

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By SENATOR BRUCE D. CRIPPEN, on February 17,
1995, at 10:00 AM

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

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

Committee Business Summary:

Hearing:
Executive Action: SB 340, SB 115, SB 136

EXECUTIVE ACTION ON SB 340

Motion: SENATOR MIKE HALLIGAN MOVED TO RECONSIDER THE SB 340 DO
PASS AS AMENDED MOTION ON A PREVIOUS LEGISLATIVE DAY.

Discussion: CHAIRMAN CRIPPEN stated the motion to reconsider SB
340 do pass as amended was for purposes of stripping the
amendments which pertained to unemployment insurance and workers'
compensation.

Motion: The motion CARRIED UNANIMOUSLY on oral vote.

Discussion: CHAIRMAN CRIPPEN commented that due to the size of the amendments he wanted to strip them from the bill and put them back on when the bill is heard in the House. HB 100 and HB 200 deal with reorganization of unemployment and reorganization of workers' compensation. There will need to be some coordination. The amendments provided by Mr. Jacobson with the Secretary of State's Office will be left on SB 340. The bill will still be amended.

Motion: SENATOR MIKE HALLIGAN MOVED TO STRIP THE AMENDMENTS ADOPTED THE PREVIOUS DAY WHICH INCLUDED UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION IN THE BILL.

Discussion: SENATOR HALLIGAN asked if the language in the amendments would already be included in HB 100 and HB 200 and thus negate the purpose of adding them to SB 340.

CHAIRMAN CRIPPEN stated that was a possibility.

Vote: The motion CARRIED on oral vote.

Motion\Vote: SENATOR HALLIGAN MOVED SB 340 DO PASS AS AMENDED. The motion CARRIED on oral vote.

EXECUTIVE ACTION ON SB 115 AND SB 136

Discussion: CHAIRMAN CRIPPEN stated the committee had a copy of the substitute bill drafted by the subcommittee on ethics. It has come to the attention and opinion of leadership and others that because of the importance of this type of legislation and the lack of time due to the transmittal deadline, it would be best to see that this issue be placed in a Select Committee. The two bills would stay on the table in Senate Judiciary. The Select Committee would be charged with taking the report of the Judiciary Subcommittee and any other material to work on ethics legislation.

CHAIRMAN CRIPPEN stated that SENATOR JOHN HARP, Majority Leader; SENATOR MIKE HALLIGAN, Minority Leader; and SENATOR STEVE DOHERTY, Minority Whip were all present to answer any questions. He invited the above mentioned senators to address the committee if they so desired.

SENATOR HARP commented that he had spoken with SPEAKER OF THE HOUSE, REPRESENTATIVE JOHN MERCER and that SPEAKER MERCER had spoken to MINORITY LEADER, REPRESENTATIVE RAY PECK, and the House would like to be a partner in the ethics bill. Both caucuses in the Senate felt that they were at an impasse on this issue. They decided to put together a Select Committee of both the House and the Senate. The members will be named by the President and Speaker of each Chamber and there will be equal representation of Democrats and Republicans on the Committee. The public is

expecting something in this arena and they desire to make sure that that product is supported by both Chambers.

SENATOR MIKE HALLIGAN commented that he discussed this issue with the **Majority Leader**. This bill is extremely important to the public as well as the legislators. The subcommittee has worked very diligently on this legislation. Given the vast amount of work necessary on the other bills prior to transmittal, they do not have time to adequately explain all the provision to their caucus. Because of the major amendments to the bill which the subcommittee has proposed, potentially a new hearing or a new public debate ought to be had on this legislation. It is very important that a Select Committee be created as the **Majority Leader** described and that these bills be referred to the Select Committee. The committee would have a time frame to complete this after transmittal. This allows for full debate and another potential hearing on an outcome so the public has a chance to make their comments.

SENATOR LORENTS GROSFIELD stated he was the Chairman of the Subcommittee. They put a lot of time into combining certain aspects of both bills and current law. He agrees with the problem with the time limitations. If this bill ended up on the Senate floor, there would not be time for an adequate fiscal note on the new approach. Because the fiscal note on one of the bills was approximately \$600,000, many Senators would be reluctant to vote without an adequate fiscal note.

CHAIRMAN CRIPPEN expressed the Committee's thanks to the hard work of the five Senators and the staff who were involved in the Subcommittee. He believes the method suggested by Leadership will go a long way to see that these efforts were not in vain.

SENATOR LARRY BAER stated he agreed with the proposal. The issue of ethics is essential and it has great impact on the public's perception of legislators. It has been a long time since Article XIII, Section 4, was created in our Constitution. To haphazardly rush the process would mean a product which was not 100% desirable. Hopefully, the Select Committee will develop an excellent product which will advance the perception of the public as to the good intentions and ethical desires of the legislature.

SENATOR DOROTHY ECK asked if this procedure would need a 2/3 vote? She did not understand what the procedure would be for a bill coming from a Select Committee.

CHAIRMAN CRIPPEN stated that the opinion of the Chair is that, unless the rules of this legislative session are changed to adapt to that, this bill would fall into the same category as any other bill. Since it would be a Select Committee and would not have a resting place in any one particular House, a 2/3 vote would be needed in both Houses. He believed that had been discussed by the **Majority Leader** with the other Leadership.

SENATOR HALLIGAN commented there are a couple of options. The bill could be declared to be a revenue or appropriations bill with a deadline so the Select Committee would have a time frame to operate within. Another way to handle this would be to have an agreement by 2/3 vote by both Houses.

SENATOR ECK stated she had some real concerns. There have been real problems getting a 2/3 vote even when there was agreement that it would happen. She would prefer that one bill or the other go to the other House. She believes each bill needs work. There will be a great deal of concern that once again this process will not work. If a 2/3 vote is needed for this bill, she would prefer seeing one bill go to the other House now.

SENATOR HARP stated that the way they would move an ethics bill would be to list it with the bills which do not need to make transmittal. He would expect that an ethics bill would be allowed to move from the Senate to the House. One deadline the **House Speaker** suggested was the same day as revenue bills, which would be the 71st legislative day. He had not had an opportunity to discuss the deadline with the **Minority Leader**. As far as suspending the rules where 2/3 would have to accept it both in the House and Senate, that would not be the case. It would simply be included in the written agreement which will be drafted in the next few days that will allow the bill to move from the Senate to the House. This will involve a Select Committee so the House would be involved with this action. He suggested keeping both bills in the committee. He asked for an opportunity to discuss with the Leadership whether or not there would be a need for a committee bill.

SENATOR BAER asked for clarification of moving the bills. Would these bills be moved as they originated? Would the two original bills and the third combined bill be sent to the Select Committee?

CHAIRMAN CRIPPEN answered that since this committee has control of both bills, if the agreement is made that the two bills do not need to meet transmittal, an interim committee would draft one bill using the subcommittee's work. That would be placed in one of the two bills. It will come back to the Judiciary Committee. The bill would pass over to the House in due process and meet any transmittal deadlines. The work which has been completed by the Subcommittee would continue to be worked on and provide the nucleus, if not most of the base, for the final product. It makes good sense to bring in the House because of the varying degrees of thought on the ethics situation. Once it is returned to this committee, the committee can amend, modify, pass or kill the bill.

SENATOR BAER commented that the Subcommittee combined the two bills into one suggested version. There would be three documents to transfer to the Select Committee.

CHAIRMAN CRIPPEN commented it has a body, but no spirit or name yet. It will be numbered as one of the two bills or it could be a committee bill.

SENATOR HALLIGAN stated he believed the deadline for a committee bill had passed, so either bill may have to be used. One or the other bill would need to be amended, a hearing would need to be held on the outcome, and then a Select Committee would decide what they wanted to do after the comments from the hearing. He stated that since this is a House and Senate Select Committee, he believed the bill could not go directly to the floor.

CHAIRMAN CRIPPEN commented that it would have to come back to the Senate since that is where the bills originated.

SENATOR ECK commented that this is an unusual procedure and may leave the bill open to legal challenge. She believed a meeting of the Joint Rules Committee was necessary to determine which rules would have to be changed in order for this bill to proceed so that it would withstand a legal challenge.

CHAIRMAN CRIPPEN responded this is not an unusual matter. This has been done in the past. According to the rules, bills can be designated which do not need to meet transmittal. As long as 2/3 of both houses agree. There have been joint committee meetings with both Houses. They have no force and effect other than to work on a bill and present a recommendation back to the originating House. That is why it must come back to this Committee. If it did not come back to this Committee, there may be a problem. Once it comes back to this Committee, it is treated as any other bill. It will be reported out having met all rules deadlines and there would not be any basis for any legal challenge whatsoever.

SENATOR SUE BARTLETT commented that since the Committee is discussing the negotiations which have been held between the Senate and the House Leadership and the potential for a Joint Select Committee, would it be possible to have some representation from the House Leadership during this meeting to express their understanding of what has been discussed and what they would anticipate procedurally? This should be made a part of the record.

SENATOR HARP commented that he had just spent 15 minutes with the **Speaker** and the **Speaker**, while he was in the office, called the **Minority Leader, Representative Peck**, and told him exactly what would be presented at this meeting and they were in agreement. They understand the makeup of the Select Committee and the potential date, the 71st day as a day of transmittal. He agrees with **CHAIRMAN CRIPPEN** in that the bill would originate in the Senate. Normally in Select Committees, the procedure is that the Select Committee refers back to the Standing Committee. The **Minority Leader** and the **Speaker of the House** agreed and liked

getting involved with this issue rather than move it from the Senate and have major amendments.

SENATOR BARTLETT stated she did not doubt the representations at all. There is some concern that this may get hung up. Today she believes that this is the intent and motivation. Three to four weeks down the road dynamics may have changed.

CHAIRMAN CRIPPEN commented that they have seen a lot of things happen over the years. He has no intention of abrogating the control and the responsibility of this Committee in this matter. The Select Committee suggested by the Leadership is to further work on this bill. The Judiciary Committee maintains control of this bill. Anytime that he feels that this is going nowhere, he will bring it back to this Committee. This Committee will be the ultimate arbitrator in the Senate as a Standing Committee to decide whether the bill proceeds any further or whether it stays in this Committee. That responsibility will not be relinquished.

CHAIRMAN CRIPPEN explained to **REPRESENTATIVE JOHN MERCER** and **REPRESENTATIVE RAY PECK** that they were discussing the proposal presented in regard to the ethics bills. The first consideration would be to place the two bills on the list of bills which would not have to meet the 45th transmittal day and then deciding a day which they would have to be transmitted. The **Majority Leader** suggested the 71st day, which is the revenue transmittal day. Both Houses would suspend the rules to do that. A Subcommittee of both the House and the Senate would be appointed to work on the bills and the work prepared by the Judiciary Subcommittee, they would then report a proposal back to this Committee since both bills have originated in the Senate. This Committee would then proceed to review the bills again, make any changes and then dispose of the bill in the normal course of business. There was some interest to hear the views of the House.

SPEAKER OF THE HOUSE, REPRESENTATIVE MERCER, commented that the Republican Action Plan and the Democratic Blueprint for Change both contained a deep desire to do something about ethics. In the House, they had hoped to have an ethics bill similar to the one which had passed the House by a 94 to 6 margin in the last session, thrown into the pool to be considered with the other ethics bills. There has been a concern in the House in light of the transmittal deadline, the busy schedules which everyone has and the heightened concern which all legislators have for this topic, that it would be in the best interest of the legislature to create a Select Committee, made up of House members and Senate members equally, to work on this important issue between now and the 71st legislative day. He has discussed this directly with **REPRESENTATIVE PECK** and also with **SENATOR HARP**. He understands that **SENATOR HARP** has spoken to **SENATOR HALLIGAN**. They wish to take the hard work which the subcommittee has accomplished; however, they do not want to jam it into the transmittal process where there is a lot of pressure. The House would like to come in as an equal partner and work on this in the days between the

45 and 71st day to come out with a truly bipartisan and bicameral ethics bill which would address the important concerns of both of the political parties and the people of Montana. That is their request to the Senate.

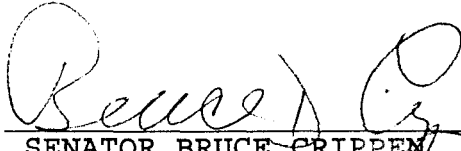
REPRESENTATIVE PECK commented that this matter was brought to him a day ago and he stated he would consult with the caucus. He has consulted with the caucus, all members were present and there is no objection to the proposal which is before this Committee from the Democrats in the House.

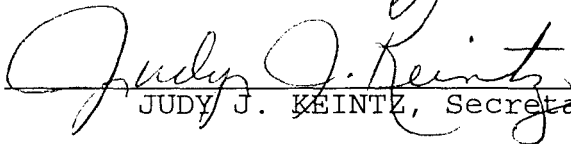
SENATOR BARTLETT expressed appreciation for the time of the **Speaker** and the **Minority Leader**.

CHAIRMAN CRIPPEN stated both bills are before this Committee. They will be part of the list which will be presented to both bodies for the rules suspension so that they do not have to meet the 45th transmittal day. The Subcommittee will be appointed. This is the Committee which still maintains control over that process. The Subcommittee will report back to this committee.

ADJOURNMENT

Adjournment: The meeting adjourned at 11:00 AM


SENATOR BRUCE CRIPPEN, Chairman


JUDY J. KEINTZ, Secretary

BC/jjk

DATE _____

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