

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on January 14, 1993, at 9:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

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

Committee Business Summary:

Hearing: SB 1, HB 128
Executive Action: HB 94

HEARING ON HB 128

Opening Statement by Sponsor:

REP. DAVE BROWN, House District 72, Butte. HB 128 is an act providing for notice, public meetings, and a public hearing as part of the development of a county drinking and driving prevention program, and amending Section 61-2-106, MCA.

Proponents' Testimony:

Mike Ruppert, Lewis and Clark County DUI Task Force, stated the more people are aware of the task force the more people will get involved. The drivers license reinstatement fee is \$100; the \$100 is split in half to fund different agencies. The first \$50 would fund the DUI Task Force, and the second \$50 would be distributed among the cities and counties to fund organizations such as D.A.R.E., teen institutes, and sheriffs' departments.

REP. BILL STRIZICH, HD 41, Great Falls, said he has experience with the DUI Task Force, and one of his frustrations in his community is how the DUI Task Force is managed and how it interfaces with the community. He said that DUI Task Forces are sometimes overlooked and have been cut across the state.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. RANDY VOGEL asked REP. DAVE BROWN how much advertising is going to cost. REP. BROWN replied it shouldn't cost anything because it is a public service announcement. A local governing body will publish the distribution of these funds.

REP. BOB CLARK asked REP. BROWN why this isn't covered under our current open meeting laws? REP. BROWN said it should be, but the meetings often aren't publicly announced.

REP. DUANE GRIMES asked REP. BROWN if this is going to be a standard announcement, and is it required to be legal format. REP. BROWN said it could be a regular public service announcement.

REP. VOGEL asked REP. BROWN if there will be a penalty if they don't comply. REP. BROWN said there is not a penalty in this bill.

Closing by Sponsor:

REP. BROWN requested that the committee hold HB 128 for 24 hours for Mr. Ruppert and Mr. MacMaster to develop necessary amendments.

HEARING ON SB 1**Opening Statement by Sponsor:**

SEN. J.D. LYNCH, Senate District 35, Butte, stated SB 1 includes revisions and updates as a result of the previous legislative session per the Code Commissioner.

Proponents' Testimony:

Greg Petesch, Code Commissioner, Legislative Council, explained the methodology for putting this bill together. As people call the commissioner's office for questions during the interim, the commissioner's staff makes notations on those calls. They then draft the proposed pieces of legislation that are required by law to be submitted to the council by November 1. After developing the bill, Mr. Petesch sends copies of the proposed sections to each agency that is impacted. This bill has 85 sections, and the changes are clarified on the green sheets attached to the bill.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. TIM WHALEN said he understands it is the practice of the Code Commissioner to change individual codes to reconcile conflicts between court decisions and the codes or statutory provisions of the law. He asked if any of those substantive changes are included in the code commission bill, and if the Code Commissioner is still following the practice of introducing individual bills? Mr. Petesch said there are six bills of substantive changes. The Senate Judiciary Committee has authorized the drafting of those bills at the Code Commissioner's request because of the fewer number of Senate bills.

REP. HOWARD TOOLE and REP. JIM RICE asked Mr. Petesch to explain the court decision in Section 63 and why it has been included. Mr. Petesch said it is the provision for a major criminal procedure revision note from the 1991 Legislative Session that provided that certain preliminary exams be closed for comments. The state neglected to offer a defense on that provision, and the state was convinced it was illegal.

REP. TOOLE asked Mr. Petesch if this bill requires affidavits in support of the file to be closed to the press until a later time in the criminal prosecution proceedings. Mr. Petesch stated the criminal procedure code contained a provision that was introduced by REP. BRUCE MEASURE, Kalispell, during the 1991 Legislature and adopted by the committee, that required affidavits to be prepared in support to file criminal charges. Felony charges would be kept sealed until the trial, and there would have to be other means and avenues for the press to have access to that information.

REP. GRIMES asked to be reassured that because it's a state court decision, that our codes aren't automatically changed. Mr. Petesch said there are a number of statutes in the code that have been found unconstitutional and are invalid by court action. Normally, those are the subject of specific legislation.

Closing by Sponsor: None.

EXECUTIVE ACTION ON HB 94

Motion: REP. VIVIAN BROOKE MOVED HB 94 DO PASS.

Discussion:

REP. BROWN said he finds it very difficult to apply severe ethics restrictions to citizen legislators. Many legislators have private business associations that sustain them when they're not legislators. Legislators also have the local community looking over their shoulder constantly and continually, and their constituents know what goes on in this state. With that in mind, REP. BROWN has a number of amendments that must be made to this bill in order to make the burden reasonable. REP. BROWN offered an amendment to strike Section 4 in its entirety from the bill, which says if someone offers a legislator a job after session is over, there's no reason why he can't take that job.

CHAIRMAN FAGG asked if there was any discussion on REP. BROWN'S motion to strike Section 4 from the bill.

REP. BROOKE said she opposed REP. BROWN'S motion and asked that the committee look at lobbying from another perspective. Lobbying could be considered another segment or section of state government as the Executive and Judicial branches of government are. They have a considerable amount of power and influence, and REP. BROOKE believes they need to maintain some semblance of a separation of those powers. Former legislators have access to a great deal of influence that perhaps they might not have had otherwise. REP. BROOKE believes this particular section of the bill says to the public that "we, as legislators, clearly know our roles as serving the public at large, and serving those particular special interests."

REP. TIM SAYLES said he thinks that some of the existing language in Section 4 should be kept in, specifically lines 1-13. If Section 4 is deleted, legislators are not licensing the lobbyist; they need to know who the lobbyists are and what their objectives are.

REP. KARYL WINSLOW addressed REP. BROOKE. She said she had been an observer of the legislative process for 14 years, and has watched the progression and the lack of action in regard to ethics in the legislature. She would like to see some specific instances where this privilege has been abused by former legislators. This is an emotional issue involving legislators and their relationship with the public, and by passing this bill, it would appear to the public there has been a problem. Legislators need to be careful with the kinds of messages they are sending to the public. REP. BROOKE said she does not have a specific example. The message to the public is that legislators don't always have to respond to the problems. What the bill says is that legislators follow guidelines, and if there are any or have been any problems in the past, this is a preventive tactic.

REP. HOWARD TOOLE extended a proposal to the "revolving door" problem by changing prohibition from two years to twenty months. REP. TOOLE offered a substitute motion on page 5, line 14 to change two years to 20 months.

Motion: REP. BROWN said that 20 months doesn't make any difference. He offered a substitute motion for all motions pending to DO NOT PASS on this bill.

Discussion:

REP. WHALEN said he is concerned about REP. BROWN'S motion. He believes most people are not offended by a legislator getting gainful employment after a legislative session.

Motion/Vote: Question was called on the substitute motion DO NOT PASS.

Vote: Motion failed on a tie of 9-9. Those voting do pass are REPS. BROWN, BROOKE, GRIMES, MCCULLOCH, RUSSELL, SMITH, TASH, TOOLE and WYATT. Those voting do not pass are CHAIRMAN FAGG, REPS. BIRD, WINSLOW, BERGMAN, CLARK, RICE, SAYLES, WHALEN and VOGEL.

Motion: REP. TOOLE made a substitute motion - change from two years to 20 months.

Discussion:

REP. RICE is not clear on the objection of REP. TOOLE, whether this would apply as of the time a person resigned or as of the end of the term. It would seem that if there is a 20-month rule, and if a legislator wanted to be a lobbyist for the 1995 session, he would have to make a decision to resign by May 1st of this year. Under that time frame, the legislator would have to make a decision whether or not he wants to resign and work for somebody while serving the legislature, which seems to be the absolutely wrong time to make that decision. REP. RICE believes the 20 months is a backward step.

REP. TOOLE explained that this situation is directed towards someone who plans to become a lobbyist. The person who loses the election isn't going to be benefited by a 20-month provision or for that matter, a two-year provision.

Vote: REP. TOOLE'S substitute motion failed 18-0.

Motion: Motion to strike Section 4 in its entirety from the bill.

Vote: Motion to strike Section 4 from the bill carried with REPS. TOOLE, RUSSELL, SMITH and BROOKE voting no. REP. BROWN moved to strike all of Section 3 from the bill. The existing statute says if a person has a conflict of interest, and

he's directly affected, he should discuss it on the floor. It's hard for a citizen legislature to have this kind of conflict with the language in REP. HAL HARPER'S bill. This bill says that legislators have to stand up, disclose and eliminate that interest; and for that reason, the existing language is sufficient for a citizen legislator. REP. BROWN believes the language is too strong for this legislature.

REP. WINSLOW said this bill puts her in an awkward position. She would not be able to vote on health care because her husband is a hospital administrator. She sees the bill working against her. This could mean that there could be a monetary gain for the hospital if her husband were a lobbyist.

Mr. MacMaster answered the question for REP. WINSLOW. On page 4, lines 20-21: "A conflict situation does not arise from legislation affecting the entire membership of a class." A class could be all hospital administrators, all farmers, all attorneys, etc. According to the language and interpretation of this bill, REP. WINSLOW could be categorized in a class and, therefore, may have a conflict of interest voting on health care.

REP. RICE asked if disclosure should be mandatory or considered by the individual legislator. Mr. MacMaster said anyone can vote on anything because there are so many different classes or ways to classify people.

REP. BROOKE agrees with REP. RICE. Legislators should try to stay away from the role of class. It would make more sense to abstain from voting if there's an absolute conflict of interest. There are examples of conflict of interest, financial reward, for example. Under those circumstances, this would be the time to abstain from voting and disclose the information. REP. BROOKE is against the amendment.

REP. BROWN said with Section 3 requiring mandatory disclosure, it sets up a major conflict between Sections 2 and 3 as to what applies, whereas REP. BROOKE said that blatant information should be disclosed. If the bill goes through the way it is, it sets up a major conflict and puts Section 2 on an even level with Section 3, and it no longer states legislators can hide in the class.

REP. VOGEL said he does not support this bill because the language is too ambiguous.

CHAIRMAN FAGG stressed three reasons why he is speaking against the amendment. 1) Page 4, line 1, it is only intended to be used as a guide, the language is not as strong as some believe; 2) Page 4, lines 9 and 10 offer three different options that the legislature must resolve concerning a conflict of interest; and 3) Lines 20 and 21. CHAIRMAN FAGG agrees with Mr. MacMaster that if a person is in a general class, then he can vote on a proposal.

REP. GRIMES would rather abstain from voting than disclose. He supports REP. BROWN.

REP. TOOLE stated that Section 3 should not be eliminated. The committee should consider REP. HARPER'S amendment which was to address these matters in the Rules Committee. They could consider the conflicts in that committee rather than in some other undefined place.

REP. BROWN said on line 22, subsection 4, the language says legislators have to stand up and say why they abstain from voting; this could bring more conflict into the matter.

REP. RICE agrees there needs to be an ethics law, but he thinks the present law is poorly written. He would like it to be rewritten.

Motion/Vote: REP. BROWN moved to strike Section 3 from the bill.

Vote: Motion to strike Section 3 from the bill passed with CHAIRMAN FAGG and REPS. TOOLE, RUSSELL, and BROOKE, voting no.

REP. BROWN pointed out that Section 3, line 3 is viewed from the standpoint that the legislator may not breach his fiduciary responsibility REP. BROWN proposed to strike page 3, lines 3-5.

REP. CLARK said he would like to start from scratch and is opposed to the entire bill. The public did not lose trust in legislators because of ethics but because of what the legislature did not do for the public. REP. CLARK offered a substitute motion to table the bill.

Motion/Vote: SUBSTITUTE MOTION TO TABLE HB 94 BILL.

Discussion:

REP. TOOLE proposed to REP. CLARK and the committee chair to appoint a subcommittee to work on this bill.

CHAIRMAN FAGG requested REP. CLARK to withdraw his motion to table the bill so that a subcommittee could be assigned to this bill.

Motion/Vote: REP. TOOLE moved that HB 94 be referred to a subcommittee and have its members appointed by CHAIRMAN FAGG.

Discussion:

REP. BROWN believes Section 4 does not belong in any bill; Section 3 should be rewritten more appropriately; and Section 2 should be rewritten substantially.

Vote: Motion passed unanimously to refer the bill to a subcommittee. CHAIR FAGG appointed Reps. Winslow, Toole, Grimes, and Rep. Brown as Chair. The subcommittee has two options: it can work on this bill as is, or put together a new committee bill.

ADJOURNMENT

Adjournment: 11:00 a.m.



RUSSELL FAGG, Chair



BETH MIKSCHKE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

1-14-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

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CS-09

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 1-14-93 BILL NO. HB 94 NUMBER 18

MOTION:

Refer bill to a subcommittee passed

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

JUDICIARY

COMMITTEE

BILL NO.

SB 1

DATE JAN. 19, 1993

SPONSOR(S)

LYNCH

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Greg Petesch</u>	<u>Code Commission</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

JUDICIARY COMMITTEE BILL NO. HB 128
DATE JAN. 19, 1993 SPONSOR(S) D. BROWN
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jill Skabronski	DUI Task Force		
Mike Roppert	L & C DUI Task Force	X	

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