

**MINUTES**

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

**COMMITTEE ON JUDICIARY**

**Call to Order:** By CHAIRMAN BRUCE D. CRIPPEN, on January 19, 1995, at 10:00 A.M.

**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 Feland, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 133, SB 141  
Executive Action: SB 113, SB 123, SB 141, SB 77, SB 143

*{Tape: 1; Side: A; Approx. Counter: 00}*

**HEARING ON SB 141**

**Opening Statement by Sponsor:**

SENATOR CHARLES SWYSGOOD, Senate District 17, Dillon, sponsor of SB 141, entitled, "an act replacing a lay member of the judicial nomination commission with a district court clerk," opened the

hearing by inviting the proponents to speak and reserved the right to close.

**Proponents' Testimony:**

**Bob Gilbert, representing the Montana Clerks of District Courts,** spoke in favor of the bill. One of the reasons for that support of the bill, he said, is that persons belonging to the nominating committee would have expertise and knowledge of the nominees and how the system works. Now there are four lay persons out of seven on the nominating committee.

**Nancy Sweeney, Clerk of Court in Lewis and Clark County,** represented the Montana Association of Clerks of District Court, and read from written testimony (EXHIBIT 1).

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

**SENATOR LORENTS GROSFIELD** asked **Nancy Sweeney** how many clerks of district courts there are in the state, to which she replied, "56."

**SENATOR GROSFIELD** asked by whom she was hired.

**Ms. Sweeney** told the committee that she was appointed to fill the term of her predecessor, but they are all elected officials. She ran in an election the last time.

**SENATOR GROSFIELD** asked **SENATOR SWYSGOOD** if this would change the make-up of the commission and wondered if he was trying to add to the expertise of the court.

**SENATOR SWYSGOOD** replied that when he put the bill up, he didn't know who was serving or who was up, and it was not his intent to displace anyone serving on the board. There is a position coming up soon, but when he drafted the bill, it was for the express purpose of adding expertise and knowledge to the board with the selection process.

**SENATOR MIKE HALLIGAN** told **SENATOR SWYSGOOD** that in looking back at the creation of the commission, several groups were vying to be part of that commission, county attorneys, public defenders, probation officers and other elected officials. The legislature was very cautious about adding any other elected group or government group on that commission. So, we have victims' rights people and lay people with no connections to the system. The commission is working well, so what's the problem, he asked, and why just one elected body, why not expand the membership?

**SENATOR SWYSGOOD** said that the committee, in their judgement,

could do that. It was not his intent to mess with the number and he knew that they did a good job. He had no problem with expansion and it might be good for the process.

**SENATOR HALLIGAN** asked **Nancy Sweeney** if she indicated that she didn't want to have input into the process now because it may hurt the relationship between the potential person who is selected judge and someone who is not elected and if she felt that the confidential information and exchange of information of the membership is not working out?

**Ms. Sweeney** replied that they currently did have input. But to submit those comments in writing where they may surface sometime in the future and come to that judge's attention would be detrimental, causing a reluctance to submit them. This measure would be a viable means of presenting our concerns through our network with the assurance that it would be kept confidential and only discussed under certain circumstances when the committee meets.

**SENATOR AL BISHOP** asked **SENATOR SWYSGOOD** how many people they submit when there's an opening, and he replied that he would assume that the list is extensive. Right now, he said, there were three or four considered.

**CHAIRMAN CRIPPEN** commented to the senator that nobody on the commission is elected in a partisan election. Judges are selected in a non-partisan method. Now we're injecting partisanship into the commission. Is there a reason for that, he asked?

**SENATOR SWYSGOOD** answered that a clerk of court served in this position.

Closing by Sponsor:

**SENATOR SWYSGOOD** closed on SB 141 by urging the committee to do as they saw fit and expressed his appreciation to the committee.

HEARING ON SB 133

Opening Statement by Sponsor:

**SENATOR CHRIS CHRISTIAENS, Senate District 23, Cascade County,** opened SB 133 by telling the committee that he was bringing them a very straightforward bill with four parts that: 1) decreased from 12 to 9 the number of jurors and 2) from 4 to 3 the number of peremptory challenges in a civil action, 3) asks the Montana Supreme Court to amend the Montana rules of civil procedure to conform them to this act, and 4) amending sections. The fiscal note, he said, showed the fiscal impact to be a savings to our court system throughout the state in a typical civil action of four days of approximately \$500. This would be a significant savings, he maintained, and no one's rights should be impacted in

this measure.

Proponents' Testimony:

**Larry Fasbender, representing Cascade County** spoke in favor of the bill. He decreed the bill an economic measure and said they hoped to decrease the county's cost in some trials. At the federal level, he said, only six jurors were required. He urged support for the bill.

**Russell Hill, representing the Montana Trial Lawyers Association (MTLA)**, said he was standing in support of SB 133 with some minor suggestions. The members of his organization were split on this bill, he said. Everyone agrees, he said, that a jury should represent a cross-section of the community; a small jury is a small cross-section, but they understood the economic necessity. Currently, he said, parties can stipulate to a smaller jury and often they do. He felt that it was unclear what relationship the reduction in peremptory challenges has to the cost-savings. Some attorneys who opposed the bill were afraid of a very strong personality on the jury being more influential in that jury's determination than in a smaller jury. Plaintiff's attorneys don't want anyone on the jury who doesn't want to give up any money and that was a concern, he said. The flip side, however, he said, if the strong personality is the attorney, it may be that a smaller jury is easier to sway than the larger group. The suggestion they recommended was: since a jury is not only a cross-section of the community, the more jurors there are, the more they will be able to remember and to comprehend. They suggested the bill provide that when the parties request (within the judge's discretion), the jury may be increased to 12 to handle especially difficult cases.

Opponents' Testimony:

**Jacqueline Lenmark, representing the American Insurance Association (AIA)**, rose in opposition to the bill on behalf of the organization. She agreed with **Mr. Hill's** assessment of the larger community cross-section of a larger jury. The influence of one person becomes too great, she said, with a small jury. Also they felt that the more opinions, the more robust the discussion could be, the better the recollection, and the better detail would be obtained. She recommended a Do Not Pass resolution to the bill.

Questions From Committee Members and Responses:

**SENATOR GROSFIELD** asked **Mr. Fasbender** if the savings were actually \$500 per trial, what would be the actual savings for Cascade County. **Mr. Fasbender** replied that he did not have the figures, but that the courts in Cascade County had been in financial trouble for a long time.

**SENATOR GROSFIELD** asked him a further question. He inquired as

to the position of the bill heard in committee the previous day to eliminate court cases heard in that county, to which **Mr. Fasbender** answered that he took no position. He thought it was a railroad bill.

**SENATOR STEVE DOHERTY** expressed a desire to obtain the number of jury cases heard in Cascade County last year. He suggested that the court administrator may have the statistics that might be helpful. To the sponsor, he asked about the value of the jury being a greater cross-section. He wanted to know how he would feel about an amendment that if either party wanted a 12-person jury, and, at the discretion of the judge, it would automatically take place.

**SENATOR CHRISTIAENS** said he had no strong feelings about it. He felt that possibly there would never be a smaller jury if that was included. He said that in the federal courts six jurors seems to work adequately.

**SENATOR DOHERTY** further asked the sponsor that if the attorneys charged with representing the individuals see a problem with obtaining justice with a nine-member jury, why should the legislature interfere with that obligation, and procedure.

**SENATOR CHRISTIAENS** said he did not think there was a great deal of support either for or against it, he thought to refuse the measure would cause hardship to the counties.

**SENATOR DOHERTY** further asked, if the lawyers wanted 12 jurors and we say nine is enough, aren't we tinkering with justice?

**SENATOR CHRISTIAENS** said he did not believe justice would be diminished with a smaller jury.

**SENATOR HALLIGAN** asked **Ms. Lenmark** if there was middle ground between the sponsor and **Mr. Hill's** proposed amendment?

**Ms. Lenmark** responded with uncertainty. She said the amendment sounds like a rephrasing of what they were already committed to do. In her practice, she said, she was routinely asked by the judge if she would agree to a smaller jury than 12. She consults her client and agrees, if the case is not too complicated. She understood that Cascade County had some serious financial problems, she said, but hated to see the body make across-the-board rules in respect to all judicial districts because of one district.

Closing by Sponsor:

**SENATOR CHRISTIAENS**, in closing, said that he would try to obtain the requested information. He understood it was not only Cascade County that was having the financial problems and would try to garner that information as well. He asked for a fair hearing and urged a Do Pass recommendation.

EXECUTIVE ACTION ON SB 113

Discussion: CHAIRMAN CRIPPEN advised the committee of a new fiscal note from the Budget Office, as well as reminding everyone that the Highway Patrol estimated the costs somewhat higher.

Motion/Vote: SENATOR GROSFIELD MOVED THAT SB 113 DO PASS.  
The MOTION CARRIED unanimously on oral vote.

EXECUTIVE ACTION ON SB 123

Motion: SENATOR HALLIGAN MOVED THAT SB 123 BE TABLED.

Discussion: SENATOR HALLIGAN said that the House took the same action. He said he did not think it was good public policy. CHAIRMAN CRIPPEN reviewed the options of the bill's direction with the committee.

Vote: The MOTION PASSED on a 7 to 4 roll call vote.

EXECUTIVE ACTION ON SB 141

Motion: SENATOR BISHOP MOVED TO TABLE SB 141.

Discussion: The reason {tape is inaudible} for the table motion was that it would not be a good time to switch, SENATOR BISHOP said. SENATOR GROSFIELD said that he looked up the statutes on the question of "public statements" which the clerk brought up in the hearing, and determined it would not make any difference. He said the contents of the documents were open anyway. SENATOR BARTLETT said that she would prefer to dispose of this bill since it did not appear to be one the clerks of court strongly support.

Motion: SENATOR BISHOP WITHDREW HIS MOTION TO TABLE SB 141.

Motion: SENATOR BARTLETT MOVED SB 141 DO NOT PASS.

Discussion: SENATOR DOHERTY spoke against the motion. He understood their concerns, and agreed with the comment made by the court clerk that they know how attorneys act outside the glare of publicity and how they treat people. He thought it would be helpful to have someone with the network in the

position.

**CHAIRMAN CRIPPEN** said that this does not preclude a clerk from being on the committee. He feared the introduction of elected officials on the committee on a partisan basis, and contended there would be an equal argument for bringing other elected people in.

**Vote:** The **MOTION PASSED** on an oral vote with **SENATOR DOHERTY** voting "No".

**EXECUTIVE ACTION ON SB 77**

**Motion:** **SENATOR LARRY BAER** MOVED THAT SB 77 DO PASS.

**Discussion:** **SENATOR GROSFIELD** asked if the committee had a sense for how many states are doing it this way. He further inquired if the other states accomplish this by the Supreme Court or the state bar. **SENATOR HOLDEN** said that he was uncertain about the bill, but thought it lacked polish. **SENATOR BAER** said that the preponderance of testimony had nothing to do with the bill. **CHAIRMAN CRIPPEN** voiced his opposition to the bill. He said there was a unified bar in the State of Montana, right or wrong. The Supreme Court has historically been the governing body for attorneys practicing in the state. They are in a greater position to determine what the standards should be and they have a responsibility not only to their own court, but to other courts to see that they are operating in a judicious manner. He said if he thought the old system was improper or unfair, he would not hesitate to change it, but felt persuaded by the arguments.

**Vote:** The **MOTION FAILED** on a roll call vote with 3 members voting aye and 8 members voting no.

**Motion:** **SENATOR HALLIGAN** MOVED TO REVERSE THE VOTE.

**Discussion:** **SENATOR DOHERTY** pointed out that this is a Constitutional Amendment and that it would have to be voted on the second and third reading and if it would get a two-thirds majority, it would be transmitted to the House, he said.

{Tape: 2; Side: A; Approx. Counter: 1.1}

**EXECUTIVE ACTION ON SB 143**

**Motion:** **SENATOR BAER** MOVED TO ACCEPT THE AMENDMENTS TO SB 143 AS CONTAINED IN (EXHIBIT 2).

**Discussion:** **SENATOR HALLIGAN** objected to the amendments because

he thought it left in language that had no business in our Constitution. He said that the present Constitution is clean, free of rhetoric and political discussion and rights are stated specifically. He had tried to contact other states and he knew of none amending their Constitution. He felt that incendiary language had no place in the Constitution.

**CHAIRMAN CRIPPEN** explained that he would give equal opportunity to all three amendments offered to be discussed.

**SENATOR NELSON** said that when they were putting something like this in the Constitution, they were getting a lot of verbiage they did not need. This bill rightfully belongs in a resolution, she said.

**SENATOR GROSFIELD** asked **SENATOR BAER** about the amendment wording, "the duty of the governor and legislature," etc. He wanted to know if the phrasing would have language that is self-executing if put into the Constitution. At the end it talks about executive order, he said, and his question was if it would require the Governor to issue the executive order.

**SENATOR BAER** said that it was clear that the State of Montana has the right to reject any directions, mandates, or orders that they feel do not fall within the enumerated powers of the necessary and proper clause of the Constitution. There is no mandate that the Governor or the legislature act on any particular direction from the federal government unless they feel we are wrongfully subject to a directive. He put these amendments into the bill as an act of good faith because of a recommended amendment from **SENATOR HALLIGAN**, who indicated in his amendment that he would like to have this language.

**SENATOR GROSFIELD** said he read it differently. He reviewed the section regarding the duty of the Governor and legislature to take action. For an example, if there is paramount agreement that there is wrongful action, he thought there would be an obligation that one or the other methods be used.

**SENATOR BAER** said we are still acting under the discretionary power of the Governor and legislature. The Governor would have the power to reject or accept the direction that comes down.

**SENATOR GROSFIELD** said that an action might come which everyone would agree is wrongful, but if some money comes with it, everyone would be reluctant to act.

**SENATOR BAER** said that the language is not his, but **SENATOR HALLIGAN'S**.

**CHAIRMAN CRIPPEN** addressed the question, saying he liked the more affirmative language about duty, he said.

**SENATOR HALLIGAN** said he understood that it was the complacency



of the states that have caused the problem. He said whether it was the Natelson group or another, he felt that a more pro-active stance should be taken and there was mention about an amendment to require the word "duty" in the testimony. In response to **SENATOR GROSFIELD'S** question, he felt it would indeed be the duty of the Governor or the legislature to act. If the Governor did not act, he thought that a private citizen could sue the legislative or executive branch for failure to implement this section. He thought the intent was to sue the federal government in an attempt to stop the wrongful action, and the motion was not allowing that.

*{Tape: 1; Side: B; Approx. Counter: 0.6; Comments: poor quality sound.}*

**SENATOR CRIPPEN** said he thought the bill would contain a provision which would authorize the appropriation for the legal officer of the state. If the Governor and the legislature do not act, then they have stated that it is not a action taken by the federal government that is against the rules in Section 2.

**SENATOR BAER** said again that the language in this bill is discretionary and it replaces the power of the governor and the legislature to reject anything that they feel is wrong for the state, but not to preclude them from rejecting things that are beneficial to the state. There is no language in the bill that would implicate anyone suing another. The 10th amendment has been in effect for a long time. However, it has been acquiesced. That is the reason for the bill, he said. He added that in November the people told them they no longer tolerate government interference in their lives. By putting this into a constitutional amendment, we are allowing people to have the major part in enacting our mandate to the federal government. This bill empowers them to approve our proposal or reject it.

**SENATOR GROSFIELD** wanted to make sure the language works and did not tie them up. He wanted to clarify that if the governor didn't act and the legislature did not act, they are basically saying it was not a wrongful action.

**CHAIRMAN CRIPPEN** agreed, adding that the measure did not preclude individuals from taking action in the proper form, such as the school funding cases.

**SENATOR HOLDEN** asked **SENATOR GROSFIELD** if he thought while the first part implied they were duty-bound, would he agree that the last sentence gave them a way out?

**SENATOR BISHOP** asked about the Constitutions of both the state and the U.S., and if the citizens should bring action because they have acted wrongly and prevailed, what recourse would they have?

**SENATOR BAER** said that the right exists now to bring suit if the people feel that the Governor and legislature have wrongfully

ignored an oppressive federal mandate which does not fall within the enumerated powers of the constitution. The bill does not change that.

**CHAIRMAN CRIPPEN** said he thought there were two ways to write constitutional law from a drafting standpoint: 1) in a more generic principle sense or 2) in a more affirmative, stringent manner. Either way, if it passed the body, it would go before the people.

**SENATOR BISHOP** (inaudible) asked further of 'wrongful' as opposed to 'beneficial' intent, to which **SENATOR BAER** asked the panel to look at the heading of the bill where is stated "to allow rejection" of mandates, etc.. It does not say, "we shall." That was the language they took out of the bill.

**SENATOR BARTLETT** asked the sponsor if he meant it would be possible for the Governor and legislature, as representatives of the people, to accept wrongful action, including federal mandates, if they thought that was best?

**SENATOR BAER** objected to the question thinking it would be putting words into his mouth. **SENATOR BARTLETT** re-phrased the question by asking about flexibility to the title of the bill including the word "allow" to "reject." She asked why he did not think that the language in the bill would constitute an absolute duty of the Governor and legislature.

**SENATOR BAER** replied that he had made no implication whatsoever that they would have the discretion to accept or reject a wrongful action. The 10th amendment merely states that we have the right to reject, he said, it does not say we shall reject anything coming from the federal government that is outside the enumerating plenary powers of the constitution, it only says that those powers are enumerated to the federal government, not the states, as in **SENATOR HALLIGANS'** amendment, but to the federal government. All other powers are relegated to the state. There is no language that says we must do anything, he said.

**CHAIRMAN CRIPPEN** asked to limit the discussion to the conflict between the title with the language allowing rejection vs. the language in the amendment that requires a duty.

**SENATOR HALLIGAN**, when asked to clarify what the Supreme Court said about the case of New York vs. the U.S., read, "the Constitution's division of power among the free friends is violated where one branch invades the territory of another whether or not the encroached upon branch approves of the encroachment." So, he said, even if we consented to years for the encroachments, we could sue at any time.

**SENATOR DOHERTY** asked a question about the amendment, and asked clarification on terms and if they meant a court order. He asked if a federal court ordered Bighorn County to discontinue its

method of collecting by the county commissioner because of racial bias, did it mean that the state had the duty to contest that.

**SENATOR BAER** said the committee was getting into the bill too deeply. He reminded the senator that the plenary powers in the Constitution are to protect civil rights. He said that **SENATOR DOHERTY** had given an example where the civil rights had been violated and we would choose not to obey the order of the court. It was an entirely inappropriate analogy, he said.

**SENATOR DOHERTY** pointed out that they were talking about changing the Constitution and that simple words may spawn litigation for years to come. He asked again to know what, "mandate, order, direction or command" meant.

**SENATOR BAER** declared that he had added the language because the dictionary meaning of "mandate" did not serve the purpose here, so he had added it to be more specific. Orders, he said, are any command from the federal government that is wrongly infringing upon the language of the Constitution and the enumerating powers.

**CHAIRMAN CRIPPEN** said that in the manner of construction, we construe them in the broadest sense. This is a principle of Constitutional law, he said.

**SENATOR DOHERTY** said that the terms could mean a statute, a federal regulation, an executive order, and asked what else?

**SENATOR BAER** thought that he had a good start.

**SENATOR ESTRADA** asked why the committee was taking 30 minutes for one amendment.

**CHAIRMAN CRIPPEN** explained that this was a very important piece of legislation and that some members might object to its construction. Therefore, he wanted to make every effort to be sure that everyone had an opportunity to express their views and concerns.

**SENATOR DOHERTY** agreed about the importance of the wording. In the last sentence about executive order, he said that introducing a bill might not be appropriate, but a statute might be just as a matter of form. Montana has a constitution that guarantees individual rights above and beyond those in the federal document, he said, including the right to privacy and the right to a clean and healthful environment. By this action, for example, he said, if a federal agency decides to grant a permit to a mine outside Cook City, Montana, he thought they had affected his individual freedoms to a clean environment. He thought that the language obligates the state to contest the granting of the permit by a federal agency. There is a direct conflict between the federal agency and the Montana Constitution, he maintained.

**SENATOR BAER** said that he brought the amendment out of respect to **SENATOR HALLIGAN** in his proposed amendment. He said it goes to show that no good deed goes unpunished.

Vote: On a roll call vote, the **MOTION TO AMEND SB 143 PASSED** with 7 members voting aye and 4 members voting no.

**SENATOR GROSFIELD** agreed with **SENATOR DOHERTY** that this was an important discussion and that the record was equally important. He wanted to disagree on the record with the scenario of the mine permit in which the obligation would fall to the State of Montana to sue the federal government. When he voted "yes", he declared, he was not voting "yes" to the permitting story, because the granting of a permit does not, in itself, show any harm. Later on if a problem arose, the state may get involved in some judicial action, but certainly not by granting a permit. He was concerned that the record show and he or any member of the committee voted for that understanding.

**SENATOR DOHERTY** asked for the record to show that it is impossible to discuss this resolution without discussing the 10th amendment. He believed that the language still will compromise whatever balance has existed between the state and Indian tribes. He believed that the language will provide a fertile ground for litigation between the tribes and the state, encouraging the state to assert 10th amendment rights which may or may not exist in the regulatory act. He thought it would send a wrong message to the tribes about tribal jurisdiction and sovereignty and how we deal with sovereign nations.

Motion: **SENATOR BAER MOVED THAT SB 143 DO PASS AS AMENDED.**

**SENATOR GROSFIELD** asked to understand the Indian relationships and how they would be affected.

**SENATOR DOHERTY** explained that currently the state is in litigation with Indian tribes over jurisdiction and Indian gaming. The state has interposed a 10th amendment defense saying that the federal government passage of the Indian Gaming Regulatory Act has infringed on the state's legitimate rights to control activities within its borders. The Indians are very protective about jurisdiction and sovereignty. The 10th amendment defenses, he said, are viewed in many ways as earlier 10th amendment defenses raised by southern governors on civil rights counts as nothing more than contempt by the state to dodge legitimate compromises. Then this language sends the message to Indian country that the state is combative and willing to take on the tribes whenever it believes its rights may be affected.

**SENATOR HOLDEN** said he believed that **SENATOR DOHERTY** was trying to introduce racism into the conversation, which was not the intent.

**CHAIRMAN CRIPPEN** said that **SENATOR DOHERTY** made a good point on

sovereignty and discouraged further discussion.

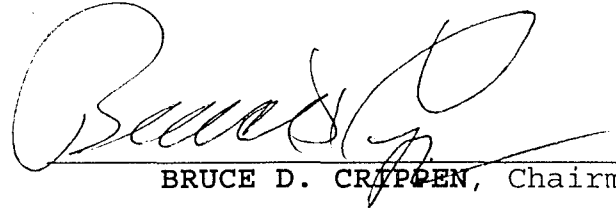
**SENATOR HALLIGAN** said that the Constitution was clean, free of rhetoric and he saw incendiary political rhetoric in this bill that did not belong in the document at hand. Each added word in the excessive language invited litigation, he said. He appreciated the attempt to include his language. This bill would invite economic and social disintegration of the country and separate rules and separate mandates would result, which was the opposite of what the Constitution's framers intended. They wanted to prevent economic Balkanization. He expressed a desire to wait until **SENATOR BROWN'S** bill was considered.

**SENATOR NELSON** felt that the bill tells the federal government to keep its nose out of our business in a strong fashion. She thought the electorate would jump on the bill, but on the other hand, many good benefits come from the federal government, such as highway dollars. She said the state received \$1.82 for each dollar paid in. She saw a conflict between saying "stay out" and then having our hand out.

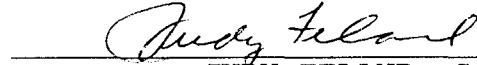
Vote: By a roll call vote, the **MOTION THAT SB 143 DO PASS AS AMENDED CARRIED 7 to 4.**

ADJOURNMENT

Adjournment: CHAIRMAN CRIPPEN adjourned the hearing at 11:52  
- a.m.



BRUCE D. CRIPPEN, Chairman



JUDY FELAND, Secretary

BDC/jf




SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 19, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 141 (first reading copy -- white), respectfully report that SB 141 do not pass.

Signed: \_\_\_\_\_  
Senator Bruce Crippen, Chair

  
Amd. Coord.  
Sec. of Senate

161330SC.SPV



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 19, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 113 (first reading copy -- white), respectfully report that SB 113 do pass.

Signed: \_\_\_\_\_  
Senator Bruce Crippen, Chair


SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 19, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 77 (first reading copy -- white), respectfully report that SB 77 do not pass.

Signed: \_\_\_\_\_  
Senator Bruce Crippen, Chair

 Amd. Coord.  
SA Sec. of Senate

161335SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 19, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 143 (first reading copy -- white), respectfully report that SB 143 be amended as follows and as so amended do pass.

Signed: \_\_\_\_\_  
Senator Bruce Crippen, Chair

That such amendments read:


1. Page 2, lines 6 through 9.

Following: "constitution." on line 6

Strike: remainder of line 6 through "compromised." on line 9

Insert: "It is the duty of the governor and the legislature to take action to protect the sovereign authority of the people of the state of Montana by rejecting wrongful actions governed by this subsection, including but not limited to federal mandates, orders, directions, or commands derived from powers not enumerated in or specifically granted to the federal government by the United States constitution, especially when individual freedoms are affected. The state's rejection may be in the form of a bill, joint resolution, or executive order."

-END-

  
Amd. Coord.  
Sec. of Senate

161323SC.SRF

MONTANA SENATE  
1995 LEGISLATURE  
JUDICIARY COMMITTEE  
ROLL CALL VOTE

DATE 1-19-95 BILL NO. SB 123 NUMBER 1

MOTION: By Sen. Halligan TO TABLE

| NAME                     | AYE | NO |
|--------------------------|-----|----|
| BRUCE CRIPPEN, CHAIRMAN  | /   |    |
| LARRY BAER               |     | /  |
| SUE BARTLETT             | /   |    |
| AL BISHOP, VICE CHAIRMAN | /   |    |
| STEVE DOHERTY            | /   |    |
| SHARON ESTRADA           |     | /  |
| LORENTS GROSFIELD        | /   |    |
| MIKE HALLIGAN            | /   |    |
| RIC HOLDEN               | /   |    |
| REINY JABS               |     | /  |
| LINDA NELSON             |     | /  |
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MONTANA SENATE  
1995 LEGISLATURE  
JUDICIARY COMMITTEE  
ROLL CALL VOTE

DATE 1-14-95 BILL NO. SB 77 NUMBER 2

MOTION: S. Baer - DP Failed 8 No - 3 Yes

failed - Motion Reverse the vote - Halligan - passed 8-3 DNP

| NAME                     | AYE | NO |
|--------------------------|-----|----|
| BRUCE CRIPPEN, CHAIRMAN  |     | /  |
| LARRY BAER               | /   |    |
| SUE BARTLETT             |     | /  |
| AL BISHOP, VICE CHAIRMAN |     | /  |
| STEVE DOHERTY            |     | /  |
| SHARON ESTRADA           | /   |    |
| LORENTS GROSSFIELD       |     | /  |
| MIKE HALLIGAN            |     | /  |
| RIC HOLDEN               |     | /  |
| REINY JABS               | /   |    |
| LINDA NELSON             |     | /  |
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MOTION SEN. HALLIGAN TO REVERSE MOTION

MONTANA SENATE  
 1995 LEGISLATURE  
 JUDICIARY COMMITTEE  
 ROLL CALL VOTE

DATE 1-19-95 BILL NO. SB 143 NUMBER 3

MOTION: Sen. BAER TO ADOPT AMENDMENT

EXHIBIT 1 (REQ. BY BAER)

SB 014301 A1

| NAME                     | AYE | NO |
|--------------------------|-----|----|
| BRUCE CRIPPEN, CHAIRMAN  | /   |    |
| LARRY BAER               | /   |    |
| SUE BARTLETT             |     | /  |
| AL BISHOP, VICE CHAIRMAN | /   |    |
| STEVE DOHERTY            |     | /  |
| SHARON ESTRADA           | /   |    |
| LORENTS GROSFIELD        | /   |    |
| MIKE HALLIGAN            |     | /  |
| RIC HOLDEN               | /   |    |
| REINY JABS               | /   |    |
| LINDA NELSON             |     | /  |
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MONTANA SENATE  
 1995 LEGISLATURE  
 JUDICIARY COMMITTEE  
 ROLL CALL VOTE

DATE 1-19-95 BILL NO. SB 143 NUMBER A

MOTION: SEN. BAER Do PASS AS Amended

| NAME                     | AYE | NO |
|--------------------------|-----|----|
| BRUCE CRIPPEN, CHAIRMAN  | /   |    |
| LARRY BAER               | /   |    |
| SUE BARTLETT             |     | /  |
| AL BISHOP, VICE CHAIRMAN | /   |    |
| STEVE DOHERTY            |     | /  |
| SHARON ESTRADA           | /   |    |
| LORENTS GROSFIELD        | /   |    |
| MIKE HALLIGAN            |     | /  |
| RIC HOLDEN               | /   |    |
| REINY JABS               | /   |    |
| LINDA NELSON             |     | /  |
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141-1

NANCY SWEENEY  
CLERK OF DISTRICT COURT  
*Lewis and Clark County Courthouse*  
P. O. Box 158  
Helena, MT 59624-0158  
447-8216

SENATE JUDICIAL COMMISSION  
COMMITTEE  
EMPHASIS NO. 1  
DATE 1-19-95  
BILL NO. SB 141

January 18, 1995

Sen. Crippen, Chairman  
Judiciary Committee  
Capitol Station  
Helena, MT 59620

RE: SB 141 District Court Clerk of Judicial Nomination Commission

Dear Chairman Crippen and Committee Members,

The Montana Association of Clerks of District Court requested Senator Swysgood to sponsor this bill which would place a clerk of district court on the Judicial Nomination Commission. The clerk of court has unique insight to the temperament, conduct and work habits of those attorneys who practice in our respective judicial districts. We observe those attorneys performing a variety of their duties from filing cases and documents to presenting their cases to the court or jury. There is no doubt that the clerk of court has a fairly accurate impression of an attorney's knowledge of procedures and law, their ability to communicate and to work cooperatively.

Our input into the selection of judicial candidates is very important but many clerks are reluctant to submit detrimental comments, however well founded, in writing. We are required to work very closely with whoever is appointed as judge and negative input does not foster a healthy working relationship. In my view it is understandable why they are reluctant to put their concerns in writing.

The Montana Association of Clerks of Court are a very close knit group with an excellent communication network. The dissemination of information through our organization is effective, efficient and confidential when necessary. We were fortunate to have Charmaine Fisher, the clerk of court from Yellowstone County, serve on the Judicial Nomination Commission for one term. When the commission was required to select candidates in any jurisdiction, the clerks in those jurisdictions provided Charmaine with the information necessary to make the best possible decision.

I encourage the committee to recommend approval of Senate Bill 141 and thereby provide the Judicial Nominations Commission with a valuable resource for making informed decisions.

Sincerely,



Nancy Sweeney  
Clerk of District Court



143-1

Amendments to Senate Bill No. 143  
First Reading Copy

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

Requested by Senator Baer  
For the Committee on Judiciary

DATE 1-19-95

SEN. NO. SB143

Prepared by Valencia Lane  
January 16, 1995

1. Page 2, lines 6 through 9.

Following: "constitution." on line 6

Strike: remainder of line 6 through "compromised." on line 9

Insert: "It is the duty of the governor and the legislature to take action to protect the sovereign authority of the people of the state of Montana by rejecting wrongful actions governed by this subsection, including but not limited to federal mandates, orders, directions, or commands derived from powers not enumerated in or specifically granted to the federal government by the United States constitution, especially when individual freedoms are affected. The state's rejection may be in the form of a bill, joint resolution, or executive order."

DATE JAN. 19, 1995

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 133, SB 141

< ■ > PLEASE PRINT < ■ >

Check One

| Name              | Representing                                    | Bill No. | Support | Oppose |
|-------------------|---|----------|---------|--------|
| Nancy Sweeney     | Montana Association of Clerks of District Court | 141      | X       |        |
| Regulise Bernmark | Am. Ins. Assoc                                  | 133      |         | X      |
| Russell B. Hill   | MTLA  | SB 133   | ✓       |        |
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VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY