

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 23, 1991,
at 8:10 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Diana Wyatt (D)

Members Excused: Rep. Brown and Rep. Whalen

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON HB #163

EXPANDING USE OF STATE LAW ENFORCEMENT PAYMENTS TO CITY POLICE DEPARTMENT

Presentation and Opening Statement by Sponsor:

REP. KASTEN, HOUSE DISTRICT 28, stated this bill is for the small towns throughout Montana. HB #163 expands the authority to spend state money given to third class cities and towns. Presently,

these funds can only be spent for police training and pensions. Most third class cities have their police covered under PERS, many counties cannot justify spending all their funds for training one or two police people they employ. This is why they have such large reserves. They cannot be spent if they follow the letter of the law. At the same time, these police departments and cities are being squeezed under I-105. If they have funds sitting around that cannot be used and the state doesn't take them back. I have 11 letters from different cities and towns in Montana that are in support of this bill. EXHIBIT 1

Proponents' Testimony:

Alan Hansen, League of Cities and Towns, stated this bill could make some additional funds available for the small towns in Montana. It would make them available in a way that would make a lot of sense. Current law is very particular about the use of these funds. We are asking that dispatchers and other police department personnel be eligible for training and support through the use of these funds. As it is now, it is only members of the police department that can be trained through the use of these funds. These funds are critically needed. This would be one way, without having any effect on property taxes, to make some additional funds available that are desperately needed. This bill addresses a critical problem in a reasonable way.

Opponents' Testimony: none

Questions From Committee Members:

REP. MEASURE asked REP. KASTEN if she researched the original bill to see what the intent of the reserve of these funds were? REP. KASTEN said no she did not because the present statute says police training and pensions.

REP. RICE asked REP. KASTEN what is the source of these monies? REP. KASTEN said they are the annual state payments from the premium tax imposed on all insurance that have risk provisions. They are reallocated to the cities and towns on a one and a half mil basis.

REP. BROOKE asked Mr. Hansen if this amendment is approved, these funds could then be used for retirement other than training? Mr. Hansen said they currently are used for retirement. We want to include other personnel in the police department beside the policeman themselves.

REP. TOOLE asked REP. KASTEN if any of the police departments expressed any of their views? REP. KASTEN no, because they do not spend the money, the city fathers do. Therefore, it would be up to the city fathers to determine where they need training and personnel.

Closing by Sponsor:

REP. KASTEN stated all small towns and cities are in need of funds to provide the necessary services. This bill will allow them extra funds when they feel it is necessary to use them.

HEARING ON HB #178
UNIFORM INTERNATIONAL WILLS ACT

Presentation and Opening Statement by Sponsor:

REP. TOOLE, HOUSE DISTRICT 60, stated this bill is for an act adopting the uniform international will act, providing for the validity of international wills. It contains a series of laws that relate to how will be signed and prepared. I suggest to you that the idea of this bill to provide a means by which a person can sign, in Montana, a will that will be upheld nationally in accordance with national standards.

Proponents' Testimony:

Professor Ed Eck, University of Montana, gave an outline of his points regarding the bill. EXHIBIT 2 He stated the major purpose of this bill will provide one form to control the validation of all wills. Without the International Wills Act, foreign wills can be established only through proof of foreign law. The Uniform International Wills Act eliminates that cumbersome and often-times expensive requirement. The primary requirements for an international will are found in a Certificate to be attached to the will. "I urge the adoption of this bill."

Opponents' Testimony: none

Questions From Committee Members:

REP. BROOKE asked Professor Eck if there was any discussion about living wills at the conventions he referenced? Professor Eck said no.

Closing by Sponsor:

REP. TOOLE said he would ask the committee to give the bill favorable consideration. It is a very useable bill and is a good bill for guidelines.

HEARING ON HB #194
EXEMPT INDIGENT FROM POSTING BOND ON APPEAL TO DISTRICT COURT

Presentation and Opening Statement by Sponsor:

REP. TOOLE, HOUSE DISTRICT 60, stated this is a bill that is entitled; An act ensuring due process to an indigent person by

providing that the district court may waive the undertaking for an appeal to district court when the appealing party is indigent. We need to bring the statutes in conformity with the Montana Case Law.

A woman was sued for a debt for the amount of \$855. She didn't believe she owed that money. A judgement was made against her in the JP court and when she tried to take it to the District Court to appeal, she was told she had to put up a bond. This is due to a statute. The appeal bond was in the amount of double the amount of her debt. This is the statute we are now appealing. We are not repealing the whole statute, just a part of it. The Supreme Court stated an appeal bond should not be applied to indigent persons. This makes it difficult for lawyers who are advising people in the JP court because the statutes are still on the books. I have been asked to present an amendment to clarify the determination shall be handled by the District Court Judge and not the court clerk. That would be accommodated on line 22 of page 3 by adding the words the word "judge" after the word court.

Proponents' Testimony: none

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor: none

EXECUTIVE ACTION ON HB #100

Motion: REP. RUSSELL MOVED HB 100 DO PASS.

Discussion:

REP. JOHNSON asked Pat Bradley what were the judges feelings on this bill? Ms. Bradley stated they had the provisions in HB #100 are already in place and used when appropriate when dealing with each individual. They strongly oppose this bill.

Motion/Vote: REP. RUSSELL moved to amend HB 100. EXHIBIT 3
Motion carried.

Discussion:

REP. JOHNSON stated that all the opposition to the bill are people who face these situations daily. They are asking us not to take away their authority. I hope we do not pass this bill.

Motion/Vote: REP. BOHARSKI moved to amend HB 100 by adding REP. RUSSELL'S previous amendment to line 1 on page 5. Motion carried.

Motion/Vote: REP. RUSSELL MOVED HB 100 DO PASS AS AMENDED.
Motion failed.

Motion/Vote: REP. GOULD MOVED TO REVERSE THE VOTES ON THE DO PASS
MOTION AS A DO NOT PASS MOTION ON HB 100. Motion carried.

EXECUTIVE ACTION ON HJR #9

Motion/Vote: REP. RUSSELL MOVED HJR 9 DO PASS. Motion carried.

EXECUTIVE ACTION ON HB #163

Motion/Vote: REP. STICKNEY MOVED HB 163 DO PASS. Motion
carried.

EXECUTIVE ACTION ON HB #178

Motion/Vote: REP. GOULD MOVED HB 178 DO PASS. Motion carried.

EXECUTIVE ACTION ON HB #194

Motion: REP. JOHNSON MOVED HB 194 DO PASS.

Motion/Vote: REP. TOOLE moved to amend HB 194 by striking "may"
and inserting "must" on line 22, page 3. Motion carried 19 to 1
with Rep. Stickney voting no.

Motion: REP. JOHNSON MOVED HB 194 DO PASS AS AMENDED.

Motion/Vote: REP. LEE moved to amend HB 194. EXHIBIT 3
Motion carried.

Motion/Vote: REP. GOULD MOVED HB 194 DO PASS AS AMENDED. Motion
carried.

ADDITIONAL EXECUTIVE ACTION ON VARIOUS BILLS

Motion/Vote: REP. STICKNEY moved to PLACE HB #178 on CONSENT
CALENDAR. Motion carried unanimously.

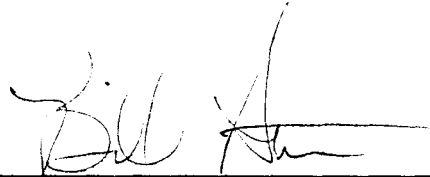
Motion/Vote: REP. CLARK moved to PLACE HB #163 on CONSENT
CALENDAR. Motion carried unanimously.

Motion/Vote: REP. GOULD moved to PLACE HJR #9 on CONSENT
CALENDAR. Motion failed 19 to 1 with Rep. Boharski voting no.

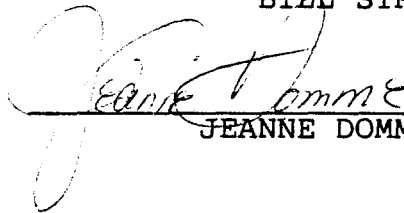
Motion/Vote: REP. RUSSELL MOVED TO RECONSIDER AND TABLE HB 100.
Motion carried 19 to 1 with Rep. Clark voting no.

ADJOURNMENT

Adjournment: 9:20 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 1-23-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	///		/
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/	late	
REP. BRUCE MEASURE	/	late	
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/	late	
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/	late	
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN		/	
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

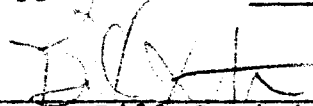
HOUSE STANDING COMMITTEE REPORT

January 23, 1991

Page 1 of 1

Corrected Copy

Mr. Speaker: We, the committee on Judiciary report that House
Joint Resolution 9 (first reading copy -- white) do pass .

Signed: 

Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

January 23, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 178 (first reading copy -- white) do pass and be placed on consent calendar .


Signed: _____
Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

January 23, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 163 (first reading copy -- white) do pass and be placed on consent calendar .

Signed: 
Bill Strizich, Chairman


1:40 pm
1-23-91
me

HOUSE STANDING COMMITTEE REPORT

January 23, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 194 (first reading copy -- white) do pass as amended and be placed on the consent calendar.

Signed: 

Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 5.

Strike: "MAY"

Insert: "SHALL"

2. Page 3, line 21.

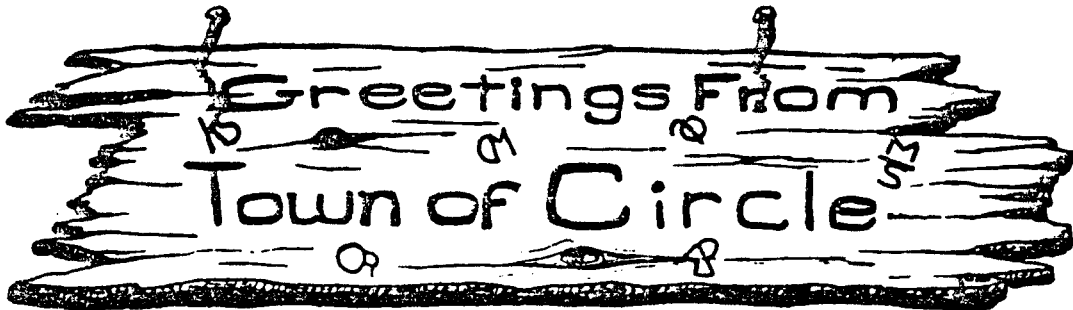
Following: "is"

Insert: "determined by the court to be indigent"

3. Page 3, line 22.

Strike: "may"

Insert: "shall"



P.O. Drawer Q

Circle, Montana 59215

Ph. 485-2524

DONALD CLARIN, Mayor

CAROL MARKUSON, Town Clerk

January 17, 1991

EXHIBIT 1
DATE 1-23-91
HB 163

House Judiciary
Chairman Bill Strizich
and Legislators
Helena, Montana 59620

Dear Chairman Strizich:

This letter is to ask your support in passing into law HB 163.

HB 163 allows for changes in law 7-32-4120 pertaining to police retirement and training.

The Town of Circle wishes this law to be changed to allow the use of these monies to be expanded to pay PERS for other law enforcement personnel, law enforcement equipment, and training for law enforcement personnel.

The changes in this law is being supported by the Montana Leagues of Cities and Towns and The Montana Clerks, Treasurers, and Finance Officers Association. Also attached are letters of support from several Towns.

Changes to this law will allow a general fund reduction or atleast allow these fund to be reappropriated for other necessary uses. These changes will benefit eighty-seven Towns in Montana and the monies are still being used for the same purposes as they were originally intended.

Thank you for your support and cooperation.

Sincerely,

Donald Clarin
Mayor

DC:Cam

COUNCIL CHAMBERS

Town of Ekalaka

MONTANA

59324

Exhibit # 1
1-23-91 HB 163

December 18, 1990

Donald Clarin, Mayor
City of Circle
P. O. Drawer Q
Circle, Montana 59215

Dear Mayor Clarin,

Re: Police Retirement
Funds

The Town Council reviewed your proposal that more flexibility be added to the laws regulating police retirement funds. They also discussed this issue with their attorney and their town's administrative officer.

Everyone agreed your suggestion will add necessary adjustments within the existing Montana laws regulating these funds. Therefore, please feel free to use the Town of Ekalaka's name and endorsement as support for passage of this legislation. Additionally, we're sure that the Montana League of Cities and Towns will be an additional resource in packaging this issue for legislation.

Please keep us advised of the progress of this legislation and let us know if additional documentation of our support is necessary.

Sincerely yours,



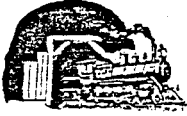
Alyce Kuehn, CMC
Town Clerk-Treasurer

City of Fairview

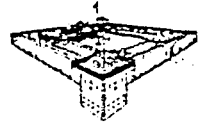
P.O. Box 426, Fairview, MT 59221

Meetings 2nd Monday of Each Month

Telephone: (406) 747-5616



A Nice Place To Live With Something For Everyone



December 13, 1990

Town of Circle
Mayor Donald Clarin
P.O. Drawer Q
Circle, MT. 59215

Dear Mayor Clarin:

In regard to your letter of December 7, 1990 in which you propose asking the legislature for a change of wording in the law pertaining to police retirement funds, after consideration I believe this change would be good.

For the smaller towns the law as it now reads is too restrictive and is not serving the purposes that it was intended to serve.

Therefore you can use this letter as a statement of support for the proposed change.

Thank you for your efforts to improve the internal operations of city government and provide ways to use our resources to better advantage.

Sincerely,

Bryan Cummins
Mayor

CITY OF LIBBY

POST OFFICE BOX Z
LIBBY, MONTANA 59923

Telephone
406-293-2731

January 10, 1991

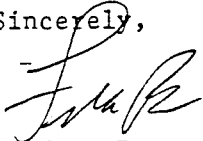
Town of Circle
Mayor Donald Carin
P.O. Box Q
Circle, Montana 59215

Dear Mayor Clarin:

The Council and I are in agreement with you that the wording in the law pertaining to police retirement and training should be changed. The law should allow the funds to be used for PERS for police and other law enforcement personnel, equipment and salaries for substance abuse enforcement, and training for police and other law enforcement personnel.

Thank you.

Sincerely,



Fred A. Brown
Mayor

CITY OF MALTA

Drawer L
Malta, Montana 59538

Garry L. Adams, Mayor
Aldermen Ward I:
Delmar Demarais
William Crowder

Ellene A. Jensen, Clerk-Treasurer
Aldermen Ward II:
Byron Ereaux
Karl Harms

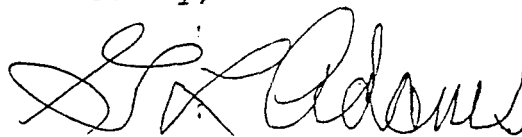
December 26, 1990

Town of Circle
P. O. Box Q
Circle, Montana 59215

Dear Mayor Clarin:

In response to your letter dated December 7, 1990, the City Council of the City of Malta would like to support Resolution No. 1990-14.

Sincerely,

A handwritten signature in dark ink, appearing to read "Garry L. Adams", written in a cursive style.

Garry L. Adams, Mayor

Mayor: Glenn Jacobsen
City Clerk: Elsie Olson
City Treasurer: Frank French

CITY OF PLENTYWOOD

205 1st AVENUE WEST
PLENTYWOOD, MONTANA 59254
406-765-1700

COUNCILMEN
Charles Devaney
Terry Gilbertson
Jon Mehl
John Kemp, Jr.

-Exhibit # 1
1-23-91 HB 163

January 7, 1991

Mayor Donald Clarin
Town of Circle
P.O. Drawer Q
Circle, MT 59215

Re: Amendment of Section 7-32-4120 M.C.A.; Police Retirement Funds

Dear Mayor Clarin,

This letter is being sent in response to your letter of December 7, 1990, regarding the proposed changes to the above-cited statute.

The Plentywood City Council and I are in favor of the proposed amendment with the following qualification: that the language be changed so as to retain the right of the affected cities and towns to purchase "pensions" with the funds, along with the right to expend the money for P.E.R.S. In other words, we would favor the retention of all current spending options while supporting the expansion of allowable uses for the payments. We have brought the omission of the word "pensions" from the proposed amendment to the attention of Alec Hanson of the Montana League of Cities and Towns.

Sincerely,



Glenn Jacobsen, Mayor

City Water

-Exhibit # 1
1-23-91 HB 163

Municipal Gas

TOWN of SACO

Saco Montana 59261

December 20, 1990

Mayor Donald Clarin
P. O. Drawer Q
Circle, MT 59215

Dear Mayor Clarin:

The Town Council of Saco would like to go on record as supporting your resolution to change the law pertaining to police retirement funds. We feel that this is a change that will greatly benefit third class cities and towns. In this economy the smaller cities and towns need all the tax relief help that is available. If you need any help please let us know.

Sincerely,
Town Council of Saco

Town of Winnett

Exhibit # 1
1-23-91 HB 163

Box 225 Ph. 429-5451

Winnett, Montana 59087

December 13, 1990

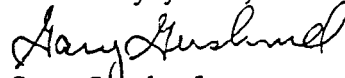
Donald Clarin, Mayor
Town of Circle
P.O. Drawer Q
Circle, Montana 59215

Dear Mayor Clarin:

This is to assure you that our town is in full support
of your proposal pertaining to police retirement funds.

If a letter or phone call will be of assistance in
achieving this change, please let us know.

Sincerely yours,



Gary Gershmel,
Mayor

R.F. LABBE, Mayor

KERMIT DANIELS
City Attorney

BARBARA P. McOMBER, CLERK
DIXIE HENDERSON, Treasurer

CITY OF DEER LODGE

Exhibit # 1
1-23-91 HB 163

300 MAIN
DEER LODGE, MT 59722-1098
(406) 846-3649
(406) 846-2238

Dec 12, 1990

DALE J. WITZEL
LYLE E. GILLETTE, JR.
RALPH BECK
HAROLD ERICSON
MICHAEL G. RICHARDS
IVAN WALLGREN
JIMMY RAY ANDERSON
KENNETH E. FENNER

TOO WHOM IT MAY CONCERN:

The City of Deer Lodge hereby supports
the resolution 1990-14 proposed by
the Town of Circle, pertaining to
Police retirement funds.



R F Labbe
Mayor

TOWN OF CULBERTSON

CULBERTSON, MONTANA

Exhibit # 1
1-23-91 HB 163

Office Of The Mayor

January 10, 1991

Mr. Donald Clarin, Mayor
Town of Circle
P.O. Box Q
Circle, MT 59215

Dear Mr. Clarin:

The Culbertson Town Council reviewed your letter pertaining to police retirement funds at the regular meeting on January 7, 1991.

Culbertson is another Third-Class Town that has a substantial reserve built up in the Police Retirement Fund.

The Town of Culbertson supports your proposal to change the wording to allow Police Retirement Funds to be used for PERS for police and other law enforcement personnel, equipment and salaries for substance abuse enforcement, also training for police and other law enforcement personnel.

Thank you.

Sincerely,

Raedelle Aspenlieder

Raedelle Aspenlieder
Clerk/Treasurer

cc: Montana League of Cities and Towns

Town of Broadus

Ph. 406 / 436-2409

BOX E1 • BROADUS, MONTANA 59317

December 31, 1990

Town of Circle
P.O. Drawer Q
Circle, Montana 59215

Dear Mayor Clarin:

The Town of Broadus strongly supports your proposal to amend the law pertaining to police retirement funds 7-32-4120 MCA in the upcoming legislature.

Due to the present economic conditions, it is vital that such a proposal be amended to give Towns such as Circle and Broadus some recourse in order that all law enforcement be properly trained and maintained.

Sincerely,



E. Roger Quaring
Mayor
Town of Broadus

E. Edwin Eck
University of Montana
School of Law

EXHIBIT 2
DATE 1-23-91
HB 178

UNIFORM INTERNATIONAL WILLS ACT

I. Background.

A. 1969 - International Institute for the Unification of Private Law.

B. 1973 - Convention Providing a Uniform Law on the Form of an International Will.

C. 1977 - National Conference of Commissioners on Uniform State Laws. Since 1977, the Uniform International Wills Act has been part of the Uniform Probate Code.

II. Purpose.

Major purpose A. Provide one form to control the validation of all wills.

B. Without International Wills Act, foreign wills can be established only through proof of foreign law.

C. Uniform International Wills Act eliminates that cumbersome and often-times expensive requirement.

III. Form for an International Will. Primary requirements for an international will are found in a Certificate to be attached to the will.

IV. Conclusion.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB #163
DATE 1-23-91 SPONSOR(S) Rep. Kasten

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Beth Ann Kasten	HD #20	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO. HB#178

DATE 1-23-91 SPONSOR(S) Rep. Toole

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
E. Edwin Eck	Tax Section Mountain Bm Assn.	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB#194
DATE 1-23-91 SPONSOR(S) Rep. Toole

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
PAT BRADLEY <i>Wella</i>	MMA	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.