

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON RULES

Call to Order: By **CHAIRMAN JOHN G. HARP**, on January 13, 1997, at 7:45 a.m., in Room 325.

ROLL CALL

Members Present:

Sen. John G. Harp, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Bruce D. Crippen (R)
Sen. Eve Franklin (D)
Sen. Mike Foster (R)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. Charles "Chuck" Swysgood (R)

Members Excused: Senator Tom Beck
Senator Fred Van Valkenburg

Members Absent: none

Staff Present: Greg Petesch, Legislative Services Division
Fredella D. Haab, Committee Secretary

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

Hearing SR #1 Date Posted: January 9, 1997
Executive Action:

Committee Business Summary: This meeting was to set the Senate Rules for the 1997 Legislative Session.

CHAIRMAN JOHN HARP asked **Greg Petesch** if there were amendments to be offered to the Senate Rules.

Greg Petesch said the first one by **SENATOR MIKE FOSTER** for the adoption of the new Senate Rule which would be Senate 52.10.

CHAIRMAN HARP asked **SENATOR MIKE FOSTER** if he wanted to go over the amendment.

SENATOR FOSTER moved the amendment. He thought there was confusion about what we are doing when we get House Amendments. On second reading we are voting on the amendments and on third readings we are voting on bills that are amended. This just clarifies it. I believe the House has adopted a similar rule.

Greg Petesch stated that this Senate Rule is the converse of the House Rule.

SENATOR MIKE HALLIGAN stated that last session **SENATOR AL BISHOP'S** bill on the Secretary, that is, where the House thought they were voting either on the bill on either the second or third reading, it was a statutory change, and they really all voted against something they should have voted for. Do you recall anything about something else in our Rules in terms of rejection or acceptance of amendments and then the bill reverts back to the original form or something. They actually rejected the Conference Committee amendments and then they thought they were voting against the bill and they were voting against the amendments. They rejected it so it went back to the original form and the Secretary or the Clerk of Court was going to be eliminated in a year instead of the end of his term. I want to make sure we are really clear that if we are changing this for third reading then they are actually voting on the bill.

Greg Petesch stated it was so if you accept it. If you don't accept it, it won't get to third reading.

SENATOR HALLIGAN asked if this was a substantial change in the way we have done business on that third reading vote on House and Senate amendments in the various Houses.

Greg Petesch stated that the confusion that originated in the House was a Conference Committee report that caused the consternation. This bill simply deals with the return by the House of Senate legislation that was amended by the House and this clarifies that when you have a second reading vote you are voting on the House amendments. If you accept the House amendments the bill goes to third reading where you are considering the bill. If you reject the House amendments you have the option of requesting a Conference Committee.

CHAIRMAN HARP asked **SENATOR HALLIGAN** if he had doubt if we offered amendments to the Senate Rules that it would basically change anything we have been doing in the Senate in the past.

SENATOR HALLIGAN said he thought if they were dealing with the Conference Committee reports and the effect of those then I think we would be. I just wanted to clarify it.

SENATOR FOSTER stated he was not trying to get into Conference Committee reports.

Greg Petesch stated there was one other thing in this rule and I kept it in because the House adopted this and if you look in sub section 1, and you should be aware of this before you vote. This allows the President of the Senate to refer substantially amended Senate Legislation so that the bill is so changed that the Senate never really considered it to another committee for a hearing. That is a change that the House adopted this time to allow the

House to do that and so I retained it in this amendment and I wanted to point it out before you voted.

CHAIRMAN HARP stated it left the Senate and we got it back from the House as a Cadillac.

SENATOR LORENTS GROSFIELD recalled it was on third reading. It was on House amendments we were voting on the bill as amended, so we have to change the way that it is done and he was wondering if that could be done without a rule and just do it or let this be in there.

PRESIDENT GARY AKLESTAD stated he thought they would still be voting on the amendments on a Senate bill that comes from the House.

CHAIRMAN HARP asked if there was any more discussion on this motion. Question called for.

Motion: PASSED ON SECOND AND THIRD READING OF AMENDMENTS UNANIMOUSLY.

CHAIRMAN HARP stated that this amendment was at the request of **SENATOR DEL GAGE**. He talked to me and the Minority Leader concerning pairs on third reading. I'll let **Greg Petesch** explain this amendment.

Greg Petesch stated that **SENATOR GAGE** is proposing not to allow pairs in Committee of the Whole. You already have Senate Rule 30.70 that prohibits pairs in standing committees. So what this proposed amendment would do would leave Senate 51.90 concerning the Committee of the Whole as saying pairs in Committee of the Whole is prohibited. That is an existing statement in the Rule but in the practice if you read sub 1 and sub 2 of that same rule allows pairs in the Committee of the Whole so you have an inherent conflict right now in the Senate itself. **SENATOR GAGE'S** concern is that by allowing pairs particularly on bills that require super majority vote, that you may be opening the Senate up to a challenge as to whether the necessary super majority vote was received when you require pairs 2 to 1 for example on a coal tax bill you would actually need 3 to 1 pair and by allowing an excused member to vote through the pair, he is concerned that at some point the Senate may be challenged on that issue.

SENATOR BRUCE CRIPPEN asked if this was a concern on second reading or third reading?

SENATOR HALLIGAN stated that we do not allow it on second reading so it would be on the third reading.

Greg Petesch stated that it was on the Committee of the Whole so you would have it on third reading. So you have an inherent conflict in your rule where you say pairs are not permitted in the Committee of the Whole.

CHAIRMAN HARP stated he obviously was thinking of Order of Business #8 and of second reading. That is his understanding of the Committee of the Whole. When we go to order of Business #9 that is third reading.

Greg Petesch stated they had a more dangerous practice of allowing them on third reading than if you did on second reading because third reading constitutes the final action of the Senate.

SENATOR HALLIGAN asked what the Constitution language about members will be present and voting. Every bill must pass by the majority of those voting and he is afraid that we could be challenged because someone is voting and they are not present.

Greg Petesch said that was the reason for the amendment.

CHAIRMAN HARP stated that we had this discussion before on the Senate Floor and if you are present on the Senate Floor you will vote. That has been discussed several times. This is in conflict with that?

Greg Petesch stated that it is not necessarily in conflict, what you are allowing is an absent member to vote as if they were present and voting. That is **SENATOR GAGE'S** concern. A pair allows a member not present to vote.

CHAIRMAN HARP stated he thought it was important that the Senate continues to allow pairs on third reading. I can recall some sickness on the Senate floor where we've had people gone for a long period of time. Their constituents need their representation even though they may be ill. So if we don't allow them to concur on Order of Business #9 I think we are neglecting the people that Senator is representing. I don't think it has been abused and I can't recall a pair when it was the difference on the outcome on third reading particularly on a major issue.

SENATOR HALLIGAN stated that on the University changes last year, he thought it only passed by one vote. He had no idea if a pair was involved in any of those votes but that required a 2/3 vote to get on the ballot. Is there a way to draft a rule to deal with when you have super majority requirements that maybe you can't have pairs on super majority vote and I think any vote eventually could cause that to be a problem. I do think we have to allow pairs so people can vote on legislation they have introduced if they are sick that day they have to be able to be recorded. We have a Constitutional issue here.

Greg Petesch stated that where we don't allow pairing on third reading, which I understand is your current practice, the third reading is the final vote of the Senate. So long as you do not allow pairs on third reading, that legal challenge is not there because that is the vote that counts for purposes of passage or failure of the legislation.

SENATOR HALLIGAN stated that they do allow it on third reading.

Greg Petesch stated they then had that issue before them.

PRESIDENT AKLESTAD stated that was the reason for pairing. A person is sick and cannot be here and there is a very important issue up, and I have gone down through the list to see what is not important then I don't care what I do on third reading. It's the important ones I pair on. I think Senators need opportunities to pair on very important issues concerning the whole state or maybe his constituency. Otherwise the constituents are going to say why didn't you vote or you didn't get a chance to vote on that particular issue.

SENATOR CRIPPEN stated that a non-excused member cannot pair.

CHAIRMAN HARP stated he thought that is where some of the discussion where we might have had a Senator outside the Chambers for some reason had to go to the bathroom at that particular time of voting and it was questioned at that time whether that Senator should have voted and they were brought in and they voted. But, when Senators are gone, that is the purpose for pairs. I know that **SENATOR GAGE** had stated a pair may not be allowed if it affects the outcome of the vote. That was the other option and he just wanted to bring to the committee what **SENATOR GAGE** offered.

PRESIDENT AKLESTAD stated they might as well do away with the pairs.

SENATOR CRIPPEN asked if the House allowed pairs on third reading.

CHAIRMAN HARP answered that they did and also on second readings.

SENATOR EVE FRANKLIN she thought that there was a conflict in the language and maybe **Mr. Petesch** could help me.

Greg Petesch said if you don't consider third reading Committee of the Whole there is no problem.

CHAIRMAN HARP said that he didn't and he never considered third reading of the Committee of the Whole. We rise and report. We finish our business on Order of Business #8.

Greg Petesch stated that under that interpretation there is no conflict.

CHAIRMAN HARP answered that the House has pairs.

Greg Petesch stated that sometimes at different times they have had. It is not addressed in their rules specifically. Sometimes they have allowed them, and sometimes they have not.

SENATOR HALLIGAN stated that the House does allow absentee voting, which we don't allow. They just vote for everything.

CHAIRMAN HARP asked for any other amendments.

SENATOR CRIPPEN said he had a few questions. One dealing with the long range planning, page 7, line 30-30. In talking with the Chairman of the Finance and Claims Committee what is the difference between that and line 12, page 7.

Greg Petesch stated that as he read line 30, this would allow the long range planning committee members to vote in the Finance and Claims Committee itself on certain issues as if they were members of the Finance Committee. Not the subcommittee, but when the bill is kicked over to the Senate and referred to the Finance and Claims Committee. This would allow the long range building committee members to vote on certain issues in that committee as if they were members.

SENATOR CRIPPEN asked if they are full currently?

SENATOR CHUCK SWYSGOOD stated that they were.

CHAIRMAN HARP said it brought up an interesting point. What if they were not?

SENATOR SWYSGOOD stated this would then cover it. If they were not members, and right now as far as he knew, all members of the House Appropriations and Senate Finance and Claims are members of the full Appropriation Committee or Finance and Claims Committee. If you had somebody setting outside that was not a member of either one of those Committees, then this rule covers that. What this says is that if there is a non member in either of those full committees, they could vote only on those issues that pertain to long range building.

SENATOR CRIPPEN stated that by implication it says they can't vote on anything other than that.

CHAIRMAN HARP asked for further discussion on Senate Rules as amended.

SENATOR HALLIGAN stated he still didn't like that the chair of the Finance and Claims can vote on all of those subcommittees.

SENATOR CRIPPEN asked about the consent calendar. We never use it. Whenever I have seen it, takes more time to explain it. It is a debatable motion because it is not used. Why do we have it?

CHAIRMAN HARP stated it was part of the culture of the Senate. It has been used in the past. When he came in 1989 there was three or four bills that he had never seen before.

SENATOR FRANKLIN said we are talking about streamlining and if we wanted to think about using the consent calendar more it might be a way to educate people that it does exist as a mechanism.

PRESIDENT AKLESTAD stated all we need is an unanimous vote in the committee and then it could go to the consent calendar.

SENATOR FRANKLIN thought maybe we should start using it again.

CHAIRMAN HARP thought it was a very good point.

SENATOR CRIPPEN thought we should use it or lose it.

CHAIRMAN HARP said that by offering an amendment obviously it would bring up a debate and we could discuss it. He asked if there were further discussions on the Senate Rules as amended.

SENATE SWYSGOOD MOVED AMENDMENTS TO SENATE RULE #1.

Motion: PASS UNANIMOUSLY

CHAIRMAN HARP said they had one other matter to bring up.

PRESIDENT AKLESTAD said he had a request the other day and we don't have anything in the Rules pertaining to video cameras, television cameras, or anything in our standing committees. We said that the committee chairman has the authority to direct where those cameras will be within their committees. We had a request the other day to have a video tape sent down and to start using video tapes in committees that are sent in from various parts of the state and so far. I talked to our leadership and I made a temporary decision with the inquiring party that we not allow that. The reason I gave for that is that #1 we are not really equipped in every committee. We don't have equipment for every committee. It appears to me that there is no rebuttal and there is no questions of that individual. You can't question that individual at that point in time. Where written material is handed out to the committee and the individual is not there, each committee member makes a decision to whether that material is important to his decision making process or not. That individual is not imposing it on the whole committee without being questioned. With a video you are going to be in a position of getting a 30 minute video sent by someone on either side of the end of the spectrum which is going to take a lot of time, and you have no questioning of that individual whatsoever.

SENATOR HALLIGAN asked if they were talking about video testimony?

PRESIDENT AKLESTAD said at this point and time he didn't think the Senate would do that because we don't have the equipment to do it in every committee, it is very time consuming but most importantly you couldn't ask that individual questions to rebut the statements that they make on that tape.

SENATOR CRIPPEN thought if it came to Senate Judiciary he'd have to figure out how to get it into the record, and unless you screened it ahead of time, how would you prevent some improper statements being made on the video. That could be inflammatory or something. Eventually, I imagine we will have something like that.

CHAIRMAN HARP stated that if you had interactive television where you had the opportunity to, but that technology is here but not here at the State Capitol.

SENATOR FRANKLIN said the only thing she was remembering a couple of times when some folks have used video presentations to augment their presentations for research .

PRESIDENT AKLESTAD stated it happens that he had been in committees but that department or that individual was right there giving that presentation and then you have immediate contact with that individual to ask questions of that material.

SENATOR SWYSGOOD stated that Long Range uses that a lot.

PRESIDENT AKLESTAD said in this case it would be like you being sent a video from who knows where, the Democratic Central Committee or the Republican Central Committee, whoever, sent you a video and you have no control of that and who knows what is going to be on that thing and more importantly, it may be lengthy but I think my main concern is you have no questions and answers of that material.

SENATOR HALLIGAN asked if they were leaving it up to the chair or are you prohibiting it all together now. What is your proposal?

PRESIDENT AKLESTAD said he temporarily stated we weren't going to allow that but he would discuss it with the Rules Committee on both sides of the aisle.

SENATOR HALLIGAN said he agreed. He said they use it in courts but usually somebody has had the opportunity to cross examine the person at some time.

PRESIDENT AKLESTAD said he would appreciate a motion that would at least back up what I would confirm with this group.

SENATOR HALLIGAN said he agreed with **SENATOR FRANKLIN'S** comment and we already know for educational purposes, the chair will be allowed to make the decision.

CHAIRMAN HARP stated he thought if the committee requested it, that was something else.

SENATOR FRANKLIN stated that the language might want to be something like video testimony in lieu of a on-site person.

Greg Petesch asked if they wanted it in the Rules.

CHAIRMAN HARP said he didn't want it in the Rules but would like a statement that the Senate Rules Committee for this Session is not going to allow pre recorded video testimony for the record. Maybe we could get it typed up and have it signed, would that be alright. Maybe **Greg Petesch** could work on that.

SENATOR FOSTER thought it was a good topic for the Legislative Council to deal with in the interim.

SENATOR HALLIGAN stated that as long as the message isn't going out and we all agree that video testimony should be prohibited . However, that it should be each chair or committee's ability to allow it if for educational purpose.

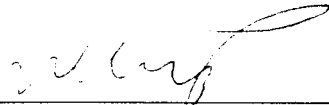
PRESIDENT AKLESTAD said there might be somebody coming into your committee with video pertaining to testimony. We want to clarify it that the individual has to be there presenting a video.

SENATOR FOSTER stated that video presentations augmenting testimony are acceptable at the discretion of the Chair. That is what we are talking about. It is very common for an agency to come especially the first part of the week with a presentation about how they do it and why they do it and a little video to show their big project.

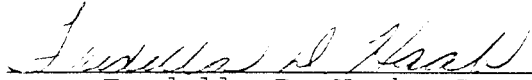
CHAIRMAN HARP asked **PRESIDENT AKLESTAD** if he was comfortable with the wording. He asked if there was any further business.

ADJOURNMENT

Adjournment: MOTION TO ADJOURN UNANIMOUS AT 8:15 A.M.



Sen. John G. Harp, Chairman



Fredella D. Haab, Secretary

jgh/fdh