill 85 DO PASS. The MOTION CARRIED UNANIMOUSLY.

#### EXECUTIVE SESSION ON SENATE BILL 83

Senator Nathe, sponsor of the bill appeared before the committee. He apologized for not attending the original hearing, being involved in executive session in another meeting at the time. He stated that the bill was introduced because there was no flexibility in the penalty provision or by the Department of Revenue and felt a better system could be devised to accommodate persons with good reasons for paying their taxes late, other than the 10% penalty which added up to a considerable amount in some cases. He said that, if the accountant doesn't fill out both the federal and state forms at the same time, paying the state might slip a person's mind, because he might assume the due date is later.

Chairman Crippen informed the sponsor of the bill that there had been no proponents in the hearing and that the department of Revenue had appeared as opposing the bill because the law already provided for the waiving of the penalty; and, by keeping the penalty in, it was felt that control of the collection would be maintained.

QUESTIONS: Senator Mazurek reiterated the DOR's belief that present law provides the ability to waive the penalty.

He expressed a willingness to work with the sponsor to solve the particular problem which brought about the drafting of the bill. He asked if Senator Nathe would be willing to hold back on action of the bill at this time and try to work with the DOR.

Senator Nathe said that, if Mr. Nordvedt was willing to extend some flexibility, he would be willing to delay the action of the bill. However, federal tax is collected on March 15, while state taxes are, in some cases, not due until May 15. He said he knew of an individual who was "walloped" with a penalty by the DOR who exercised no flexibility.

It was the consensus of the committee that the bill had many problems. Chairman Crippen said one option of the committee was to Table the bill.

Senator Yellowtail wondered if the committee might consider sending a letter to Mr. Nordtvedt explaining it's action or lack of action. Chairman Crippen said that was a good idea and suggested that Senator Yellowtail draft a letter to this effect.

Senator Jenkins asked why the state requirement for payment was different than the federal one. Senator Nathe didn't know.

Senator Jenkins said the present law uses the language "shall" be assessed a penalty, and he felt that was pretty strong language.

#### DISPOSITION OF SENATE BILL 83

Discussion: There was further discussion.

Amendments and Votes: None

Recommendation and Vote: Senator Yellowtail MOVED that the committee TABLE Senate Bill 83. The MOTION CARRIED UNANIMOUSLY.

#### DISCUSSION ON SENATE BILL 10

Senator Crippen called for discussion on Senate Bill 10. Senator Jenkins pointed out to the committee that Judge McNeil, in a letter distributed to the committee, had suggested two amendments. He MOVED that the amendment

regarding children be added to the bill. It reads as follows from the letter: "(3) There are no children from the relationship born before or during the marriage or adopted by the parties during the marriage who have not attained the age of 18 years or older, and the wife, to her knowledge, is not pregnant." The MOTION CARRIED UNANIMOUSLY.

Senator Halligan said he had checked with the Attorney General's office about the cost of the pamphlet and was informed the cost to that office would be about \$500. He said the bill would a fiscal note and asked that action of the bill be delayed until a fiscal note was prepared. He suggested the committee could Table the bill at this time if it wished. But, he felt the bill had merit in that it had a 90-day waiting period and was not a "quickie divorce". He then MOVED that Senate Bill 10 DO PASS AS AMENDED. After discussion by the committee, Senator Halligan decided to WITHDRAW the MOTION.

Senator Pinsonneault said the reason for some "one-day divorces" under present law, was that previous work had been done, and if the judge saw an attorney present, he knew that counselling and other matters in the case had been done.

Senator Jenkins asked what was the cost of a divorce if 3 months work had been performed by the lawyer. Senator Pinsonneault said, he quit keeping track after 12 hours, but for an uncontested divorce, he charged \$125 and sometimes less. One thing about a divorce, he said, was that problems continue to come up long after the decree.

Senator Mazurek said the cost of a divorce would be much more in Helena, probably from \$350 to \$500. And, in a contested case, he said the cost could run up to tens of thousands of dollars. However, he added, this bill did not pertain to contested divorces. Further, he said there were some things about this bill which he felt had merit. He felt that, with some amendment, the bill could be passable. In regard to students getting divorced, sometimes a wife works for years putting her husband through school and then the marriage falls apart. If a quick divorce were used, the wife might throw away her right to have a share of the earnings the educated husband would earn in the following years. He was concerned the wife might not be told of this claim against the spouse, if she used this type of divorce.

Senator Yellowtail said a bill of this limited scope has options available for people who need them and thought this was a good alternative to a regular kind of divorce. As to

the clerk of court's disagreement with the bill, he thought the publication that would be printed and distributed should alleviate that concern. He thought the filing fees should remain the same, but, he had some concern about the effective date.

Senator Halligan said he would like to talk to Mr. Barrett regarding the example Senator Mazurek gave, and asked the committee for 24 hours to do further research. He then WITHDREW his MOTION of DO PASS AS AMENDED.

#### DISCUSSION OF JUDGES' BILL - LC 315

Chairman Crippen told the committee he had talked to Jim Oppendahl regarding these bills. One would give a flat raise to district and court judges and the other would use an index method based on the salaries given judges in nearby states.

Senator Yellowtail felt the Judiciary Committee should take the "bull by the horns" and establish salaries, rather than look into what other states are doing.

Senator Brown asked if he meant that the Judiciary Committee represented the Judiciary branch of government, and Senator Yellowtail said, yes, he felt the decision could start here.

Senator Crippen said either bill could turn into a committee bill. The judges thought a committee bill by the Judiciary would lend credibility, he said.

Senator Halligan said the committee scrutinizes, but doesn't represent the judicial branch. He said there should be no question of impropriety as to the number of lawyers on the committee, as there were also an equal number who were not lawyers.

Senator Mazurek thought the committee should take an interest in the Judiciary. He noted that Governor Stephens mentioned in the State of the State speech that Montana paid its judges less than the other states. He thought if a committee bill were employed, it would take out some of the partisan politics. In his estimation, we ought not to be the lowest in the country in our judges salaries.

Senator Pinsoneault agreed in the committee bill concept.

Senator Beck asked who drafted the bill and Senator Crippen

said he thought Jim Oppedahl of the Supreme Court staff and Representative Spaeth. Senator Beck said he heard the drafters had trouble finding a sponsor. He also felt that other state employees deserved raises. Many of his constituents were not happy with the judges and might not be happy if their salaries were raised, while other government salaries did not enjoy the same raises.

Senator Crippen said he would be glad to be the chief sponsor of one of the bills. He felt the low salaries were an abomination. Even the new attorney general had to take a salary cut in accepting his job. His former position as assistant attorney general had a higher salary, and yet no one in the Legislature had the courage to raise salaries. He felt this committee should grant the judiciary the courtesy to do something to raise the salaries.

#### DISPOSITION OF LC 315

Recommendation and Vote: Senator Yellowtail MOVED that LC 315 be resubmitted and SPONSORED AS A COMMITTEE BILL. He also stated that he would like to see it amended. The MOTION CARRIED UNANIMOUSLY.

#### DISCUSSION ON LC 313

Senator Beck MOVED that LC 313 be resubmitted as a committee bill. Senator Halligan though it might be good to have this bill ready to go and go ahead and work on the other bill.

Senator Mazurek thought if this bill wasn't acceptable by the legislators, then the other one would lose credibility. He thought it might send a poor message. He would like to see the committee send a bill it really liked and thought that would be LC 315.

Senator Beck thought there was justification to at least see what other states are doing salary-wise, but Senator Yellowtail felt we shouldn't "pass the buck" in that respect. Senator Mazurek thought there were good points in both bills and said it wasn't a necessity to index salaries. He just wanted a bill the legislature could accept. After further discussion, Senator Beck's MOTION on LC 313 was withdrawn.

ADJOURNMENT

Adjournment: 11:00 a.m.



SENATOR BRUCE CRIPPEN, Chairman

BC/RJ

minutes.116

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 1-16-89

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| NAME                | PRESENT | ABSENT | EXCUSED |
|---------------------|---------|--------|---------|
| SENATOR CRIPPEN     | ✓       |        |         |
| SENATOR BECK        | ✓       |        |         |
| SENATOR BISHOP      | ✓       |        |         |
| SENATOR BROWN       | ✓       |        |         |
| SENATOR HALLIGAN    | ✓       |        |         |
| SENATOR HARP        |         |        | ✓       |
| SENATOR JENKINS     | ✓       |        |         |
| SENATOR MAZUREK     | ✓       |        |         |
| SENATOR PINSONEAULT | ✓       |        |         |
| SENATOR YELLOWTAIL  | ✓       |        |         |
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Each day attach to minutes.




STANDING COMMITTEE REPORT

January 16, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 85 (first reading copy -- white), respectfully report that SB 85 do pass.

DO PASS

Signed:   
Bruce D. Crippen, Chairman

STATE  
OF  
MONTANA  
**DEPARTMENT OF JUSTICE**  
CENTRAL SERVICES DIVISION

Justice Building, 215 North Sanders, Helena, Montana 59620 (406) 444-3800

SENATE JUDICIARY

SENATE NO.

DATE 11/16/89

BILL NO. SB 10

TO: Senator Mike Halligan  
FROM: Mick Robinson, Administrator *MR*  
SUBJECT: Senate Bill Number 10  
DATE: January 12, 1989

We estimate the costs associated with the printing and the distribution of the brochure described in Section 7 of Senate Bill Number 10 to be \$500. The cost of \$500 would be sufficient to print and distribute 5,000 copies.

MR/rj

