

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 19, 1993,
at 5:30 p.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

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

Committee Business Summary:

Hearing: NONE
Executive Action: SB 336
SB 349
SB 323
SB 397
SB 368
SB 406
SJR 13

EXECUTIVE ACTION ON SB 271

Discussion:

Senator Halligan told the Committee that SB 271 should be

referred to the Finance and Claims Committee because of the fiscal note. Senator Halligan said a citizen review board was an excellent idea, but there was an existing Foster Care Review Committee in statute that was reviewed every six months.

Motion:

Senator Harp moved SB 271 be REFERRED to the Finance and Claims Committee.

Discussion:

Chair Yellowtail said SB 271 would have a substantial fiscal impact.

Senator Grosfield said SB 271 was an appropriations bill, therefore it did not belong to Finance and Claims. SB 271 spends money, it does not bring in money. There was no revenue from SB 271. Senator Grosfield said SB 271 is a regular bill that spends money.

Motion:

Senator Harp moved to TABLE SB 271.

Discussion:

Senator Grosfield said he would speak against the tabling of SB 271. Senator Grosfield said there were a lot of people who felt there were problems with the foster care system. Senator Grosfield said the citizens review boards already in place are it not working, therefore something needs to be done.

Senator Crippen told the Committee SB 271 could be sent to Finance and Claims is because nothing is being appropriated.

Senator Halligan told the Committee if SB 271 has trouble passing out of the Finance and Claims Committee, he would work with Ms. Lane to expand the membership of the existing Foster Care Review Committee. Senator Halligan said the Foster Care Review Committee does not have an additional cost because they are all volunteers.

Senator Harp withdrew his motion to TABLE.

Chair Yellowtail moved on order of business #6 to refer SB 271 to the Finance and Claims Committee.

EXECUTIVE ACTION ON SB 323

Discussion:

Chair Yellowtail explained the amendments. (Exhibit #1)

Senator Harp asked Chair Yellowtail about striking the word "youthful." Chair Yellowtail said "youthful" was struck because the age limit was increased to 35, therefore "youthful" was not necessary.

Motion:

Senator Halligan moved to AMEND SB 323.

Discussion:

Senator Harp spoke against the motion to amend. Senator Harp told the Committee he has visited the Swan River Camp several times. The facility is for young offenders. SB 323 changes the whole concept of the Swan River Youth Camp and increases the age limit. Senator Harp increasing the age limit would probably involve more hardened criminals. Senator Harp questioned the security of the facility because it is very open to the woods and accessible to Highway 83.

Senator Towe asked Mr. Gamble to address the amendment. Mickey Gamble, Department of Corrections and Human Services, told the Committee the word "youthful", was stricken so the camp could increase the age for offenders. However, the camp would mainly focus on younger offenders. The age was increased so the camp could be available for those offenders who violate their parole or probation and would fit the program. Mr. Gamble said an escape from the facility would be very limited because of what the offenders would lose and the intensity of the supervision, which is constant, 24 hours a day.

Senator Halligan asked Mr. Gamble about the inmates. Mr. Gamble said all the inmates would be adults. Anyone in the program would be adjudicated as adults.

Senator Brown asked Mr. Gamble about the location of the boot camp. Mr. Gamble told the Committee the boot camp would be located at the Swan River Youth Camp.

Senator Brown asked Mr. Gamble about the current use of the camp. Mr. Gamble said the Swan River Youth Camp would no longer be used as it is today.

Senator Towe asked Mr. Gamble about the funding. Mr. Gamble said funding for vocational education was being limited because of the short incarceration period, which is usually a 90 day period.

Senator Harp told the Committee SB 323 would be a MAJOR change.

Vote:

The motion to amend SB 323 CARRIED UNANIMOUSLY.

Motion:

Senator Towe moved SB 323 DO PASS AS AMENDED.

Discussion:

Senator Bartlett asked Mr. Gamble about the shock incarceration program. Mr. Gamble said shock incarceration is primarily focused to divert people from the system. The program would consist of offenders recommended for placement by a judge, offenders who violate parole, and offenders already incarcerated if they would fit into the program. Mr. Gamble stated that records indicate that shock incarceration was an excellent program. The program would decrease the population of the Montana State Prison.

Senator Bartlett asked Mr. Gamble about the screening process in which offenders would be allowed into the program. Mr. Gamble said in the screening process would done by a classification process. The classification process would involve a risk and need assessment as people enter the system.

Senator Bartlett asked Mr. Gamble if the people performing the screening would be specifically trained in techniques for the screening function. Mr. Gamble said yes.

Senator Bartlett said the fiscal note for SB 323 indicates an average daily population of 40 offenders. Senator Bartlett asked Mr. Gamble about the average daily population of the Swan River Youth Camp in its current function. Mr. Gamble said the Swan River Youth Camp averages between 50 and 55 offenders.

Senator Harp asked Mr. Gamble about the population in the Montana State Prison. Mr. Gamble said there were 1,162 inmates.

Senator Harp asked Mr. Gamble if the intention was to decrease the population of the state prison to 850 inmates. Mr. Gamble said yes.

Senator Blaylock asked Mr. Gamble if the community around the facility knows about SB 323. Mr. Gamble told the Committee that public hearings will be held.

Senator Bartlett asked Mr. Gamble how the offenders would be supervised with eight fewer employees. Mr. Gamble said the whole idea of a boot camp was to work together. Less employees are needed because the offenders are constantly together working as a group. The group is always under direct supervision.

Vote:

The Do Pass As Amended motion CARRIED with Senators Rye, Harp, Brown, and Halligan voting NO.

EXECUTIVE ACTION ON SB 397

Motion:

Senator Doherty moved SB 397 DO PASS.

Discussion:

Senator Blaylock asked Senator Doherty if the attack on the judge in Great Falls would have happened, even with a law to make an attack on a judge a felony. Senator Doherty said the judge probably would have still been attacked. However, the prosecutor could have brought a felony count against the individual. Senator Doherty said if there was a law making it a felony to attack a judge, it would help.

Motion/Vote:

The Do Pass motion CARRIED with Senators Crippen, Blaylock, Brown, Harp, voting NO.

EXECUTIVE ACTION ON SB 336

Discussion:

Chair Yellowtail explained amendment SB033601.ACE.

Motion/Vote:

Chair Yellowtail moved to AMEND SB 336. (Exhibit #2) The motion CARRIED UNANIMOUSLY.

Discussion:

Chair Yellowtail said according to the Constitution, judges salaries cannot be lowered.

Senator Crippen asked Chair Yellowtail if the Governor's and other elected official salaries, would be increased with the passage of SB 336. Chair Yellowtail asked Ms. Lane to check on the question.

Senator Halligan said the goal of SB 336 was not to treat judges the same as state employees. Judges should not receive raises along with state employees.

Chair Yellowtail told the Committee they would come back to SB 336.

EXECUTIVE ACTION ON SB 349

Motion:

Senator Halligan moved SB 349 DO PASS.

Discussion:

Senator Bartlett told the Committee there were proposed amendments.

Senator Halligan withdrew his DO PASS motion.

Motion:

Senator Halligan moved to AMEND SB 349. (Exhibit #3)

Discussion:

Chair Yellowtail explained amendment sb034901.avl.

Vote:

The motion to amend CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Harp moved SB 349 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SJR 13

Motion:

Senator Brown moved to TABLE SJR 13.

Discussion:

Senator Towe asked why the Committee wanted to TABLE SJR 13.

Chair Yellowtail said the Attorney General explained that SJR 13 had no reason for passing. SJR 13 would not change state policy as towards Indian gaming compacts, therefore the Attorney General would disregard the resolution.

Senator Towe said resolutions are not usually binding, because they are not statutes. Senator Towe said the Indian tribes were frustrated because the position of the State, through the Attorney General, was contrary to the federal statute in case law on gambling. Senator Towe said SJR 13 should be passed indicating the sense of the legislature. Senator Towe urged support for the amendment sjr001301.avl.

Motion:

Senator Towe made a substitute motion to AMEND SJR 13. (Exhibit #4)

Discussion:

Senator Towe explained amendment sjr001301.avl.

Motion:

The motion to amend FAILED by a Roll Call Vote.

Motion:

The motion to TABLE CARRIED with Senator Rye voting NO.

Discussion:

Chair Yellowtail suggested the legislature amend statutes, giving clear directions of the legislature's intent, that indian tribes be dealt with separately from other state policies as to Indian gaming on the reservations.

EXECUTIVE ACTION ON SB 368

Motion:

Senator Doherty moved SB 368 DO PASS.

Discussion:

Chair Yellowtail asked Senator Doherty if non-Indian misdemeanor offenders would be dealt with by the tribal court under SB 368. Senator Doherty said no.

Senator Rye asked Senator Towe about enrolled members of an Indian tribe. Senator Towe said an enrolled member of a tribe would be a person whose name was on the roll. They are placed on the roll at birth, or shortly there after, by a full action of the tribal council to accept them as a tribal member. It would only be those members in which the jurisdiction of the tribal court exists.

Senator Doherty said the question of jurisdiction would be sorted out after the person was arrested on a misdemeanor count.

Senator Grosfield asked Senator Towe about jurisdiction. Senator Towe said there would be jurisdiction over member of other tribes only for misdemeanors.

Senator Grosfield told the Committee that he would support the DO PASS motion.

Senator Brown asked Senator Towe about civil case jurisdiction. Senator Towe said if a person does business on a reservation, they submit themselves to the jurisdiction of the tribal court. If a person sued someone they would have to sue the tribal court if the action took place on the reservation.

Vote:

The Do Pass motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 400

Discussion:

Chair Yellowtail said SB 400 called for an immunity from suit for conservation district supervisors. There was a suggestion to amend them into existing law.

Ms. Lane said the question involved whether the Tort Claims Act could be amended to include conservation districts. Ms. Lane said conservation districts were covered by the Tort Claim Act, but individual officers were not. The conservation district has to indemnify individual officers, but they can not afford to buy the insurance to identify the individuals. The inclusion of conservation district into the Tort Claims Act was not satisfactory, therefore SB 400 was drafted. Conservation districts are covered by the act, but not covered by the State. The state does not indemnify conservation district employees or pay claims against the conservation districts. Conservation districts are subdivisions of the State, just like school districts and counties. Conservation district supervisors want immunity from suit so they could not be sued or pay claims.

Senator Towe said conservation districts are included in the Tort Claims Act, therefore supervisors are identified as public officials by the conservation district and taken care of in the law. Senator Towe said the problem is that the conservation district supervisors want the Tort Claims Division to defend them. The Tort Claims Division defends the State, not local government, cities, or counties. The Tort Claims Division can not pay for the conservation districts defense. Senator Towe said SB 400 was unworkable.

Motion:

Senator Towe moved SB 400 DO NOT PASS.

Discussion:

Senator Grosfield said there was a problem with employing conservation district supervisors. Senator Grosfield said conservation district supervisors were volunteers who take on state regulatory functions. Senator Grosfield said supervisors were worried about liability, therefore difficult to hire.

Senator Towe said in section 2-9-11 there is immunity for any legislative act. Therefore, if the conservation district makes a decision that was a legislative act, they would be completely immune. Senator Towe said they would not be immune if it was an administrative act.

Senator Grosfield told the Committee an administrative act was the biggest area of liability.

Senator Towe WITHDREW his Do Not Pass motion for SB 400.

Motion:

Senator Towe moved to TABLE SB 400.

Vote:

The motion to TABLE TIED by a Roll Call Vote.

Discussion:

Chair Yellowtail asked Senator Grosfield to work on amendments for SB 400 so action can be taken at a later date.

EXECUTIVE ACTION ON SB 406

Motion:

Senator Bartlett moved SB 406 DO PASS.

Discussion:

Senator Towe asked Senator Bartlett about a permanent injunction. Senator Bartlett replied that judges probably would not issue permanent injunctions against a parent, unless there was extensive abuse and the judge feared for the wife or children's lives.

Senator Crippen told the Committee that SB 406 was a good bill.

Vote:

The Do Pass motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 336

Discussion:

Senator Crippen said the Governor and the elected officials do not receive raises automatically.

Motion:

Chair Yellowtail moved SB 336 DO PASS AS AMENDED.

Discussion:

Ms. Lane reminded the Committee they adopted two sets of

amendments. One set was adopted earlier in the hearing, the other set was adopted at the first hearing on this date.

Vote:

The Do Pass As Amended motion CARRIED with Senators Harp and Rye voting NO.

ADJOURNMENT

Adjournment: 7:58 p.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-19-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 20, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 323 (first reading copy -- white), respectfully report that Senate Bill No. 323 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 22, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 336 (first reading copy -- white), respectfully report that Senate Bill No. 336 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, lines 6 and 7.

Strike: "INDEXING" on line 6 through ";" on line 7

2. Page 1, line 13.

Strike: "(a)"

3. Page 1, line 19.

Strike: "(i)"

Insert: "(a)"

4. Page 1, line 21.

Strike: "(ii)"

Insert: "(b)"

5. Page 1, line 21.

Page 1, line 24.

Page 2, line 21.

Page 2, line 24.

Page 3, line 23.

Page 4, line 1.

Strike: "percentage"

Insert: "average percent"

6. Page 1, line 22.

Page 1, line 25.

Page 2, line 22.

Page 2, line 25.

Page 3, line 24.

Page 4, line 2.

Strike: "other"

Insert: "classified"

7. Page 1, line 24.

Strike: "(iii)"

Insert: "(c)"

AW Amd. Coord.
on Sec. of Senate

430944SC.San

8. Page 2, line 2 through line 13.
Strike: subsection (b) in its entirety

9. Page 2, line 14.
Strike: "(a)"

10. Page 2, line 19.
Strike: "(i)"
Insert: "(a)"

11. Page 2, line 21.
Strike: "(ii)"
Insert: "(b)"

12. Page 2, line 24.
Strike: "(iii)"
Insert: "(c)"

13. Page 3, line 2 through line 13.
Strike: subsection (b) in its entirety

14. Page 3, line 16.
Strike: "(a)"

15. Page 3, line 21.
Strike: "(i)"
Insert: "(a)"

16. Page 3, line 23.
Strike: "(ii)"
Insert: "(b)"

17. Page 4, line 1.
Strike: "(iii)"
Insert: "(c)"

18. Page 4, line 4 through line 15.
Strike: subsection (b) in its entirety

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 20, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 368 (first reading copy -- white), respectfully report that Senate Bill No. 368 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 22, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 349 (first reading copy -- white), respectfully report that Senate Bill No. 349 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, lines 4 through 6.

Following: "AN ACT" on line 4

Strike: remainder of line 4 through "AND" on line 6

2. Title, line 8.

Following: "DETAINER"

Insert: "; AND AMENDING SECTION 70-27-115, MCA"

3. Page 1, line 11 through page 2, line 1.

Strike: sections 1 through 3 in their entirety

Insert: "Section 1. Section 70-27-115, MCA, is amended to read:

"70-27-115. Defendant's appearance and answer. On or before the day fixed for his the defendant's appearance, the defendant may appear and answer or move to dismiss the complaint for failure to state a claim. In any case, the defendant shall answer the complaint and summons within 10 days."

-END-

AP Amd. Coord.
SR Sec. of Senate

430932SC.San

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 20, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 368 (first reading copy -- white), respectfully report that Senate Bill No. 368 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 20, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 397 (first reading copy -- white), respectfully report that Senate Bill No. 397 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 20, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 406 (first reading copy -- white), respectfully report that Senate Bill No. 406 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

ROLL CALL VOTE

SENATE COMMITTEE

Judiciary

BILL NO.

ST 13

DATE _____

0119/93

TIME

6.55

A.M.

P.M.

NAME

YES

~~NO~~

[illegible]

Rebecca Lawst.

SECRETARY

Bill Ullmann

CHAIR

MOTION: to amend. §§ 13. Unaired

ROLL CALL VOTE

SENATE COMMITTEE Judiciary

BILL NO. SB400

DATE 2-19-93 TIME 7:36 A.M. P.M.

NAME _____

YES

NO

[illegible]

Rebecca Law
SECRETARY

Bill Velloutail
CHAIR

MOTION: to ~~add~~ table, tied.

Amendments to Senate Bill No. 323
First Reading Copy

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

Requested by Senator Christiaens
For the Committee on Judiciary

DATE 2-19-93

BILL NO. SB323

Prepared by Connie Erickson
February 18, 1993

1. Title, line 5.
Strike: "YOUTHFUL"

2. Page 1, line 18.
Page 2, line 14
Strike: "youthful"

3. Page 2, line 5.
Strike: "youthful"

4. Page 2, line 18.
Strike: "5 years"
Insert: "1 year"

5. Page 2, line 21.
Strike: "25"
Insert: "35"

6. Page 2, lines 22 and 23
Strike: "(c)" on line 22 through ";" on line 23.
Renumbar: subsequent subsection

Amendments to Senate Bill No. 336
First Reading Copy

Requested by Senator Yellowtail
For the Committee on Judiciary

Prepared by Connie Erickson
February 19, 1993

1. Title, lines 6 and 7.

Strike: "INDEXING" on line 6 through ";" on line 7

2. Page 1, line 13.

Strike: "(a)"

3. Page 1, line 19.

Strike: "(i)"

Insert: "(a)"

4. Page 1, line 21.

Strike: "(ii)"

Insert: "(b)"

5. Page 1, line 24.

Strike: "(iii)"

Insert: "(c)"

6. Page 2, line 2 through line 13.

Strike: subsection (b) in its entirety

7. Page 2, line 14.

Strike: "(a)"

8. Page 2, line 19.

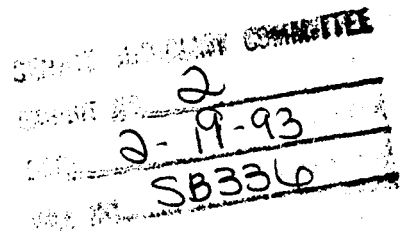
Strike: "(i)"

Insert: "(a)"

9. Page 2, line 21.

Strike: "(ii)"

Insert: "(b)"



10. Page 2, line 24.

Strike: "(iii)"

Insert: "(c)"

11. Page 3, line 2 through line 13.

Strike: subsection (b) in its entirety

12. Page 3, line 16.

Strike: "(a)"

13. Page 3, line 21.

Strike: "(i)"

Insert: "(a)"

14. Page 3, line 23.

Strike: "(ii)"

Insert: "(b)"

15. Page 4, line 1.

Strike: "(iii)"

Insert: "(c)"

16. Page 4, line 4 through line 15.

Strike: subsection (b) in its entirety

Amendments to Senate Bill No. 349
First Reading Copy

Requested by Senator Christiaens
For the Committee on Judiciary

Prepared by Valencia Lane
February 18, 1993

SENATE JUDICIARY COMMITTEE
SENATE NO. 3
DATE 2-19-93
BILL NO. SB 349

1. Title, lines 4 through 6.

Following: "AN ACT" on line 4

Strike: remainder of line 4 through "AND" on line 6

2. Title, line 8.

Following: "DETAINER"

Insert: "; AND AMENDING SECTION 70-27-115, MCA"

3. Page 1, line 11 through page 2, line 1.

Strike: sections 1 through 3 in their entirety

Insert: "Section 1. Section 70-27-115, MCA, is amended to read:

"70-27-115. Defendant's appearance and answer. On or before the day fixed for ~~his~~ the defendant's appearance, the defendant may appear and answer or move to dismiss the complaint for failure to state a claim. In any case, the defendant shall answer the complaint and summons within 10 days."

{ Internal References to 70-27-115: None. }

Amendments to Senate Joint Resolution No. 13
First Reading Copy

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
February 19, 1993

1. Page 4, line 4.

Following: "Montana"

Insert: "and follow the clear mandate of the IGRA that was intended to limit the state's role to prohibiting types of gambling on the reservations that are not permitted in Montana generally and not to regulate other types of gambling on the reservations that are permitted in Montana generally"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 2-19-93
BILL NO. SJR 13