

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 8, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

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

Committee Business Summary:

Hearing:	HB 315, HB 322, HB 355, HB 402
Executive Action:	HB 55, HB 271, HB 402 POSTPONE ACTION
	HB 191, HB 290 HB 302 TABLE
	HB 74 DO PASS AS AMENDED
	HB 217 DO PASS AS AMENDED
	HB 253 DO PASS AS AMENDED
	HB 347 DO PASS AS AMENDED

{Tape: 1; Side: A}

EXECUTIVE ACTION ON HB 55

Motion: REP. DUANE GRIMES MOVED TO RECONSIDER HB 55.

Discussion: REP. BILL TASH had researched whether there was current federal and state legislation in process in regard to welfare reform which might have provided another way to deal with this issue. Since he had found none he supported reconsidering HB 55.

REP. DANIEL MC GEE also had researched and discussed the proposed legislation and believed it was still wrongful treatment of employers.

Vote: The motion carried 10-6, REPS. MC GEE, CLARK, ANDERSON, TREXLER, CURTISS and BOHARSKI voted no.

REP. GRIMES asked to transfer that vote to DO PASS, without objection. REP. MC GEE objected.

Motion/Vote: REP. JOAN HURDLE MOVED HB 55 DO PASS. The motion failed on an 8-8 vote, REPS. MC GEE, CLARK, ANDERSON, TREXLER, BOHARSKI, CURTISS, AHNER and BERGMAN voted no. (REPS. SMITH, MOLNAR, and SHEA were absent at the time of the vote.)

Motion: REP. GRIMES MOVED TO RECONSIDER HB 55.

Discussion: REP. WILLIAM BOHARSKI discussed whether this action was appropriate. REP. GRIMES asked for clarification from CHAIRMAN CLARK whether the DO-PASS motion had succeeded.

CHAIRMAN CLARK reported that the official count on the DO PASS motion was 8 - 8 and so it had failed. REP. GRIMES reiterated his motion to reconsider.

REP. SHIELL ANDERSON asked if this bill was simply bringing Montana into compliance with federal law so that the federal funds would not be jeopardized.

REP. GRIMES said they were already under these stipulations on a federal level and they only wanted it in state statutes. The absence of it in state statutes would immediately jeopardize \$32 million in funds for single mothers.

REP. BILL CAREY felt passage of this bill was the right thing to do because it would put teeth in the law. He did not think it was a great burden on employers.

REP. BOHARSKI did not remember specific language in the federal statutes requiring the fines on employers and wondered if they could consider lowering them to a token amount.

REP. LIZ SMITH asked if it was this legislature's choice to set the penalty or if the amount of penalty was required by federal mandate.

REP. DEB KOTTEL said this bill told employers that they cannot act punitively simply because a man with children had failed to pay his child support. She reiterated the benefits of the bill as she saw them. She said **Mary Ann Wellbank** had specific language which could be taken out of the bill and it would still comply with federal regulations.

REP. BOHARSKI suggested changing the wording on page 2, lines 6 and 7 to reflect the reduction in the fines and striking the full restitution portion of it. He wanted to know how this would affect the bill.

Ms. Wellbank said that was exactly what she was going to propose. The amount of the fine or penalty was not set by federal regulation and there was no requirement to reference full restitution.

REP. BOHARSKI referred to section 3 on line 13 and asked if they could also change the accumulated amount to a token payment.

Ms. Wellbank said that provision was federally required under U.S.C. 666 and she read the code.

REP. MC GEE spoke on the motion to reconsider and he read from section 45-7-101, MCA, "Bribery in official and political matters."

Motion/Vote: REP. BRAD MOLNAR MADE A SUBSTITUTE MOTION TO POSTPONE ACTION ON HB 55. The motion carried 14-5, REPS. MC GEE, ANDERSON, SOFT, HURDLE and SHEA voted no.

CHAIRMAN BOB CLARK appointed a subcommittee to resolve the amendments and language issues made up of REP. MOLNAR, CHAIRMAN, REP. LOREN SOFT and REP. KOTTEL.

EXECUTIVE ACTION ON HB 217

Motion: REP. ANDERSON MOVED HB 217 DO PASS.

Motion: REP. ANDERSON MOVED TO AMEND HB 217 BY STRIKING SECTION 1, 3, AND 4.

Discussion: REP. ANDERSON explained his amendment.

REP. LINDA MC CULLOCH asked if his amendment would do the same thing as the statute which exists in protecting school employees.

REP. ANDERSON replied that it would do exactly the same thing and explained why that was true.

Vote: The motion carried, 14-5, REPS. WYATT, SHEA, KOTTEL, GRIMES and HURDLE voted no.

Motion/Vote: REP. ANDERSON MOVED HB 217 DO PASS AS AMENDED. The motion carried by unanimous vote.

EXECUTIVE ACTION ON HB 302

Motion: REP. CHRIS AHNER MOVED HB 302 DO PASS.

Discussion: REP. ANDERSON said that this statute was a reflection of one already in law.

Motion/Vote: REP. ANDERSON MOVED TO TABLE HB 302. The motion carried 12-7, REPS. WYATT, CAREY, MC CULLOCH, SHEA, GRIMES, AHNER and HURDLE voted no.

EXECUTIVE ACTION ON HB 74

Motion: REP. MOLNAR MOVED HB 74 BE RECONSIDERED.

Discussion: REP. MOLNAR said he had reached an agreement with REP. KOTTEL and had held discussions with the sponsor who was in agreement with the amendments.

Motion: REP. MOLNAR MOVED TO AMEND HB 74 BY INSERTING IN SECTION 2, "IN CIVIL ACTIONS, THE COURT MUST NOTIFY JURORS THAT THEY MAY IMPOSE ECONOMIC SANCTIONS IF THEY DEEM THE CASE FRIVOLOUS OR BROUGHT FOR PURPOSES OF HARASSMENT." REP. MOLNAR FURTHER MOVED THAT THE SAME LANGUAGE BE PLACED IN 3-15-203-2, MCA.

Vote: The motion to reconsider HB 74 carried, 14-5, REPS. ANDERSON, WYATT, MC GEE, HURDLE and CAREY voted no.

Motion: REP. MOLNAR MOVED HB 74 DO PASS.

Discussion: REP. MOLNAR said he felt this was one way to handle frivolous lawsuits some of which are being filed by Freeman. He felt it would have a chilling effect on frivolous lawsuits and cases of harassment. He expanded on the purposes of the bill as amended and at the request of the committee restated his proposed amendments.

REP. ANDERSON recommended modifying the amendment by changing the language referring to economic sanctions. REP. MOLNAR said he would leave that up to the legal representatives on the committee.

John MacMaster felt correct sanctions imposed on the one bringing the frivolous lawsuits should be the costs of the other party, the jury and court costs.

REP. MOLNAR felt they should leave it fairly broad and asked REP. ANDERSON to bring possible modifications forward when the amended bill would be debated on the floor.

Vote: The motion carried, 13-6, REPS. WYATT, ANDERSON, CAREY, HURDLE, MC CULLOCH and CURTISS voted no.

Motion/Vote: REP. BOHARSKI MOVED HB 74 DO PASS AS AMENDED. The motion carried 14-5, REPS. WYATT, ANDERSON, HURDLE, CAREY and MC CULLOCH voted no.

EXECUTIVE ACTION ON HB 253

Motion: REP. HURDLE MOVED HB 253 DO PASS.

Motion: REP. DEBBIE SHEA MOVED TO AMEND LINES 12, 13 AND 14.

{Tape: 1; Side: B}

Discussion: Mr. MacMaster explained the amendments. Committee members held an informal discussion for further clarification.

REP. TASH spoke against the amendments believing that they would establish something which should be left up to the court. The court should have the option to refer people to educational programs rather than to demand it. He said the committee was trying to redraft bills and thought the bills should be allowed to go through the usual process.

CHAIRMAN BOB CLARK clarified that the amendment would not demand that the court order the program, but would provide that the parties be informed that they were available.

REP. BOHARSKI asked for further clarification and suggested a modification which the sponsor of the amendment accepted.

Vote: The motion carried unanimously.

Motion/Vote: REP. SHEA MOVED HB 253 DO PASS AS AMENDED. The motion carried unanimously.

HEARING ON HB 402

Opening Statement by Sponsor:

REP. THOMAS NELSON, HD 11, sponsored HB 402 at the request of the League of Cities and Towns. He said that it would allow a deputy sheriff to appeal a termination of employment to a district court

and it would also require disciplinary action against members or officers of a police force to be determined by the police commission. It was requested that the language in section 1, be restored as detailed in **EXHIBIT 1**.

Proponents' Testimony:

Alec Hansen, League of Cities and Towns, said this bill would correct a problem created by the 1993 Legislature. He described the process whereby citizen oversight of the police department was provided before the action of a previous legislative session which passed a bill to provide arbitration for police officers. The unintended effect of the 1993 act was that the police commission can no longer hear charges brought against an officer by a member of the community. It eliminated the real purpose and function of the police commission and if a member of the community has a problem with a police officer, there is now no way to bring that charge to the police commission. He submitted copies of the 1991 and 1993 statutes. **EXHIBITS 2 and 3**

Informational Testimony:

Kathy McGowan, Montana Sheriff's and Police Officer's Association, appeared to ask the committee to leave the sheriffs' portion of the statute intact as it is in current law. She was not appearing as either a proponent or opponent of the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. TASH asked the sponsor if he agreed with the amendments suggested.

REP. NELSON said he did.

REP. BOHARSKI asked **Mr. Hansen** to explain how the amendments applied to both deputy sheriffs and peace officers.

Mr. Hansen said with the amendments the bill should not affect deputy sheriffs. The intent is to return the municipal section of the law to its language before 1993. There is a collective bargaining agreement in place and the bill wouldn't interfere with it.

REP. BOHARSKI asked if all cities with police departments have police commissions.

Mr. Hansen said police commissions are required and every city which has an active police department rather than a contract with the county would have a police commission.

REP. BOHARSKI and Mr. Hansen discussed the other portions of the bill for clarity.

REP. BOHARSKI asked if the reason for the appeal to the commission was an effort to avoid a court battle.

Mr. Hansen said that was one of the reasons. He explained the reasons behind the 1993 amendments and how it became confused and unworkable.

REP. SMITH reiterated the intent to exclude deputy sheriffs from this bill by striking section 1. Mr. Hansen affirmed the statement.

REP. SMITH asked about how this would apply in consolidation of city and county officers.

Mr. Hansen said the two consolidated governments in Butte and Anaconda are under the metropolitan police law.

REP. SMITH asked if the word, "members," included search and rescue workers and Mr. Hansen said it would not because it was dealing with city police.

REP. SMITH asked why "members" was under section 5 and who would that include.

Mr. Hansen replied that the inclusion of "member" was a part of the effort to write and update the laws in a grammatically correct fashion while eliminating gender references.

REP. GRIMES asked if there were any contracts which would have to be re-negotiated as a result of the passage of this bill.

Mr. Hansen said it could not set aside any collective bargaining agreements that are currently in place.

REP. GRIMES asked if a grievance could go through two processes concurrently, both the old and the new.

Mr. Hansen said the officer would choose up front whether it would go through the police commission or to arbitration.

REP. HURDLE asked if the police commissions in Butte and Anaconda approved of the removal of arbitration in the bill.

Mr. Hansen said he did not inform them of this hearing but his recollection of the 1993 session was that the Butte police union was not enthusiastic about the changes which were made and they have a record of not favoring arbitration but prefer collective bargaining. He assumed they would be here to object if they did.

REP. HURDLE asked the sponsor if the Billings police union was aware of this bill.

REP. NELSON said they were.

Closing by Sponsor:

REP. NELSON closed.

EXECUTIVE ACTION ON HB 402

Motion: REP. AHNER MOVED HB 402 DO PASS.

Discussion: REP. SMITH recalled the testimony that said deputy sheriffs were not included, but stated that under consolidation the officers are a single group. Secondly, she did not understand the use of the word, "members."

CHAIRMAN CLARK explained that dispatchers and other employees in law enforcement agencies were also under the authority of police commissions.

REP. SMITH wanted to know if those areas which have consolidated still have a police commission.

CHAIRMAN CLARK could not answer the question, nor could Mr. MacMaster.

Motion/Vote: REP. SMITH MOVED TO POSTPONE ACTION ON HB 402. The motion carried, 14-3. REPS. WYATT, AHNER and TREXLER voted no.

HEARING ON HB 355

Opening Statement by Sponsor:

REP. WILLIAM REHBEIN, HD 100, said HB 355 would simply ask for a change in the statute of limitations to stay in effect as long as the person who stole property had that property in his possession. The current law leaves questions about when the statute of limitations begins.

Proponents' Testimony:

Gary Ryder, Deputy County Attorney, Richland County, said the basis for the bill came from a Supreme Court decision in December 1994 where the Montana Supreme Court ruled that the statute of limitations expires for prosecution for stolen property at the time the property is stolen. He believed that an amendment would be added to limit the statute of limitations to one year after discovery of the stolen property.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

CHAIRMAN CLARK asked if there were copies of the proposed amendments. **Mr. Rider** did not have them, but the sponsor had a conceptual amendment for line 15 on page 2 which he described to the committee.

REP. BOHARSKI asked if the same language of the conceptual amendment should apply on page 1, lines 25 and 26. The sponsor agreed.

REP. BOHARSKI asked about the need for the language on lines 11 through 13 on page 2. The sponsor said it was added at the recommendation of **SPEAKER MERCER** to clarify the bill but was not necessary.

REP. BOHARSKI felt they were redundant and the sponsor said he tentatively agreed.

REP. BOHARSKI asked what 45-6-301, MCA, included. The sponsor said that was the "theft statute."

REP. HURDLE inquired about the meaning of the language in the bill as it applied to a person who committed a crime at age 13 and whether the person could be prosecuted at 18. When the sponsor said he did not think so, she asked him to repeat the purpose of the bill from his opening statement, which he did.

Mr. Rider clarified the language concerning the juvenile offender. At the time that the offense is committed, the prosecution must take place.

CHAIRMAN CLARK asked if the proposed amendment deleted anything that is currently in the bill. **Mr. Rider** said it did not and the Chairman said the committee staff counsel would review it.

Closing by Sponsor:

REP. REHBEIN closed with a reiteration of the intent of the bill.

HEARING ON HB 322Opening Statement by Sponsor:

REP. CHASE HIBBARD, HD 54, presented HB 322 on behalf of the Montana Innkeepers' Association. He said it was a variation on a national model from the American Motel and Hotel Association. The model was designed to define the rights and responsibilities of lodging operators and guests specifically patterned after a

law just passed in Idaho. During 1994, several other states passed similar laws and eight other states are currently considering similar measures. He went through the bill section by section and described its affect on guests, minors and innkeepers.

{Tape: 1; Side B; Approx. Counter: 52.3}

Proponents' Testimony:

Stuart Doggett, Montana Innkeepers' Association (MIKA), said Montana currently has no law to set guidelines for innkeepers in dealing with problem guests. Though there is a low volume of problem situations, they would like to take the lead in establishing a fair-minded law before it becomes a problem in this fast-growing industry in Montana. He added that the intent of the measure would not be to set up opportunities for random evictions, but to deal with the obnoxious guest and to set up guidelines for renting a room to someone under 18.

Greg Bryan, MIKA, said he had been involved in the industry for over 25 years and that the bill was important to them as operators. He said it would assist them in dealing with behaviors which could damage their hotels and impact their ability to run a profitable business. He cited current problems in renting rooms to minors for parties, proms, etc. when there are damages or unpaid rent or conduct associated with illegal activities.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. MOLNAR asked for clarification of line 13 on page 1 in the use of the language, "shall demand payment of the bill and shall ask the guest to vacate the premises." He wondered if the guest had paid, whether they might want vacating to be optional rather than a demand.

Mr. Doggett said that it was a good point which they should investigate more fully.

REP. MOLNAR redirected the question to Mr. Bryan, who explained the scenario as one in which the customer refused to pay the bill and further explained how he interpreted the intent of the bill.

REP. MOLNAR said he preferred the use of the word, "may," and Mr. Bryan continued to explain his understanding of the use of the word, "shall."

REP. ANDERSON referred to page 2, line 17 and asked how big a problem exists in denying accommodations because of being under age.

Mr. Bryan said it was not the number one problem, but that it is a problem and described how it exists for parties and proms.

{Tape: 2; Side: A}

He stated that it is difficult to enforce the contractual agreement for room rental with someone under the age of 18.

REP. ANDERSON discussed the provisions of the bill in dealing with overcrowding of the room and illegal activities causing damages to the room. Mr. Bryan responded by explaining in more detail what they want to accomplish with the bill.

REP. ANDERSON asked if they would accomplish the same purpose by allowing them to deny accommodations to someone under 18 if they said they could deny those accommodations to someone under 18 who doesn't prepay.

Mr. Bryan said that was a possibility but there has been the situation where only the first night was prepaid, substantial damage had occurred that night and there would be no one to accept responsibility for the damages unless a parent or guardian had entered into the contract. The question of the innkeeper's liability for the underage occupant who might be injured was also raised.

REP. KOTTEL wondered if the bill allowed an innkeeper to deny accommodations to an emancipated minor.

Mr. Bryan asked how the hotelier would know if they were emancipated. If they were a couple, they could be required to show some sort of identification.

REP. KOTTEL understood the problem of voidable contracts with minors while contracts with emancipated minors are not voidable. She felt they should be protected from discrimination and felt the bill was so broad that it did not provide that protection.

Mr. Bryan asked how the person behind the desk at the facility would know the customer had the ability to be held accountable without some sort of statement.

REP. KOTTEL said the law does not like irrebuttable presumptions and by saying that everyone under the age of 18 can be refused accommodations, an irrebuttable presumption is made that persons under the age of 18 are not financially able to make payment. She reflected on page 1, lines 23 and 24 that because of the word, "or," another problem existed.

Mr. Bryan responded that in this situation "or" provides the hotelier some rights in the situation where a person who has a license to carry a weapon is intoxicated, and it would be reasonable, prudent judgment based upon that combination to deny accommodations.

REP. KOTTEL said the language of the bill did not combine the two conditions. It said simply that they have the right to refuse someone accommodations if they believed the firearm was dangerous. In other words, subsection (a) was not connected with subsection (d).

Mr. Bryan said that was true as it is true for any other business which may seek to refuse service or business as long as it did not jeopardize constitutional rights.

REP. KOTTEL asked if there was a definition in Montana statute for toxic substances. **Mr. Bryan** was sure there was.

REP. KOTTEL asked why national fraternal organizations were exempted on page 3, lines 12 and 13 and asked if he would object to amending the section to remove that exemption.

Mr. Bryan said he would inquire into the purpose of amending it out before agreeing to it. He did not know the background of this current language and **REP. KOTTEL** wondered why it existed.

REP. BOHARSKI wanted to know why the legislation was being requested and why they could not just evict persons who fail to comply to lines 13 and 14 on page 2 and lines 28 and 29 on page 1. He felt these were things which any reasonable person would agree with.

Mr. Bryan said this model was based upon national recommendations submitted by the American Motel/Hotel Association and also patterned after Idaho legislation recently enacted. With regard to lines 13 and 14, they were trying to establish that a hotelier has the right to establish reasonable standards and policies and that they are sufficient and reasonable reasons for denial of accommodations.

REP. BOHARSKI said he did not understand the need to draft three pages on statute to take care of something that is completely reasonable. He wanted to know why Montana needed to do this.

Mr. Bryan replied that they were here to provide some statewide standards to allow the enforceability of actions taken by hoteliers in a reasonable and prudent manner because of today's litigious society.

REP. BOHARSKI expressed his frustration and asked why the organization could not come up with reasonable statewide standards and then enforce them.

Mr. Bryan said they find themselves dragged into legal suits and they feel they need to codify the standards.

REP. BOHARSKI suggested striking all of the language except lines 28 and 29 on page 1 and all of the language of subsection (2) except for 13 and 14 to accomplish the same thing.

Mr. Bryan thought that the interpretations which were given dictated that they need to define the standards in an available form.

REP. DIANA WYATT understood that if she gave her teenaged daughter cash for accommodations, she might be rejected; but if she gave her a credit card, she would have a better chance at getting the accommodations.

Mr. Bryan replied that it was provisional for the person having the legal right to use the credit card, if named as an individual on it, and secondly a more beneficial way would be a letter from the parent or the parent making the reservations indicating willingness to accept the liability for the teen's actions while using the accommodations.

REP. WYATT said that it could go against individual freedoms for those who choose not to use credit cards.

Mr. Bryan said it does not require credit cards, but rather some mechanism where the parent or guardian accepts responsibility.

REP. KOTTEL asked **Mr. MacMaster** if lines 17, 18 and 19 on page 2, which gave the owner of public accommodations the right to deny an 18-year old who is not accompanied by a parent or guardian, are unconstitutional. She read article 2, section 15 of the Montana Constitution.

Mr. MacMaster said he agreed that provision was unconstitutional.

REP. KOTTEL asked if this legislation was needed so that the innkeepers would not fall under the landlord/landowners statutes dealing with eviction processes.

Mr. Bryan said they differ from the landlord act in that it is a short-term temporary rental of space which would change from moment to moment as opposed to a long-term lease and agreement. The intent was to codify for the customer as well as the person who is providing the accommodations. He agreed that they do not follow the landlord act.

REP. ANDERSON asked where the current system leaves them in having to take someone to court for which there is no remedy.

Mr. Bryan said currently when an underaged customer seeks to rent a room for a prom or party, he would be limited in liability to deny him the rental of the room. Should they pay cash, and the

rental of the room resulted in damage to the room, there would be no recourse in pursuing the restoration of damages from the parent or guardian.

REP. ANDERSON pointed out that there is a remedy in criminal mischief and restitution from that underaged customer.

Mr. Bryan replied that he had several situations where he is seeking to recover restitution from underaged individuals based on damages where the parents refuse to act.

REP. ANDERSON felt there were already laws to prohibit the bringing in of firearms and asked if there were any specific examples of problems with that.

Mr. Bryan said that there is an anticipation of problems in this area of concern.

CHAIRMAN CLARK was not sure about the necessity for it after listening to testimony. The requirement to be licensed to carry firearms does not apply in Montana. He wanted to know if he would be evicted for carrying a firearm into the facility.

Mr. Bryan pointed out that the language was, "may evict," which would base the decision on the inappropriate use of the firearm provoking a dangerous or threatening situation. The intent would not be to say a person could not bring firearms into the rooms.

CHAIRMAN CLARK said he was more concerned with the words, "that is unlawful to possess."

Mr. Bryan listed items like explosives or toxic substances which are unlawful to possess.

CHAIRMAN CLARK said those were already covered under current statute and was concerned with firearms.

Mr. Bryan clarified that they were trying to deal with the eviction of a person who was doing something unlawful. The police would be called and the person arrested, but the innkeepers could not evict them, thus the room would be unavailable for rental to other parties.

CHAIRMAN CLARK asked if they would object to the removal of the word, "firearm."

Mr. Bryan wasn't sure why that would be done and cited situations which involved gang members who carry firearms and rent rooms.

CHAIRMAN CLARK suggested that gang members, unless they were breaking the law or were felons, could possess firearms legally in Montana.

Mr. Bryan said, "Then I guess 'unlawful to possess' wouldn't apply."

CHAIRMAN CLARK said that was why he suggested removing firearms from the language of the bill. He and **Mr. Bryan** continued to clarify the issue as it related to prepaid rental of the room versus unpaid rental of the room in a situation where the person was arrested during occupancy for illegal activities or possession of unlawful weapons.

REP. BOHARSKI asked why the statement, "we reserve the right to refuse service to anyone," would not apply.

Mr. Bryan replied that refusing anyone is a broad and flat statement which was being challenged in many ways in lawsuits. They were trying to define what that means and the grounds in which public places can legally refuse that accommodation.

REP. BOHARSKI asked if he was saying that under current law, the hotel owner could not ask the person to check their firearm at the front desk.

Mr. Bryan said they were not trying to find ways to deny their product and service to people. They desired to provide a safe environment and when it becomes evident that unsafe actions by a person with a firearm would endanger themselves or others, then they want the right to address that.

REP. LOREN SOFT asked if members of the hotel/motel industry had refused to rent rooms or evict people (apart from discriminatory action) for any reasons listed in the bill.

Mr. Bryan said, "In reality, the answer is yes. That does not mean that we were within our legal rights, what it means is that we were forceful enough in our presentation that we were successful. That does not mean the individual could not come back, or has not come back, with legal threats about our ability to do just that."

REP. SOFT asked how many suits have resulted.

Mr. Bryan said he could not quantify those but that he had been subjected to threats and had been served initial papers on numerous situations which did not end up in court though the threat was very real.

REP. SOFT asked, "To your knowledge then, there have been no suits that have been successful in their action against the hotel industry?"

Mr. Bryan answered, "To my personal knowledge, no, but I know of numerous situations where those have been started....."

Closing by Sponsor:

REP. HIBBARD made his closing remarks.

HEARING ON HB 315Opening Statement by Sponsor:

REP. DAN HARRINGTON, HD 38, presented HB 315 which provided for volunteer firefighters being exempt from liability for civil damages except for gross negligence or willful or wanton misconduct. He said that amendments would be proposed.

Proponents' Testimony:

Bob Gilbert, Montana Volunteer Firefighters' Association, said the bill came as a result of the problem of volunteers fighting fires or having to deal with hazardous materials spills or damage who have been sued. They were asking in this bill for exemption liability from those types of actions except where gross negligence or willful or wanton misconduct occurred. The basis of the language was taken from legislation in Oklahoma in 1986. He explained the reasons for the amendments and for their disagreement with some of them and the need for time to contact all the signers on the bill before accepting them.

James Lofftus, President, Montana Fire Districts Association, supported the bill because of their desire to protect their volunteers from lawsuits for minor things occurring in the course of performing their duties.

John Geach, Department of Health and Environmental Sciences (DHES), presented his testimony with explanations for the amendments. EXHIBITS 4 and 5

Russell Hill, Montana Trial Lawyers Association (MTLA), said MTLA did not oppose HB 315. His statement was based on the bill prior to the amendments which were being presented. He said that he understood that the amendments drastically broadened the bill and would suspect that MTLA would oppose the bill if amended.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. ANDERSON asked if Mr. Gilbert was aware of the bill which had to do with hazardous-materials-quick-response teams.

Mr. Gilbert said he was and would be supporting that bill, but that it did not deal with the same issues as this bill. He explained the differences in the two bills.

REP. ANDERSON asked if this wouldn't alleviate some of the need for those hazardous response teams.

Mr. Gilbert understood that there is no cost to the government for the emergency response teams but that the money would come out of a fund. He did not think this bill would eliminate the need for the team. This bill provided that if a volunteer department was on site and there was a spill that was not their fault, they could not be sued.

REP. ANDERSON asked him to respond to the amendments and asked if he would have any objection to including all emergency responding personnel rather than just firemen.

Mr. Gilbert said the intent of the bill was to cover volunteer fire companies and their personnel. He felt expanding that would get them into areas that they did not want to get into especially when it came to paid individuals.

{Tape: 2; Side: B}

He said he preferred to leave the bill as it was and if others wanted to be covered by its provision to work with them toward that end during the next legislative session.

REP. MC GEE asked if volunteer fire departments are currently required to respond to hazardous waste calls.

Mr. Gilbert did not know if they are required to, but said they do respond to every incident. Their obligation doesn't extend to going to the point where they endanger their own lives, but they do their best to contain the situation until the trained personnel arrive.

REP. MC GEE cited a situation where a hazardous spill occurred with a house nearby and asked if the volunteer department would probably have taken action they deemed appropriate to protect that house. He wanted to know if they could have been sued if they had not taken what they thought to be a reasonable response to an endangerment situation.

Mr. Gilbert said they could but did not know how far the litigation might extend in that situation.

REP. MC GEE asked **Mr. Geech** if he would agree that when a volunteer fire department arrives on a scene and assesses that they need to take action, they are doing the best they can with the resources they have available.

Mr. Geech said he agreed that it was appropriate to take initial action to curb the threat, but that after emergency response was complete and the situation contained, they should turn it over to experts.

REP. MC GEE asked why the DHES amendment proposed negligence as opposed to gross negligence.

Tim Baker, DHES Attorney, said he was asked to prepare amendments for the immunity protection for volunteer fire departments the same as it is for the state when it responds to hazardous or deleterious substances. The standard is that they are liable for negligence or gross negligence. It offers no protection. These are all strict liability statutes, so during response and management of activities at a spill, there could be continued releases which are not a result of negligence.

REP. MC GEE asked if he believed it was fair and equitable that a volunteer fire department have the same standards as paid employees of DHES who are trained to do this work.

Mr. Baker said it was a policy call. He said they should have some training to make sure they were not getting in over their heads.

REP. MC GEE said that was not what they are trained to do as a normal course and when they respond to those situations as volunteers, they do get in over their heads. His question was why the standards should be equal for them as for the trained entity who might respond.

Mr. Baker said he was not there to testify on behalf of the department for policy, but only to explain the amendments he was asked to draft. He left it up to the committee to decide whether they wanted to extend the same standards to the volunteers as to the experts in the department.

REP. TASH asked **Mr. Baker** if he was the same attorney who drafted the amendments for HB 128 or if he was familiar with them or that the bill was tabled in committee.

Mr. Baker said he had not drafted those amendment and was not familiar with them though he was familiar with the introduced legislation and that it had been tabled.

REP. MC CULLOCH recounted an experience with an explosion in a school which involved asbestos. The volunteer fire department responded and their primary concern was with the safety of the children. She said as she watched the abatement team which dealt with it for about two months, she knew that there was no way that the volunteer department even with training would have known how to deal with it. So she was concerned with the amendments that negligence could be attributed to them for their part of it.

Mr. Geach replied that their concern is not that they don't respond, because in many cases they are the only ones available in their community and hazardous materials experts may be hours or a day away. The local fire department, volunteer or paid, needs to do the best they can. They felt their amendments provided the coverage they needed to give them the immunity in doing the best they can in the emergency situation. They didn't want to stop them from emergency response, but after the emergency is over, they should not be going in to try to do something beyond their scope of training or their capabilities.

Without objection from the committee, **Mr. Lofftus** discussed the different levels of training as it related to hazardous material. He explained the counties' responsibilities and plans for it.

Closing by Sponsor:

REP. HARRINGTON made his closing remarks and hoped that the committee would not allow the bill to become bogged down because of the amendment but would deal with it as introduced for the benefit of volunteer firemen.

EXECUTIVE ACTION ON HB 271

Motion: **REP. HURDLE** MOVED HB 271 DO PASS.

Discussion: **REP. HURDLE** was concerned about line 2, page 14 directing the clerk of the court to mail a copy of the divorce decree to each party. She wanted to know who would pay the postage.

REP. MC CULLOCH responded that it was set up for the court to pay the postage, but there had been a suggested amendment that the parties would provide a self-addressed, stamped envelope.

Motion: **REP. KOTTEL** MOVED TO AMEND LINE 14 ON PAGE 2 AFTER THE WORD, "SHALL," INSERT "UPON ENTRY OF A FINAL DECREE THE COURT OF THE COURT SHALL." DELETE "MAIL TO," AND INSERT "MAKE AVAILABLE A COPY" AFTER "PARTY," DELETE "AT THE ADDRESS SET OUT IN" INSERT A PERIOD AFTER "THE JOINT PETITION." AND DELETE THE BALANCE.

Discussion: **REP. BOHARSKI** and **Mr. MacMaster** fine tuned the amendment. **Mr. MacMaster** walked the committee through the amendment as he modified it.

Vote: The motion carried unanimously.

Motion: **REP. MC CULLOCH** MOVED HB 271 DO PASS AS AMENDED.

Discussion: **REP. HURDLE** asked about the \$45 payment for registering the decree of dissolution and suggested the committee examine that. She said it was not included in the bill, but that the collection of it is required and the clerks of the courts

would be dependent on it. Therefore, she thought it should be addressed.

REP. CURTISS said the \$45 fee was alluded to in a letter from the clerk of the court of Yellowstone County.

REP. KOTTEL said the answer to the question during the hearing was that normally the clerk of the court severs the two fees until the judge issues the final petition (sic). Testimony was that because there would be no contest and should this bill pass, the clerk of the court would collect the fees upon the filing of the petition.

REP. CURTISS remembered Mr. Barrett would be coming to the committee with amendments to address that and asked if those amendments had been submitted.

REP. MC CULLOCH said those amendments had been drafted, but they were not ready for executive action as yet.

Motion: REP. MC CULLOCH MOVED TO POSTPONE ACTION.

{Tape: 2; Side: b; Approx. Counter: 30.4}

EXECUTIVE ACTION ON HB 191

Motion: REP. MOLNAR MOVED HB 191 DO PASS.

Motion: REP. MOLNAR MOVED TO AMEND HB 191 BY STRIKING SECTION 5 IN ITS ENTIRETY.

Discussion: REP. MOLNAR explained his reasons for the amendment. His concern was that DNA evidence would be expunged when a conviction was reversed on a technicality and therefore be unavailable for evidence in a new trial.

REP. KOTTEL felt there should be some safeguard regarding the reversal of conviction. She wanted to use language which would say that the records could be expunged if the time for bringing the new action by the state had expired.

REP. MOLNAR felt they should strike the section and thereby leave it up to the judge's discretion to exercise as they do with fingerprints.

REP. BOHARSKI questioned how the record would be eliminated if the person were to be found not guilty.

REP. MOLNAR said the situation he was addressing was not one of innocence, but one of reversal on a technicality with the possibility of a new action on the same case.

REP. BOHARSKI was concerned about a case of conviction which would be later overturned, asking if they would then need to petition the court for the expunging of the DNA records and what assurance would they have of those records being expunged.

REP. MOLNAR said they would have the same assurance that is there concerning fingerprints, photographs, etc., that they would not be misused. The attorney could petition the court or the judge could order it without being asked as is common practice for other evidence upon overturning a conviction.

REP. BOHARSKI asked **REP. KOTTEL** if she was formulating a substitute amendment.

REP. KOTTEL said she was concerned about deleting section 5 entirely, it was the staff attorney's opinion that they could not go in under a petition to expunge and the judge would not have the right to expunge the file because it is a mandatory statute. She proposed leaving section 5 and on page 4, line 1, the word, "must," be taken out and the word, "may," be inserted. This would give the person the option to file the petition and the county attorney could argue against that if there were a subsequent trial planned. If there were no subsequent trial, the county attorney would stand back to allow the judge to exercise his discretion without argument. It would protect the rights of the person accused but not convicted at the same time it would accomplish the goal outlined by **REP. MOLNAR**.

Motion: **REP. MOLNAR MOVED A SUBSTITUTE MOTION TO INSERT THE WORD, "MAY," FOR "MUST" ON LINE 1.**

REP. BOHARSKI said that did not satisfy his concern because it still left the option to not expunge the record. He felt there should be some legal language about the final disposition of the case determining the expunging of the records. The danger with "may" was that the record could be destroyed and that was a mistake, he felt. He asked **Mr. MacMaster** if there was a way to define the final determination of a case.

REP. GRIMES suggested language to accomplish the goal.

Mr. MacMaster believed that they were talking about two different things. He thought **REP. BOHARSKI** was concerned about the appeals process and was looking for the time when all appeals had been exhausted in habeas corpus and post conviction relief when the reversal stands that then the records could be expunged. He believed that **REPS. GRIMES** and **KOTTEL** were concerned about a reversal and then a new trial. He suggested that they say, "Once the statute of limitations for filing for the new trial has passed, then we will expunge it."

REP. BOHARSKI said some of the problems would not be dealt with because of cases where there is no statute of limitations. He restated his concern in other words. At the point in time where

there can be no new trial, they ought to be expunged, he believed.

REP. MOLNAR talked about a case in his experience to address those concerns. He reiterated that he was not talking about acquittal, but reversal on technicalities.

REP. BOHARSKI said he understood, but repeated that upon acquittal, it needed to be a must.

REP. KOTTEL suggested a subcommittee to look at the criminal rules of procedure to craft an amendment to satisfy the concerns.

REP. MOLNAR wanted to vote on the amendment and put it out on the House floor for decision. They could come up with the amendment prior to floor action. In the meantime, he still felt it could be left up to the discretion of the judge to order records to be expunged.

REP. HURDLE was still concerned about the definition of certain sex offenses in the bill and asked the committee to address that.

CHAIRMAN CLARK reminded her they were still working on the amendment.

REP. AHNER wanted to know why expunging of records was needed at all. If a person was innocent she felt it would not make any difference.

REP. HURDLE said that DNA could become a very invasive procedure and the issue needed careful scrutiny.

Vote: The motion on the substitute amendment carried 16 - 3, **REPS. SHEA, HURDLE and KOTTEL** voted no.

Motion: **REP. MOLNAR MOVED HB 191 DO PASS AS AMENDED.**

Discussion: **REP. CURTISS** reminded the committee that **Mr. Day** had said that they needed to examine the rule-making authority of the department and he would bring back something to the committee. She also noted the cost involved as reflected in the fiscal note.

CHAIRMAN CLARK reported that **Mr. Day** had been working cooperatively with him on narrowing down the rule-making authority on all of the agency bills and assured the committee that he would insist that it was narrowed down on this bill before it went to the floor for action.

REP. MC GEE understood what the bill is trying to do. He recounted various points of testimony:

1. In some cases DNA evidence would do nothing toward the conviction of the perpetrator,

2. If everybody were indexed on DNA, it would also prove innocence as well as guilt, and

3. Shouldn't this include violent crimes as well as sex crimes.

REP. SMITH wondered if this should include reference to the new facility for DNA testing. She was assured that would be addressed in the Appropriations Committee.

REP. SMITH agreed that sex offenses are acts of violence and if the bill addressed all violent crimes, sex offenses would fall under that same category for the purposes of DNA collection.

REP. KOTTEL echoed **REP. MC GEE'S** comments. She said that this was a costly bill and she remembered that during testimony the answer was that addition of all violent crimes would not increase the cost to implement and maintain the process of DNA testing. It would decrease the cost of a search to include all violent offenders. She felt that they needed to closely examine which kinds of offenses were included and pointed out some which might need to be excluded such as sexual deviancy (which are consensual by definition), or statutory rape (which can be consensual), for instance. She highlighted inconsistencies in offenses which are specifically excluded such as incest engaged in between adults. Because it is consensual and involves adults, they are exempt and excluded under the DNA bill. She felt they should only include those crimes which are violent to be consistent with other legislation.

CHAIRMAN CLARK asked if that proposal would also exclude "date rape."

REP. KOTTEL replied that she had no problem with exempting acquaintance rape which could be non-violent.

REP. MC GEE asked if they were beginning to trespass on constitutional issues.

{Tape: 3; Side: A}

REP. ELLEN BERGMAN asked why they couldn't take the sample and send it out of state in order to reduce the cost.

REP. AHNER asked about including language such as, "An act requiring sex offenders and/or violent"

REP. KOTTEL replied that in order to make it parallel to the registration, it should read, "An act requiring DNA testing for violent and sex offenders....." and then the statute would define the same category of people who would be required to register.

REP. MOLNAR suggested that someone come up with an amendment to cover the things being discussed but felt they were getting away from the title.

CHAIRMAN CLARK said the amendment being discussed would include changing the title of the bill.

REP. KOTTEL asked that she be allowed to take this bill with HB 214 and HB 157 to make a comprehensive and cohesive package dealing with this issue. She would bring an amendment that would make this one parallel with the other two.

CHAIRMAN CLARK said it would not be part of the package, but could be worked in conjunction with them.

REP. BOHARSKI said the title was not very broad and was inclined to think from looking at section 4 of the bill that this data could be released for murder crimes committed at a time after it was collected for a molestation, for instance. He wondered if it would be within the scope of the title of the bill to expand it to cover all the crimes being talked about such as murder, rape, and assault, etc.

Mr. MacMaster replied, "As the Chairman said, if you are going to amend the bill, you can always and usually have to amend the title if you are going to add a substance to the bill. But what we are really talking about is the rule that you cannot so change a bill as it works its way through the legislative process so as to change its original purpose. Frankly, I think this committee has been doing that all session. We are taking bills that were carefully crafted, hopefully, and carefully drafted -- people put a lot of time in and we are re-writing bill after bill in this committee, often without giving it the thought that is necessary to see to it that if you do something someplace in the bill, you don't screw up something else in that bill. And, quite frankly, it's scaring me because I think we are putting a lot of stuff out of this committee that is going to cause trouble down the line and also, quite frankly, it is getting to the point where I am going to be unable to keep up with the work that this committee is generating."

REP. BOHARSKI said he asked the question because he usually didn't mind expanding titles if it reasonably stayed within the original intent of the bill. It seemed to him that they ought to clean up the bill or pass it out the way it was and look at the amendment on the House floor. Or he thought they could draft a committee bill to change or include what needed to be done.

CHAIRMAN CLARK asked for comments on **REP. BOHARSKI'S** idea.

REP. WYATT addressed the ramifications of DNA testing as it is expanded to every violent crime in Montana were unknown. She said the committee was making major changes to Montana law without knowing some of those ramifications. Intelligence and

other components of a person's personality and make-up can be tracked through DNA testing and she questioned the wisdom in getting that invasive. She did not see a compelling need at this point in Montana to DNA test every violent felon and questioned its cost effectiveness and the extent of its invasiveness. She hoped they would not write a committee bill based upon that.

CHAIRMAN CLARK suggested that they get back to discussion on the bill.

REP. BOHARSKI asked, "What is 46-23-502?" It seemed to him that was the only sex crime they had no record taken under this bill.

REP. KOTTEL said that was the sexual assault statute which deals with victims less than 15 years old and the offenders are three or more years older than the victims or the offenders inflict bodily injury upon anyone in the course of committing sexual assault. She had no problem with the second crime being covered, but did have a problem with the first.

REP. BOHARSKI asked about sections, 503, 505, and 507. **REP. KOTTEL** clarified those sections for him.

Both **REP. BOHARSKI** and **REP. MOLNAR** said they were ready to vote on the bill as it was written.

Vote: The motion to pass HB 191 as amended failed, 9-10, REPS. CAREY, GRIMES, TREXLER, MOLNAR, AHNER, BOHARSKI, ANDERSON, SMITH, and CLARK voted aye. (REPS. ANDERSON and SMITH voted by proxy.)

Motion/Vote: **REP. WYATT** MOVED HB 191 BE TABLED. The motion carried by reversing the previous vote, 10-9.

Motion/Vote: **REP. KOTTEL** MOVED TO DRAFT A COMMITTEE BILL REGARDING DNA TESTING OF CERTAIN SEX OFFENDERS AND VIOLENT OFFENDERS.

Discussion: **REP. MC GEE** said he would not vote in favor of the motion and expressed his frustration with all the time and policy constraints. He knew the staff attorney did not have time to draft it.

REP. KOTTEL believed the staff attorney for the Department of Corrections and Human Services would be available to do the initial draft of the committee bill and that it could be given to **Mr. MacMaster** simply for his review.

REP. BOHARSKI said the bill draft was before them, it only needed a new title.

REP. BOHARSKI expressed his concern about expanding the purpose of the bill beyond the original intent of the title. He believed they should reconsider and pass this bill, and draft another one that does the same thing in case this one did not pass the House.

REP. BERGMAN said she did not think it was the committee's responsibility to re-write bills, but rather to vote existing bills up or down and to let the sponsor re-write it if it got voted down.

REP. KOTTEL disagreed and explained that when they have different sponsors coming in with different bills that attempt to solve a puzzle, the committee has the affirmative obligation to try to put the pieces of the puzzle together. If in the time allotted, another bill couldn't be drafted that would satisfy the committee, they could reconsider the table motion and pass it out of committee.

REP. MOLNAR still believed they should stay within the narrow context of this bill rather than write a committee bill that could be so over-broad that it would be thrown out. He felt that if they draft an additional bill after reconsidering this one, this one would be the one which would pass constitutional muster.

REP. KOTTEL reiterated the plan to work on a committee bill and perhaps reconsider HB 191.

REP. MOLNAR reiterated that he wanted both bills to be considered in case one of them was struck down, then they would be left with something. He pressed for reconsideration now of HB 191.

Vote: The motion to draft a committee bill carried 12-7, REPS. WYATT, BERGMAN, MC CULLOCH, TASH, TREXLER, ANDERSON and AHNER voted no. (REP. ANDERSON voted by proxy).

Motion: REP. MOLNAR MOVED TO RECONSIDER HB 191.

Discussion: REP. MOLNAR repeated his reasons.

REP. SOFT felt that the motivation behind the bill might be to acquire the DNA lab and for that reason would vote against it.

REP. MOLNAR said that was a question for the Appropriations Committee to deal with. If both bills were to pass, they would be codified and anything that was redundant would be struck out.

Vote: The motion failed by voice vote.

EXECUTIVE ACTION ON HB 290

Motion: REP. ANDERSON MOVED HB 290 DO NOT PASS.

Discussion: REP. CLIFF TREXLER said he had done quite a lot of research and if it were enacted, it probably still would not be possible. Any kind of action they would take would be a condemnation action and would have to result in public access. If it were public access, it would have to be maintained by the county. It would be an unfunded mandate to the counties who

already can't take care of the roads they have. He could cover other issues if the committee desired.

Motion/Vote: REP. BOHARSKI MOVED HB 290 BE TABLED. The motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 347

Motion: REP. KOTTEL MOVED HB 347 DO PASS.

Discussion: REP. CURTISS said they were told over and over that they shouldn't be making laws which deal with specific instances and she thought that was what this one was for. The testimony related to what was happening in one county. She felt it was up to law enforcement to discharge their duties and obligations and responsibilities. She planned to oppose the bill. Though they should not tolerate threats, she was not convinced there was enough evidence that was happening over an extensive area.

REP. MOLNAR believed this provision existed in law and felt for shallow reasoning it lowered the threshold of pain that they could inflict as opposed to raising it.

REP. ANDERSON said the penalties being lowered pertained to judicial or administrative proceedings and this bill only made those commensurate with penalties for threatening public officials. The bill would help people in rural areas because it would make the crimes a felony the first time. For all practical purposes, it would be permissive to levy a fine or imprisonment so that they could still treat it similar to a misdemeanor. It wouldn't set up a new category of persons, but simply would put more teeth in the law that they currently have.

REP. CAREY felt they needed to stand up to the people who are issuing threats and to support the people who are dealing with the groups who are causing the problems. He wanted to add families to the wording along with public servant's property.

CHAIRMAN CLARK said they would be expanding the title of the bill where it could prove to be a problem later on and kill it.

Motion: REP. TASH MOVED TO AMEND BY INCREASING THE FINE.

Discussion: REP. CAREY suggested also increasing the time to ten years.

Motion/Vote: REP. TASH MOVED A SUBSTITUTE AMENDMENT TO RETURN THE BILL TO THE ORIGINAL LANGUAGE TO RAISE THE FINE TO NOT TO EXCEED \$50,000 AND A TERM IN THE STATE PRISON NOT TO EXCEED TEN YEARS. The motion carried unanimously by voice vote.

Motion: REP. MC GEE MOVED TO AMEND BY INCLUDING FAMILIES.

Discussion: REP. MC GEE discussed his intent and said he would be in favor of modifying the language to immediate families.

Motion: REP. MC GEE MOVED A SUBSTITUTE AMENDMENT TO SPECIFICALLY LIST THOSE FAMILY MEMBERS TO BE INCLUDED.

Discussion: Mr. MacMaster read the amended language to the committee and which also considered modified language per REP. KOTTEL'S suggestion.

Vote: The motion carried unanimously by voice vote.

Motion: REP. BOHARSKI MOVED HB 347 DO PASS AS AMENDED.

Discussion: REP. BOHARSKI asked for clarification as to the types of property which would be included and REP. KOTTEL provided that clarification.

Vote: The motion carried 17-1, REP. MOLNAR voted no.

Motion: REP. WYATT MOVED TO ADJOURN.

{Comments: This set of minutes is complete on three 60-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 12 noon.



BOB CLARK, Chairman



JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/8/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ late*		
Rep. Debbie Shea	✓ late*		
Rep. Liz Smith	✓ late*		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

* 7¹⁵



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 74 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, lines 4 through 6.

Strike: "ALLOWING" on line 4 through "PARTY" on line 6

Insert: "PROVIDING THAT IN CIVIL ACTIONS, THE COURT SHALL NOTIFY THE JURORS THAT THEY MAY IMPOSE ECONOMIC SANCTIONS IF THEY DETERMINE THE CASE TO BE FRIVOLOUS OR BROUGHT FOR PURPOSES OF HARASSMENT"

2. Page 1, lines 18 and 19.

Strike: "may order" on line 18 through "party" on line 19

Insert: "shall notify the jurors that they may impose economic sanctions if they determine the case to be frivolous or brought for purposes of harassment"

- END -

Committee Vote:
Yes 14, No 5.

331628SC.Hdh



HOUSE STANDING COMMITTEE REPORT

February 9, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 217 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, lines 4 and 5.

Strike: "CREATING" on line 4 through "EMPLOYEE;" on line 5

Insert: "ELIMINATING THE OFFENSE OF ABUSE OF TEACHERS; AND"

2. Title, lines 5 and 6.

Strike: "; AND" on line 5 through "DATE" on line 6

3. Page 1, lines 10 through 19.

Strike: section 1 of the bill in its entirety

Renumber: subsequent section

4. Page 1, lines 23 through 27.

Strike: sections 3 and 4 of the bill in their entirety

-END-

DS.
Committee Vote:
Yes 19, No 0.

341411SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that **House Bill 253** (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 1, line 12.

Strike: "may on its own motion order"

Insert: "shall inform"

2. Page 1, line 13.

Strike: "to attend an"

Insert: "of available"

Strike: "program"

Insert: "programs"

3. Page 1, line 14.

Following: "children"

Insert: "and,"

Following: "child"

Insert: ", may order the parties to attend a program"

-END-

Committee Vote:

Yes 19, No 0.

331632SC.Hdh



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 347 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 6.
Following: "PERSON"
Insert: ", SPOUSE, CHILD, PARENT, SIBLING,"
2. Page 1, line 15.
Following: "person"
Insert: ", the person's spouse, child, parent, or sibling,"
3. Page 1, line 18.
Following: "servant"
Insert: ", to the public servant's spouse, child, parent, or sibling,"
4. Page 1, line 21.
Following: "official"
Insert: ", the person's spouse, child, parent, or sibling,"
5. Page 1, line 30.
Following: "servant"
Insert: "or injures the servant's spouse, child, parent, or sibling"
6. Page 2, line 9.
Strike: "\$5,000"
Insert: "\$50,000"

Committee Vote:
Yes 12, No 1.

331634SC.Hdh

7. Page 2, line 10.

Strike: "5"

Insert: "10"

-END-

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-8-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

H Bill No. 253

Representative

Bill Long

voting

aye

(aye or no)

"I will be present at the hearing this morning."

WGC

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date

Feb.

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

HB

Bill No.

402

Representative

Rep. Wm. Smith

voting

(aye or no)

Yes

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date _____

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

HB Bill No. 191

Representative Rep. Ed Smith voting Yes
(aye or no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Wagon 347

Date 2-8-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

Bill No. NO on 271 yes on 191 NO on 290

All bills on all bills not listed here.

Made vote w/ Chairman Phil

Representative Shirley Anderson

voting

(aye or no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

I agree Rep. McCallister my party on all
bills and amendments Date _____

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

Bill No. 347

Representative _____

Edgar Allan

voting

☒ (aye or no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-17-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

Bill No. 55

Representative Charles McKeon

Voting Aye
(aye or no)

EXHIBIT 1
DATE 2/8/95
HB 402

Proposed Amendment
House Bill 402

Recommended by the Montana Sheriff's & Peace Officer's Association

Restore language in Section 1, lines 13-21, to present law language:

"7-32-2109. Right to hearing on termination of deputy sheriff's employment. (1) A deputy sheriff whose employment is terminated has a right of appeal:

(a) to the district court of the county where the deputy was employed;
(b) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the deputy sheriff is covered by a collective bargaining agreement.

(2) The appeal to the district court must be made within 30 days from the date of the termination of employment."

7-32-4139 through 7-32-4150 reserved.

7-32-4151. Police commission required in all cities and some towns. (1) In all cities and some towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall nominate and, with the consent of the city council or commission, appoint three residents of such city or town who shall have the qualifications required by law to hold a municipal office therein and who shall constitute a board to be known by the name of "police commission".

(2) This section shall apply to organized police departments in every city and town of the state which have three or more full-time law enforcement officials, regardless of the form of government under which said city or town may be operating or may at any time adopt.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part).

Cross-References

Municipal commission-manager government, Title 7, ch. 3, part 43.

Municipalities, Title 7, ch. 4, part 41.

7-32-4152. Term and compensation of members of police commission. (1) The appointees to the police commission shall hold office for 3 years, and one such member must be appointed annually at the first regular meeting of the city council or commission in May of each year. However, a member serving on the commission during the hearing or deciding of a case under 7-32-4155 shall continue to serve on the commission for that case until a decision has been made; a new member may not sit on the commission for such business.

(2) The compensation of the members of such board shall be fixed by the city council or commission, not to exceed \$10 per day or more than \$50 per month for any month for each member in cities of the first and second class.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part); amd. Sec. 1, Ch. 453, L. 1979.

Cross-References

Compensation and duties of city employees, 7-5-4110.

Conduct of Municipal Council business, 7-5-4121.

7-32-4153. Meaning of word mayor. Wherever the word "mayor" is used in 7-32-4109 and 7-32-4160 through 7-32-4163, it is intended to include "city manager", "city commissioner", or any other name or designation used to identify or designate the chief executive of any city or municipality.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(11); amd. Sec. 27, Ch. 370, L. 1987.

7-32-4154. Role of police commission in examination of applicants for police force. It shall be the duty of the police commission to examine all applicants whose applications have been referred to the commission as to their

age, legal, mental, moral, and physical qualifications and their ability to fill the office as a member of the police force. It shall also be the duty of the police commission, subject to the approval of the mayor, to make such rules regarding such examinations not inconsistent with this part or the laws of the state.

History: En. Sec. 5, Ch. 136, L. 1907; Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R.C.M. 1921; amd. Sec. 3, Ch. 119, L. 1923; re-en. Sec. 5099, R.C.M. 1935; R.C.M. 1947, 11-1805(part).

Cross-References

Structure of Department of Public Safety
— duties, 7-32-103.

Veterans' public employment preference
Title 39, ch. 29.

Handicapped persons' public employment
preference, Title 39, ch. 30.

7-32-4155. Role of police commission in hearing and deciding charges against policemen. (1) The police commission shall have the jurisdiction and it shall be its duty to hear, try, and decide all charges brought by any person or persons against any member or officer of the police department, including any charge that such member or officer:

(a) is incompetent or has become incapacitated, by age, disease, or otherwise, to discharge the duties of his office;

(b) has been guilty of neglect of duty, of misconduct in his office, or conduct unbecoming a police officer;

(c) has been found guilty of any crime; or

(d) whose conduct has been such as to bring reproach upon the police force.

(2) It is the duty of the police commission, at the time set for hearing a charge against a police officer, to forthwith proceed to hear, try, and determine the charge according to the rules of evidence applicable to courts of record in the state.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

Cross-References

Department of Public Safety — hearing
required for discharge of subordinate
employee, 7-32-107.

Right to hearing on termination of Deputy
Sheriff's employment, 7-32-2109.

Montana Rules of Evidence, Title 26
10.

7-32-4156. Charges to be in writing. Any charge brought against a member of the police force must be in writing in the form required by the police commission, and a copy thereof must be served upon the accused officer or member at least 15 days before the time fixed for the hearing of such charge.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(2).

Cross-References

Sheriffs — written notice of termination of
deputy's employment required, 7-32-2108.

7-32-4157. Rights of accused policeman. The accused shall have the right to be present at the trial in person and by counsel and to be heard and to give and furnish evidence in his defense.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

EXHIBIT 2**Cross-References**

Rights of the accused, Art. II, sec. 24, Mont. Const.

DATE 2-8-95HB 402

7-32-4158. Police commission trials open to public. All trials shall be open to the public.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

7-32-4159. Subpoena authority of police commission. The chairman or acting chairman of the police commission shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing, and any person duly served with a subpoena is bound to attend in obedience thereto. The police commission shall have the same authority to enforce obedience to the subpoena and to punish the disobedience thereof as is possessed by a judge of the district court in like cases; provided, however, that punishment for disobedience is subject to review by the district court of the proper county.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(4).

Cross-References

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas and witnesses, Title 26, ch. 2.

7-32-4160. Decision by police commission — veto power of mayor.
(1) The police commission must, after the conclusion of the hearing or trial, decide whether the charge was proven or not proven and shall have the power, by a decision of a majority of the commission, to discipline, suspend, remove, or discharge any officer who shall have been found guilty of the charge filed against him.

(2) Such action of the police commission shall, however, be subject to modification or veto by the mayor, made in writing and giving reasons therefor, which shall become a permanent record of the police commission; provided, however, that where and when the police commission decides the charge not proven, the decision is final and conclusive and is not subject to modification or veto by the mayor or to any review.

(3) Where the police commission decides the charge proven, the mayor, within 5 days from the date of the filing of such findings and decision with the city clerk, may modify or veto such findings and decision.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(5), (6).

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

Powers and duties of Mayor related to administration and executive functions, 7-5-4102.

7-32-4136. Assignment to light duty or another agency. (1) Whenever, in the opinion of the municipality, supported by a physician's opinion, the officer is able to perform specified types of light police duty, payment of his partial salary amount under 7-32-4132 shall be discontinued if he refuses to perform such light police duty when it is available and offered to him. Such light duty shall be consistent with the officer's status as a law enforcement officer.

(2) With his consent, the officer may be transferred to another department or agency within the municipality.

History: En. 11-1822.5 by Sec. 5, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.5; amd. Sec. 3, Ch. 290, L. 1979.

7-32-4137. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

History: En. 11-1822.6 by Sec. 6, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.6.

7-32-4138. Subrogation. The municipality has a cause of action for reimbursement of sums it has paid to an officer as salary and for medical treatment against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the municipality.

History: En. 11-1822.7 by Sec. 7, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.7.

7-32-4139 through 7-32-4150 reserved.

7-32-4151. Police commission required in all cities and some towns. (1) In all cities and some towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall nominate and, with the consent of the city council or commission, appoint three residents of such city or town who shall have the qualifications required by law to hold a municipal office therein and who shall constitute a board to be known by the name of "police commission".

(2) This section shall apply to organized police departments in every city and town of the state which have three or more full-time law enforcement officials, regardless of the form of government under which said city or town may be operating or may at any time adopt.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part).

Cross-References

Municipal commission-manager government, Title 7, ch. 3, part 43.

Municipalities, Title 7, ch. 4, part 41.

7-32-4152. Term and compensation of members of police commission. (1) The appointees to the police commission shall hold office for 3 years, and one member must be appointed annually at the first regular meeting of the city council or commission in May of each year. However, a member serving on the commission during the hearing or deciding of an appeal under

7-32-4155 shall continue to serve on the commission for that appeal until a decision has been made; a new member may not sit on the commission for business.

(2) The compensation of the members of a board must be fixed by the city council or commission, not to exceed \$10 per day or more than \$50 per month for any month for each member in cities of the first and second class.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part); amd. Sec. 1, Ch. 453, L. 1979; amd. Sec. 3, Ch. 468, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 468 in (1), in two places, substituted "appeal" for "case"; and made minor changes in style.

Cross-References

Compensation and duties of city employees, 7-5-4110.

Conduct of Municipal Council business, 7-5-4121.

7-32-4153. Meaning of word mayor. Wherever the word "mayor" is used in 7-32-4109, 7-32-4160, and 7-32-4161, it is intended to include "city manager", "city commissioner", or any other name or designation used to identify or designate the chief executive of any city or municipality.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(11); amd. Sec. 27, Ch. 370, L. 1987; amd. Sec. 4, Ch. 468, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 468 substituted "and 7-32-4161" for "through 7-32-4163".

7-32-4154. Role of police commission in examination of applicants for police force. It shall be the duty of the police commission to examine all applicants whose applications have been referred to the commission as to their age, legal, mental, moral, and physical qualifications and their ability to fill the office as a member of the police force. It shall also be the duty of the police commission, subject to the approval of the mayor, to make such rules regarding such examinations not inconsistent with this part or the laws of the state.

History: En. Sec. 5, Ch. 136, L. 1907; Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R.C.M. 1921; amd. Sec. 3, Ch. 119, L. 1923; re-en. Sec. 5099, R.C.M. 1935; R.C.M. 1947, 11-1805(part).

Cross-References

Structure of Department of Public Safety
— duties, 7-32-103.

Veterans' public employment preference,
Title 39, ch. 29.

Handicapped persons' public employment
preference, Title 39, ch. 30.

7-32-4155. Role of police commission in hearing and deciding appeals brought by policemen. (1) The police commission has jurisdiction and it is its duty to hear and decide appeals brought by any member or officer of the police department who has been disciplined, suspended, removed, or discharged by an order of the mayor, city manager, or chief executive.

(2) It is the duty of the police commission, at the time set for hearing an appeal of a police officer, to hear and determine the appeal according to the rules of evidence applicable to courts of record in the state.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part); amd. Sec. 5, Ch. 468, L. 1993.

7-32-4156

LOCAL GOVERNMENT

DATE

2-8-95

HB 402

1040

Compiler's Comments

1993 Amendment: Chapter 468 in (1), after "hear", substituted remainder of subsection concerning appeals by member or officer for "try, and decide all charges brought by any person or persons against any member or officer of the police department, including any charge that such member or officer:

(a) is incompetent or has become incapacitated, by age, disease, or otherwise, to discharge the duties of his office;

(b) has been guilty of neglect of duty, of misconduct in his office, or of conduct unbecoming a police officer;

(c) has been found guilty of any crime; or

(d) whose conduct has been such as to bring reproach upon the police force"; in (2) substituted "an appeal of a police officer, to hear and determine the appeal" for "a charge against a police officer, to forthwith proceed to hear, try, and determine the charge"; and made minor changes in style.

Cross-References

Department of Public Safety — hearing required for discharge of subordinate employee, 7-32-107.

Right to hearing on termination of Deputy Sheriff's employment, 7-32-2109.

Montana Rules of Evidence, Title 26, ch. 10.

7-32-4156. Appeals to be in writing. An appeal brought by any member of the police force must be in writing in the form required by the police commission, and a copy must be served upon the mayor, city manager, or chief executive at least 30 days before the time fixed for the hearing of the appeal.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(2); amd. Sec. 6, Ch. 468, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 468 at beginning substituted "An appeal brought by" for "Any charge brought against", near middle substituted "mayor, city manager, or chief executive" for "accused officer or member", increased number of days from 15 to 30, and at

end substituted "appeal" for "charge"; and made minor changes in style.

Cross-References

Sheriffs — written notice of termination of deputy's employment required, 7-32-2108.

7-32-4157. Rights of police officer. The appealing police officer has the right to be present at the hearing in person and by counsel and to be heard and to give and furnish evidence in the police officer's appeal.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part); amd. Sec. 7, Ch. 468, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 468 near beginning substituted "appealing police officer has" for "accused shall have", substituted

"hearing" for "trial", and at end substituted "the police officer's appeal" for "his defense".

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

7-32-4158. Police commission hearings open to public. All hearings must be open to the public.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part); amd. Sec. 8, Ch. 468, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 468 substituted "hearings must" for "trials shall".

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

7-32-4159. Subpoena authority of police commission. The chairman or acting chairman of the police commission shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing, and any person duly served with a subpoena is bound to attend in obedience thereto. The police commission shall have the same authority to

enforce obedience to the subpoena and to punish the disobedience thereof as is possessed by a judge of the district court in like cases; provided, however, that punishment for disobedience is subject to review by the district court of the proper county.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(4).

Cross-References

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas and witnesses, Title 26, ch. 2.

7-32-4160. Decision by police commission. The police commission shall, after the conclusion of the hearing, decide the appeal and must have the power, by a decision of a majority of the commission, to sustain, modify, or overrule the disciplinary order of the mayor, city manager, or chief executive.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(5), (6); amd. Sec. 9, Ch. 468, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 468 after "hearing" deleted "or trial"; substituted "the appeal" for "whether the charge was proven or not proven"; substituted reference to decision regarding the disciplinary order for "discipline, suspend, remove, or discharge any officer who shall have been found guilty of the charge filed against him"; deleted (2) and (3) that read: "(2) Such action of the police commission shall, however, be subject to modification or veto by the mayor, made in writing and giving reasons therefor, which shall become a permanent record of the police commission; provided, however, that where and when the police commission decides the charge not

proven, the decision is final and conclusive and is not subject to modification or veto by the mayor or to any review.

(3) Where the police commission decides the charge proven, the mayor, within 5 days from the date of the filing of such findings and decision with the city clerk, may modify or veto such findings and decision"; and made minor changes in style.

Cross-References

Duties of City Clerk related to city records and papers, 7-4-4502.

Powers and duties of Mayor related to administration and executive function, 7-5-4102.

7-32-4161. Enforcement of decision. The mayor shall make an order enforcing the decision of the police commission. The decision or order is subject to review by the district court of the proper county on all questions of fact and all questions of law.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(7); amd. Sec. 10, Ch. 468, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 468 substituted present first sentence concerning mayor enforcing decision of police commission for "When a charge against a member of the police force is found proven by the board and is not vetoed by the mayor, the mayor must make an order enforcing the decision of the

board or the decision as modified if modified by the mayor"; and made minor changes in style.

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

Powers and duties of Mayor related to administration and executive function, 7-5-4102.

7-32-4162. Repealed. Sec. 12, Ch. 468, L. 1993.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(9).

7-32-4163. Repealed. Sec. 12, Ch. 468, L. 1993.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

7-32-4164. Right to appeal. A member of the police force who is disciplined, suspended, removed, or discharged as a result of a decision by the mayor, city manager, or chief executive has a right of appeal:

(1) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the member is covered by a collective bargaining agreement; or

(2) to the police commission. A final decision of the police commission may be appealed to the district court of the proper county. The district court has jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force. A suit to review a decision or an order or for reinstatement to office may not be maintained unless the suit is begun within a period of 60 days after the decision by the police commission has been filed with the city clerk.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(8); amd. Sec. 11, Ch. 468, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 468 inserted introductory clause concerning right of appeal and (1) concerning grievance procedure in collective bargaining agreement; at beginning of (2) inserted "to the police commission. A final decision of the police commission may be appealed to the", at end of first sentence deleted "shall have jurisdiction to review all questions

of fact and all questions of law in a suit brought by any officer or member of the police force, but no", inserted second sentence concerning District Court jurisdiction, and in third sentence substituted "a decision or an order" for "such hearing or trial" and near end, after "police commission", deleted "or order of the mayor", and made minor changes in style.

Part 42

Municipal Jails

Part Cross-References

County jails, Title 7, ch. 32, part 22.

7-32-4201. Municipal detention centers authorized. The city or town council has power to establish and maintain a detention center, as defined in 7-32-2120, for the confinement of persons convicted of violating the ordinances of the city or town and to make rules for the government of the same.

History: En. Subd. 35, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.34, R.C.M. 1935; R.C.M. 1947, 11-937; amd. Sec. 28, Ch. 461, L. 1989.

Cross-References

Detention centers, 7-32-2201.

General powers of Municipal Council,
7-5-4101.

7-32-4202. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Subd. 53, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.52, R.C.M. 1935; R.C.M. 1947, 11-955.

7-32-4203. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Subd. 52, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.51, R.C.M. 1935; R.C.M. 1947, 11-954.

AMENDMENTS TO HB 315 - INTRODUCED VERSION
February 7, 1995

1. Title, lines 4 and 5.

Following: "THAT"

Strike: "A VOLUNTEER FIRE COMPANY OR DEPARTMENT"

Insert: "EXCEPT FOR A RELEASE THAT IS CAUSED BY CONDUCT OF THE EMERGENCY RESPONDER THAT IS NEGLIGENT OR GROSSLY NEGLIGENT OR THAT CONSTITUTES INTENTIONAL MISCONDUCT, AN EMERGENCY RESPONDER"

2. Title, lines 5 and 6.

Following: "FOR"

Strike: "CIVIL DAMAGES, EXCEPT DAMAGES FOR GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT,"

Insert: "INJURIES, COSTS, DAMAGES, EXPENSES, OR OTHER LIABILITY THAT RESULTS FROM A HAZARDOUS MATERIAL INCIDENT,"

3. Title, lines 7 and 8.

Following: "OMISSIONS" on line 6

Strike: "RELATING TO THE INVESTIGATION, MONITORING, CLEANUP, MITIGATION, ABATEMENT, OR REMOVAL OF A HAZARDOUS OR DELETERIOUS SUBSTANCE IN RESPONSE TO A RELEASE OF THE SUBSTANCE"

Insert: "DIRECTLY RELATED TO THE HAZARDOUS MATERIAL INCIDENT"

4. Page 1, Line 12.

Following: "of"

Strike: "volunteer fire company or department"

Insert: "emergency responder"

5. Page 1, line 13.

Following: "for" on line 12

Strike: "hazardous or deleterious substance cleanup"

Insert: "hazardous material incident"

6. Page 1, lines 13, 14 and 15.

Strike: "A volunteer fire company or department that is organized by a municipality, county, rural fire district, fire service area, or other entity and the employees of the company or department"

Insert: "Except for a release that is caused by conduct of the emergency responder that is negligent or grossly negligent or that constitutes intentional misconduct, an emergency responder and its employees"

7. Page 1, lines 15 and 16.

Following: "for"

Strike: "civil damages, except damages for gross negligence or willful or wanton misconduct,"

Insert: "injuries, costs, damages, expenses, or other liability that results from a hazardous material incident,"

8. Page 1, lines 16 and 17.

Following: "omissions"

Strike: "relating to the investigation, monitoring, cleanup, mitigation, abatement, or removal of a hazardous or deleterious substance in response to a release"

Insert: "directly related to the hazardous material incident"

"Except for a release that is caused by conduct of the emergency responder that is negligent or grossly negligent or that constitutes intentional misconduct, an emergency responder and its employees are not liable for injuries, costs, damages, expenses, or other liability that results from a hazardous material incident, for their acts or omissions directly related to the hazardous material incident."

DHES SUPPORTING TESTIMONY FOR HB 315

The Department of Health and Environmental Sciences recognizes the liability concerns volunteer fire departments and other emergency response agencies have in responding to incidents involving hazardous or deleterious substances. We also recognize the immeasurable public service contribution all emergency responders provide in protecting life and property during these incidents. Therefore, the Department supports the concepts presented in HB 315.

However, the bill as presently written raises several concerns regarding the scope of this bill, both in terms of the activities which would be provided liability immunity and the types of emergency response agencies that should be covered. We would like to offer amendments today which would address those concerns.

HB 315 presently includes a broad range of environmental investigation and mitigation activities which are not normally required for initial hazardous materials emergency responses and are beyond the technical expertise and capabilities of most emergency response agencies. The bill as written would provide volunteer fire departments with immunity from "monitoring, mitigation, abatement or removal of a hazardous or deleterious substance." As written, these activities might be construed to include all monitoring activities such as soil or groundwater sampling, the treatment of hazardous wastes, the development and implementation of a final cleanup plan and the removal, packaging and shipping of hazardous wastes. These activities are associated with traditional hazardous waste environmental monitoring and mitigation activities and must be performed by highly trained and properly equipped personnel. A hazardous materials incident could be exacerbated by emergency response personnel attempting to conduct activities which were beyond the scope of their capabilities or expertise. The role of the emergency responders should be limited to initial life safety and fire control

activities. Activities beyond that, should be performed by adequately trained and equipped hazardous waste response personnel.

To better define these hazardous material incident response activities necessary for emergency responders, the department offers amendments 3, 5 and 8.

We also feel the term "civil damages" on line 15 is ambiguous and subject to a wide range of interpretation. We suggest this term be replaced with language that clarifies the immunity being provided to emergency responders and is constant with liability immunity the Montana Comprehensive Cleanup and Responsibility Act (CECRA), (75-10-718 MCA) provides to remedial action contractors and governmental employees working on environmental remediation projects. Amendments 2 and 7 would better define the degree of immunity which would be needed by emergency responders and would be consistent with immunity provided to other professions working on hazardous waste sites.

And finally, the Department recommends the liability indemnification of this bill be extended to all emergency responders, not just volunteer fire departments. Section 75-10-716 of CECRA contains a definition of an Emergency Responder which includes law enforcement, firefighting, civil defense and ambulance or medical personnel. Amendments 1, 4 and 6 would allow coverage of this bill to be extended to all hazardous material incident emergency personnel and would define these agencies in a manner that is consistent with present law.

Members of the Department are available to answer any questions you may have regarding my testimony or our proposed amendments. Thank you.



JOHN C. GEACH
SUPERVISOR
UNDERGROUND STORAGE TANK SECTION

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