

**MINUTES**

**MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON RULES**

**Call to Order:** By **CHAIRMAN JOHN HARP**, on February 13, 1995, at  
12:00 p.m.

**ROLL CALL**

**Members Present:**

Sen. John G. Harp, Chairman (R)  
Sen. Robert "Bob" Brown, Vice Chairman (R)  
Sen. Gary C. Aklestad (R)  
Sen. Thomas A. "Tom" Beck (R)  
Sen. Bruce D. Crippen (R)  
Sen. Ethel M. Harding (R)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Judy H. Jacobson (D)  
Sen. Fred R. Van Valkenburg (D)

**Members Excused:** None.

**Members Absent:** Senator J. Jacobson  
Senator Fred Van Valkenburg

**Staff Present:** Greg Petesch, Legislative Council  
Fredella Haab, Secretary

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

**Committee Business Summary:**  
Hearing: SB 132

**HEARING ON SB 132**

**CHAIRMAN HARP** said discussion today would be on SB 132 that was in the Senate Judiciary Committee and introduced by **SENATOR AL BISHOP** relating to estates and trusts. **SENATOR CRIPPEN** had moved the bill be referred to the Rules Committee based on a new rule contained in Section 40-1180. The new rule was passed this session dealing with the contingency voidance. There was some discussion this bill might have a reduction in revenue and with that reduction in revenue the chairman of the Judiciary Committee was concerned that it may need a stipulation - a contingency voidance.

**SENATOR CRIPPEN** announced that for the record, the bill before them had been passed out by the Judiciary Committee and recommended Do Pass As Amended and it does have the contingency avoidance provision in it now. He said the reason it was done this way was because he didn't want to see the bill back before the Judiciary Committee. No matter what this committee does, the bill is in position to proceed further. If this committee wants to leave that in, it goes right on out - if they want to amend it, they have the power to amend it or refer it to the floor.

**CHAIRMAN HARP** stated on Page 8 of 8, page 55 line 15 that the new section was there. He inquired if there was a fiscal note?

**SENATOR CRIPPEN** replied he thought there was a fiscal note.

**SENATOR BISHOP** stated they had a revenue employee, **Bruce McKinnis**, testify and he estimated that there would be somewhere between a \$150,000 to \$300,000 impact. He contended that is like throwing darts at the board on the wall.

**SENATOR AKLESTAD** remarked he didn't know how you could know where **Mr. McKinnis** came up with the \$150,000 to \$300,000. How are you to know what the impact it would have? With the contingency avoidance language in there, if was followed to the letter of the law what you do with this bill?

**CHAIRMAN HARP** asked what would happen to this bill.

**SENATOR AKLESTAD** questioned the language in the bill because the title was so off.

**SENATOR CRIPPEN** maintained the question before them is, if the contingency avoidance provision pertains to the entire bill, or can there be a separate clause added to it that pertains only to that portion of the bill that was amended which dealt with the reduction of the revenue. The rest of the bill could continue on its way if, in fact, it was not a reduction of expenditures per the requirement of the contingency avoidance requirement. That was the other question before this committee.

**CHAIRMAN HARP** asked **GREG PETESCH** if that were possible.

**GREG PETESCH** stated the contingency avoidance provision, if it is in a bill and if a corresponding reduction in spending is not made in House Bill 2, prohibits the bill from being transmitted to the Governor for enactment. The Governor cannot sign a portion of the bill. He signs the whole bill. He was of the opinion that this provision was permissive and only placed in bills that the body desires it to be placed in. If it is in the bill, it is in the whole bill.

**SENATOR AKLESTAD** declared just the title would give an indication that they would not know the fiscal impact this session. All of these things are too variable.

**SENATOR DOHERTY** commented that even if the Governor wanted to mandatory veto a portion of the bill that might have the reduction in revenue, and we hadn't identified the corresponding cut, the Governor would not be able to do that because it would not reach his desk.

**CHAIRMAN HARP** stated that it could not be transmitted.

**SENATOR BISHOP** explained this could be a part that causes a fiscal impact, and they don't want to lose the bill. We would like to keep it in. The whole bill is a lot more important than that one division.

**SENATOR CRIPPEN** commented he agreed with **GREG PETESCH** on his interpretation because of the rules. He thought the rules clearly refer to the bill as the whole. The question he had was what constitutes a reduction in expenditures? How do we make that determination?

**GREG PETESCH** stated that he believed the rule as written required the reduction in the appropriation bill to match the reduction in revenue in the bill that contains the contingency avoidance provision because it speaks to an identified corresponding reduction.

**SENATOR CRIPPEN** inquired if as an example, when we get HB 2 coming through and you see some reductions and you have one of these bills outstanding in limbo, can a motion be made at that time to say that you needed \$300,000, and there was \$10 million, can you say that \$300,000 of the \$10 million was to correspond to SB 132. Can it be done at that time? In fact it's the only time it can be done. It is probably one of the major times it would be done.

**GREG PETESCH** stated he thought it was going to behoove both houses to keep a list of bills that contain contingent avoidance provisions to take action at your opportunities.

**CHAIRMAN HARP** asked for the wishes of the committee.

**SENATOR AKLESTAD** stated his problem of leaving the language in is that at that point of time in coming to HB 2, what figure would be used, if you have a figure, and that is what we should have. His question was whether the language should be included because there is not a figure, and we will not know what that figure will be this session.

**CHAIRMAN HARP** stated this was a moving target. He wondered how many people do we know that are going to die. Do we have a statistic out and how many have a trust?

**SENATOR BISHOP** stated it isn't how many are going to die, it's how many who die may have used this provision in the law that we have. He thought **Bruce McKinnis**, the Department of Revenue,

stated that the worse case scenario is \$300,000.

**SENATOR DOHERTY** commented he was trying to figure out how to deal with this new animal. It is almost as if these contingent avoidance things are like cat and dog bills. We have to go at them at the other side as opposed to the side we got at the cat and dog bill because he could see having the bill go through the Senate and go through the House and then be on the list of the dog and cat bill and then trying to match up any moneys in HB 2 with reduction and at that point the legislature might be able to do it. Until then he didn't know if you could and especially with a bill like this that may have \$150,00 or \$300,000. You are going to have to do it with the worst case scenario and hope because if you don't, you are going against the spirit of the contagious vagueness provision, whatever you want to call it, but unless you do that way, how are we going to know.

**SENATOR HALLIGAN** stated if these bills don't go the Conference Committee, if we have to amend them, they would have missed the deadlines that have passed and then they would wait for the last several days so you have to have 2/3 vote to get them back on the floor, unless you don't by some previous motion.

**CHAIRMAN HARP** stated that with this particular bill because of the unknown quantity of the revenue impact, his preference would be to take that section out and let the bill go through. We really don't have anything to hang our hat on, it may be zero or \$150,000 or \$300,000.

**SENATOR CRIPPEN** stated they changed some of it to make it better.

**SENATOR HALLIGAN** thought the section should come out for now and let the House come in and deal with it.

**CHAIRMAN HARP** asked for a motion to take Section 38 out.

**Motion\Vote:** **SENATOR AKLESTAD** MOVED THAT THE ABOVE SECTION BE DELETED. MOTION CARRIED UNANIMOUSLY.

**CHAIRMAN HARP** asked for further discussion on SB 132 amended.

**SENATOR AKLESTAD** MOVED DO PASS ON 2ND READING AS AMENDED.

**GREG PETESCH** stated he was a little confused as the status of this bill. Has it been reported from the Judiciary Committee? It has not been printed for 2nd reading. So, this committee will be excising the Judiciary Committee's report last amendment and the corresponding title.

**CHAIRMAN HARP** stated that was the motion.

**SENATOR HALLIGAN** stated that was not the intent.

SENATOR CRIPPEN stated that it was referred during order of business #6 to the Rules Committee. It was passed out and then he took it off second reading and referred it to the Rules Committee.

GREG PETESCH stated his question was whether a second reading copy of the bill existed.

SENATOR HALLIGAN asked if the motion that was placed in Judiciary would be on the bill.

GREG PETESCH stated that was what he was trying to figure out.

CHAIRMAN HARP asked why they just didn't adopt this amendment excluding #3 on the first page and item #55 of the Standing Committee report.

GREG PETESCH stated you would just be amending the Judiciary Committee's report.

CHAIRMAN HARP stated that was the motion.

SENATOR CRIPPEN asked why there was a 2nd reading bill.

CHAIRMAN HARP stated it never got to second reading as it was taken off of order of business #6.

CHAIRMAN HARP asked if everyone was clear on what they were doing. All said they were.

SENATOR BECK stated that they were leaving all the amendments in but #3 and #54.

Motion/Vote: MOTION CARRIED UNANIMOUSLY.

CHAIRMAN HARP spoke about the constitutional amendments coming up in several committees and he asked GREG PETESCH how they were treated in the past. People have said they can be tabled, others say not, what has been done in the past?

GREG PETESCH stated in the past it was handled very inconsistently. There have been Rules Committees that have determined that they must be reported from the committee, and there have been Rules Committees that have determined that it is permissible to table a constitutional amendment. He said he was of the opinion that it is permissible to table a constitutional amendment in Committee.

CHAIRMAN HARP stated a bill can be taken from the table on a motion from the floor and it would take 26 votes.

SENATOR BROWN stated that if no one in the Senate voted for the bill and all 100 members of the House of Representatives voted yes, it could still go before the people. So a sponsor of a

constitutional amendment may think it was unfair of them to table a bill because then it would require 26 votes on the floor to get it further through the process. He declared if he was the only one in the Senate who voted for it, it still should have a chance to see if it can get 99 votes from the House of Representatives. That seems to be because of the peculiarity of our Constitution and how it is written, because it applies to a unicameral as well as a bicameral legislature. Theoretically, you can't kill a constitutional amendment in the Senate unless you can put it on the table. It is hard to understand why a constitutional amendment should be treated any different than any other legislation. But a sponsor can always say it isn't fair because what if he can get 24 votes in the Senate and 76 in the House. There is always that possibility.

**SENATOR HALLIGAN** stated you really have to get back to the importance of the Committee. The Committees have to be that buffer between the floor and others. Out of respect to the Committees if **SENATOR HARDING'S** committee wanted to table something, that committee ought to be able to do that. We should treat it just like any other bill and if it is a bad bi-partisan bill it ought to be put on the table. I should have to make a motion even if we have to go through that extra hassle. I think we ought to treat them fairly and be able to do the table motion.

**SENATOR BROWN** asked **SENATOR HALLIGAN** if his argument was, that the guy who has a constitutional amendment that is tabled, can make that argument on the floor. They are keeping it up there and they are not giving him the opportunity to get it to the other side and I want to have the chance to convince you of that here on the floor and the only way I can do that is if you force it out of committee. He can make that argument.

**SENATOR HALLIGAN** stated we are keeping the integrity of the committee process by treating it the same way.

**CHAIRMAN HARP** asked if they wanted to make a determination on how we want to handle this from this point on. I think we should so people can understand that. I personally like the idea of keeping bills in committees that are tabled and requiring 26 votes to bring them out and make the committee work that way.

**SENATOR BROWN** stated those of us who have been concerned about the way the Constitution applies to the Senate recognize in all other legislation our votes count more heavily than the Representatives but in this one item our votes are equally weighted. I suppose if we adopted the rule that John is talking about, or if we decide to say that a Senate Committee can table a proposed constitutional amendment, that maybe it is more in keeping with the Senate's traditional goal in this process.

**SENATOR HALLIGAN** stated he thought it kind of balanced things out a little bit because they could put a 100 votes together and pass it and we would have no control on it. We need to have a little

bit of control.

CHAIRMAN HARP stated it had happened once.

GREG PETESCH stated there was one instance when a constitutional amendment got 98 votes in the House, the House reconsidered this action to get an unanimous vote to disenfranchise the Senate and it was not transmitted to the Senate. It was placed on the ballot and approved. It was a provision clarifying residencies for the justice of the peace and city court judges in the city courts.

SENATOR BROWN explained as it had received 100 votes in the House of Representatives it didn't need to be transmitted to the Senate.

GREG PETESCH stated that tabling is the only way the Senate can, if you will, disenfranchise the House.

SENATOR HALLIGAN wanted to go back to his people and see what they said. Maybe an amendment could be proposed.

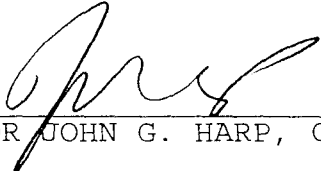
CHAIRMAN HARP said he was comfortable with his caucus.

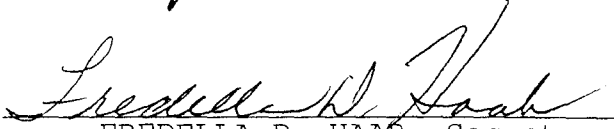
SENATOR AKLESTAD asked if they needed a rule.

CHAIRMAN HARP said no rule was needed.

ADJOURNMENT

Adjournment: Meeting adjourned at 12:30 p.m.

  
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SENATOR JOHN G. HARP, Chairman

  
\_\_\_\_\_  
FREDELLA D. HAAB, Secretary

JGH/fdh

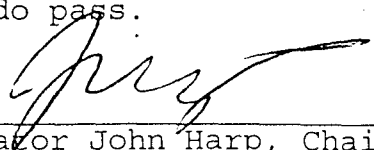
SENATE STANDING COMMITTEE REPORT

Page 1 of 8  
February 13, 1995

MR. PRESIDENT:

We, your committee on Rules having had under consideration SB 132 (first reading copy -- white), respectfully report that SB 132 be amended as follows and as so amended do pass.

Signed: \_\_\_\_\_

  
Senator John Harp, Chair

That such amendments read:

1. Title, line 19.

Following: "72-16-301,"

Insert: "72-16-308,"

2. Page 2, line 21.

Strike: "an insurance or annuity policy,"

Following: "designation"

Strike: ", "

3. Page 2, line 22.

Following: ";"

Insert: "or"

4. Page 2, line 23.

Strike: line 23 in its entirety

Renumber: subsequent subsection

5. Page 2, lines 26 and 27.

Following: "donee" on line 26

Strike: remainder of line 26 through "appointment" on line 27

6. Page 2, line 30.

Strike: "an insurance or annuity policy,"

Following: "designation"

Strike: ", "

7. Page 3, line 1.

Following: ";"

Insert: "or"

8. Page 3, line 2.

Strike: line 2 in its entirety

Renumber: subsequent subsection

9. Page 11, line 10.

Strike: "other"

Insert: "others"



Amd. Coord.  
Sec. of Senate

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10. Page 11, line 30.  
Following: ";"  
Insert: "or"

11. Page 12, line 4.  
Strike: "or"

12. Page 12, lines 5 through 14.  
Strike: subsection (D) in its entirety

13. Page 13, line 11.  
Following: "i"  
Insert: "or"

14. Page 13, lines 12 through 16.  
Strike: subsection (B) in its entirety  
Renumber: subsequent subsection

15. Page 14, line 5.  
Strike: "and"

16. Page 14, line 6.  
Following: line 5  
Insert: "(iii) proceeds of insurance, including accidental death benefits, on the life of the decedent if the decedent owned the insurance policy immediately before death or if and to the extent that the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds; the amount included is the value of the proceeds, to the extent that they were payable at the decedent's death; and"  
Renumber: subsequent subsection

17. Page 14, lines 28 through 30.  
Strike: line 28 through "." on line 30

18. Page 15, line 6.  
Strike: "or"

19. Page 15, line 8.  
Following: "spouse"  
Insert: "; or (c) if the property is life insurance, accident insurance, pension, profit-sharing, retirement, and other benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate"

20. Page 19, line 13.

Strike: "good faith"

21. Page 19, line 16.

Following: "liable"

Insert: "only"

Following: "for"

Strike: remainder of line 16

22. Page 19, line 17.

Following: "taken"

Insert: "2 or more business days"

23. Page 19, line 18.

Following: "."

Insert: "The written notice must indicate the name of the decedent, the date of the decedent's death, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that the spouse intends to file a petition for the elective share or that a petition for the elective share has been filed. Any form of service of notice other than that described in subsection (2) is not sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument."

24. Page 19, lines 19 and 20.

Following: "notice" on line 19

Strike: remainder of line 19 through "filed" on line 20

25. Page 19, line 22.

Following: "."

Insert: "Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party."

26. Page 19, line 27.

Following: "."

Insert: "The availability of an action under this section does not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment, transfer, or deposit."

27. Page 20, line 1.

Following: "."

Insert: "A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court."

28. Page 20, line 2.

Following: "claims"

Insert: "under the governing instrument or applicable law"

29. Page 21, line 30.

Strike: "(C)"

Insert: "(B)"

30. Page 38, line 30.

Following: "decendent,"

Insert: "then"

31. Page 39, line 11.

Following: "instrument,"

Insert: "then"

32. Page 41, line 20.

Following: "."

Insert: "A payor or other third party does not have a duty or obligation to make any determination as to whether the decedent was a victim of a homicide or to seek any evidence with respect to a homicide even if the circumstances of the decedent's death are suspicious or questionable as to the beneficiary's participation in a homicide."

33. Page 41, line 21.

Following: "is"

Insert: "only"

Following: "for"

Strike: "a payment made or other action"

Insert: "actions"

Following: "taken"

Insert: "2 or more business days"

Following: "after"

Insert: "the actual receipt by"

34. Page 41, line 22.

Strike: "received"

Insert: "of"

Following: "notice"

Strike: remainder of line 22 through "section"

Following: "."

Insert: "The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of the service is that described in subsection (8)(b)."

35. Page 41, line 23.

Following: "(b)"

Insert: "The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture or revocation is being made under this section."

36. Page 41, line 25.

Following: "."

Insert: "Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party."

37. Page 41, line 30.

Following: "."

Insert: "In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property."

38. Page 42, line 1.

Following: "."

Insert: "A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court."

39. Page 42, line 4.

Following: "A"

Strike: "person"

Insert: "bona fide purchaser"

Following: "property"

Strike: "for value and without notice"

40. Page 42, line 12.

Following: "law"

Insert: ", other than the federal Employee Retirement Income Security Act of 1974, as amended,"

41. Page 44, line 14.

Following: "."

Insert: "A payor or other third party does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital relationship."

Following: "is"

Insert: "only"

Following: "for"

Strike: "a payment made or other action"

Insert: "actions"

42. Page 44, lines 15 and 16

Following: line 14

Insert: "2 or more business days"

Following: "after" on line 15

Insert: "the actual receipt by"

Following: "party"

Strike: "received"

Insert: "of"

Following: "notice"

Strike: remainder of line 15 through "section" on line 16

Following: "."

Insert: "The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b)."

43. Page 44, line 17.

Following: "(b)"

Insert: "The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred."

44. Page 44, line 24.

Following: "."

Insert: "In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The

court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property."

45. Page 44, line 26.

Following: line 25

Insert: "A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court."

46. Page 44, line 28.

Following: "A"

Strike: "person"

Insert: "bona fide purchaser"

47. Page 44, line 29.

Strike: "for value and without notice"

48. Page 45, line 8.

Following: "law"

Insert: ", other than the federal Employee Retirement Income Security Act of 1974, as amended,"

49. Page 46, line 6.

Following: "provided"

Insert: "otherwise"

50. Page 54, line 16.

Insert: "**Section 33.** Section 72-16-308, MCA, is amended to read:

"**72-16-308. Tax to be on clear market value -- deductions allowed in determining value -- valuation of certain farm and business property.** (1) The tax ~~se~~ imposed ~~shall~~ must be upon the clear market value of ~~such~~ the property passing by ~~any such~~ transfer to each person, institution, association, corporation, or body politic at the rates ~~hereinafter~~ prescribed in this section and only upon the excess of the exemption ~~hereinafter~~ granted to ~~such~~ the person, institution, association, corporation, or body politic.

(2) In determining the clear market value of the property ~~se~~ passing by ~~any such~~ the transfer, the following deductions and no other ~~shall be~~ are allowed:

(a) debts of the decedent owing at the date of death, provided that any debt secured by decedent's joint interest in property and for which the decedent was jointly and severally liable is deductible only to the extent of one-half or other proper fraction representing decedent's share of the property;

- (b) expenses of funeral and last illness;
- (c) all Montana state, county, municipal, and federal taxes, including all penalties and interest ~~thereon~~, owing by decedent at the date of death;
- (d) the ordinary expenses of administration, including:
  - (i) the commissions and fees of executors and administrators and their attorneys actually allowed and paid;
  - (ii) attorneys' fees, filing fees, necessary expenses, and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of inheritance tax; and
- (e) federal estate taxes due or paid; and
- (f) the annual gift exclusion provided in section 2503(b) of the Internal Revenue Code.

(3) In determining clear market value, the valuation of certain farm and other real property may be made under 72-16-331 through 72-16-342.""

Renumber: subsequent sections

51. Page 55, lines 13 and 14.

Strike: "35"

Insert: "36"

-END-

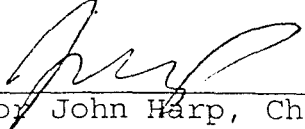
SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 6, 1995

MR. PRESIDENT:

We, your committee on Rules having had under consideration Senate Resolution 1 (first reading copy -- white), respectfully report that Senate Resolution 1 do pass.

Signed: \_\_\_\_\_

  
Senator John Harp, Chair

PV Amd. Coord.  
SA Sec. of Senate

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MONTANA SENATE  
 1995 LEGISLATURE  
 RULES COMMITTEE  
 ROLL CALL VOTE

DATE 2-13-95 BILL NO. SB 132 NUMBER 2

MOTION: Remove section 38

NAME	AYE	NO
GARY AKLESTAD	✓	
TOM BECK	✓	
BRUCE CRIPPEN	✓	
STEVE DOHERTY	✓	
MIKE HALLIGAN		
ETHEL HARDING	✓	
JUDY JACOBSON		
FRED VAN VALKENBURG		
BOB BROWN, VICE CHAIRMAN	✓	
JOHN HARP, CHAIRMAN	✓	
	✓	