

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Senator Bill Yellowtail, on March 11, 1993, at 10:07 a.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. David Rye (R)  
Sen. Tom Towe (D)

**Members Excused:** Sen. Harp

**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: HB 499  
HB 559  
Executive Action: HB 499  
HB 559

#### **HEARING ON HB 559**

**Opening Statement by Sponsor:**

Representative Shiell Anderson, District 81, told the Committee that HB 559 is a simple bill that reroutes the way the fees are set up for the character and fitness exam for bar applicants. Currently the Supreme Court is required to get an appropriation. The Supreme Court collects the fees from the bar applicants and deposits those in the general fund.

**Proponents' Testimony:**

Pat Chenovick, Administrator for the Supreme Court, urges support for HB 559. Mr. Chenovick said that when a person applies to take the bar exam they have to first pay a fee to the court in order to take the exam. HB 559 does not change that fee. The applicant also has to pay a fee for an investigation into their character and fitness. Under the present statute, the fee is paid to the Clerk of Court and then is paid back to the State Bar which conducts the investigations. HB 559 simplifies that process by allowing the Supreme Court to pay all the fees collected to the State Bar for the actual cost of the investigation.

Gary Spaeth, State Bar of Montana, said HB 559 is a good bill because it eliminates the money being passed through several different hands and goes right to the State Bar.

**Opponents' Testimony:**

NONE

**Questions From Committee Members and Responses:**

Senator Grosfield asked Mr. Chenovick about the fee. Mr. Chenovick said the fee for the character and fitness investigation is set by the Supreme Court.

Chair Yellowtail asked Mr. Chenovick if the state bar was an agency of state government. Mr. Chenovick said the state bar is a private organization chartered by the Supreme Court.

Chair Yellowtail asked Mr. Chenovick about the State Bar. Mr. Chenovick said the statute was written so attorneys who practice in Montana have to belong to the State Bar. The Supreme Court does not have the staff or the ability to conduct the investigations so the State Bar conducts the investigation before the applicant can take the bar exam. HB 559 provides that the State Bar would give a report to the Supreme Court on the cost of the fees and the amount of which the fee should be set.

Chair Yellowtail asked Mr. Chenovick if anywhere in State Government or statute establishes a fee required of private citizens to be paid to a private agency. Mr. Chenovick did not know of any.

Senator Crippen asked Mr. Chenovick if the Supreme Court was in favor of HB 559. Mr. Chenovick said Supreme Court supports HB 559 because the Supreme Court would no longer need a general fund appropriation to pay to the State Bar for the character and fitness investigations.

Senator Grosfield asked Mr. Chenovick who conducts the investigation. Mr. Chenovick said the State Bar conducts the investigation.

Senator Grosfield asked Mr. Chenovick why the fee does not go directly from the applicant to the State Bar. Mr. Chenovick said the current statute requires that the applicant pay the character and fitness investigation fee directly to the Clerk of the Supreme Court.

Senator Grosfield asked Mr. Chenovick if he felt the State Bar was conducting adequate investigations. Mr. Chenovick said yes.

**Closing by Sponsor:**

Representative Anderson told the Committee that the investigations are necessary and the costs they are incurring are covered by the appropriation of which the Supreme Court receives.

**HEARING ON HB 499**

**Opening Statement by Sponsor:**

Representative John Mercer, District 50, opened for Representative Cobb. Rep. Mercer told the Committee that HB 499 revises the Board of Bar Examiners, which is currently five members, so it cannot exceed seven members. Rep. Mercer said at the end of the current law, it states that it was an option for the court to have such a board. HB 499 would remove the option by request of the Supreme Court.

**Proponents' Testimony:**

Pat Chenovick, Administrator for the Supreme Court, said a recent audit of the Supreme Court revealed that there were extra members on the Board of Bar Examiners. HB 499 would help the Supreme Court to get into compliance with the statute. Mr. Chenovick urged support for HB 499.

Gary Spaeth, State Bar of Montana, told the Committee that HB 499 would change the statute to seven members on the Board of Bar Examiners which corresponds with the Board of Bar Commissioners. The State Bar of Montana supports HB 499.

**Opponents' Testimony:**

NONE

**Questions From Committee Members and Responses:**

Senator Rye asked Mr. Spaeth why attorneys are required to belong to the State Bar. Mr. Spaeth said in 1974 the State Bar Association petitioned the State Bar on the basis of assisting the furtherance of justice, judicial, and court integrity in the State of Montana. The Supreme Court agreed, which is why every attorney is required to be a member of the State Bar. The State Bar also requires all lawyers to support the judicial system and it regulates the legal profession in the State of Montana.

Senator Towe asked Mr. Chenovick why the last sentence of HB 499 was being struck. Mr. Chenovick said the language that was deleted was replaced by language in the first part of HB 499 which says, "it shall not appoint more than seven members." The deletion was an attempt to clean up the statute.

Senator Towe said the last sentence which was deleted says, "it shall be optional for the Supreme Court to appoint that Board." Senator Towe said the sentence provided that the Supreme Court does not HAVE to appoint a board. The new language requires the Supreme Court to appoint a board.

Senator Towe asked Mr. Chenovick about the intent of HB 499. Mr. Chenovick said the intent of HB 499 was to change that the Supreme Court have a Board of Bar Examiners to administer the exam to attorneys.

Senator Bartlett asked Mr. Chenovick why the Supreme Court wanted the option eliminated. Mr. Chenovick said the Supreme Court needs to be separate from things that may take place which may need to be challenged. Therefore if there is a challenge, the Supreme Court would be able to hear that challenge.

Senator Grosfield asked Mr. Chenovick if the statute would allow the Board to consist of two members. Mr. Chenovick said yes, but there is no intention to decrease the number of members on the Board of Bar Examiners.

Closing by Sponsor:

Representative Mercer closed.

EXECUTIVE ACTION ON HB 499

Motion/Vote:

Senator Towe moved HB 499 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 559

Motion:

Senator Towe moved HB 559 BE CONCURRED IN.

Discussion:

Chair Yellowtail asked Senator Towe if other statutes impose a fee on private citizens for payment to private organizations. Senator Towe said the State Bar is no longer a private agency because anyone who practices law in the State of Montana must

belong to the Bar.

Senator Doherty said he had a question about an unconstitutional delegation of the legislature's power to a private entity. The Legislature can delegate power to administrative agencies of the state, but not to a private entity.

Senator Halligan told the Committee that the legislature has appropriated a dollar amount of which can be spent. The legislature has already exercised power of appropriation authority just like any other contract agency of private government. Senator Halligan said barbers and cosmetologists are governed by the Department of Commerce and they pay fees directly to Commerce to conduct examinations of their members. The Department of Commerce sets their own fees, so there it is no different then what is being proposed in HB 559. Senator Halligan said there is no appropriation requirement because State Government is not spending any money. The private bar or private cosmetology board is spending the money of its members.

Senator Rye said his concern was the requirement for attorneys to belong to the State Bar. HB 559 further solidifies what he believes is not a good trend. Senator Rye told the Committee that he will vote against HB 559.

Senator Blaylock said this issue goes back to the constitutional convention in which the state was concerned about bringing conformity to the lawyers who were concerned with the justice system in the State of Montana. The Legislature gave the Supreme Court the power to bring unity to that whole procedure. The Chief Justice of the Supreme Court does have the power to bring unity and ethical principles to the lawyers in the State of Montana, which is good. Senator Blaylock said if there is a lawyer who is not doing properly by their client, there needs to be a powerful source to revoke that person's license.

Chair Yellowtail agreed with Senator Blaylock that lawyers require some sort of supervision. However, if the state of Montana, through the Supreme Court, assumes that responsibility, then the legislature assumes the responsibility for supervising the expenditure of money. Senator Yellowtail said to now yield that responsibility back out to the group population whom we propose to regulate, is not a reasonable thing to do.

Senator Towe called attention to page 2, line 5. Senator Towe said the report is to be given to the Supreme Court so it is still consistent with the concept that was put into the constitution. It provided that the Supreme Court is the supervisor of the State Bar. Senator Towe told the Committee that he was opposed to the integration of the bar because he felt there was real merit in having a private association separate from an official organization. He thought there was a benefit in having an official government organization and an official

private organization that could do things because of its volunteer nature and because of its private nature. However, that did not prevail and Montana now has an integrated bar. Senator Towe said he opposed the State Bar because it is now under the appropriation and under the supervision of the Supreme Court and it does not offer an attorney any choice. At the present time the State Bar is parallel to the Boards and Commissions under the Department of Commerce in that they regulate other people. There is no reason why the State Bar should be treated any differently just because the Board is elected rather than appointed by the Governor, which is the case in most of the Department of Commerce Boards.


Senator Halligan told the Committee that the Supreme Court held that no one could practice law without belonging to the State Bar.

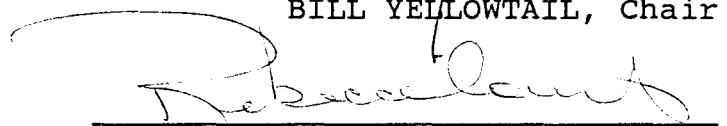
Vote:

The motion CARRIED by Roll Call Vote.

ADJOURNMENT

Adjournment: 10:59 a.m.

  
BILL YELLOWTAIL, Chair

  
REBECCA COURT, Secretary

BY/rc

# ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-11-93

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		

SENATE STANDING COMMITTEE REPORT

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March 11, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 499 (first reading copy -- blue), respectfully report that House Bill No. 499 be concurred in.

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



SENATE STANDING COMMITTEE REPORT

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March 11, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 559 (first reading copy -- blue), respectfully report that House Bill No. 559 be concurred in.

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

## ROLL CALL VOTE

SENATE COMMITTEE                      Judiciary

BILL NO. HBS559

DATE 3-11-93

TIME 10:45 (A.M.) P.M.

A.M.) P.M.

NAME \_\_\_\_\_

YES NO

[illegible]

Rebecca Couet  
SECRETARY

Bill Yellowtail  
CHAIR

MOTION: Carried HB 559 BCL.

H.B. 559 Anderson.

Support Oppose

[illegible]

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