

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 17, 1997, at 10:00 a.m., in Room 410, of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

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

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 142, SB 143, SB 145
posted January 9, 1997

Executive Action: SB 32, SB 44, SB 46, SB 142,
SB 145

HEARING ON SB 142

Sponsor: SENATOR REINY JABS, SD 3, Hardin.

Proponents: None

Opponents: None

Opening Statement by Sponsor: SENATOR REINY JABS, SD 3, Hardin.
SB 142 clarifies the process when a defendant appeals revocation

of a suspended sentence. In one case a fellow was picked up in Gallatin County and given a six-month suspended sentence, providing that he would obey the law. But he was picked up again for DUI and driving with no insurance, and he appealed. The District reviewed his case. The Supreme Court ruled that he could have a new trial, but not a jury trial.

Questions From Committee Members and Responses: None

Closing by Sponsor: None

{Tape: 1; Side: A; Approx. Time Count: #3.8; Comments: None.}

HEARING ON SB 145

Sponsor: SENATOR AL BISHOP, SD 9, Billings.

Proponents: John Connor, Prosecutor, Office of the Attorney General.

Opponents: None

Opening Statement by Sponsor: SENATOR AL BISHOP, SD 9, Billings. I believe striking language on lines 17-20 accomplishes the goal of eliminating double prosecution for the same situation (misdemeanor & felony criminal mischief).

Proponents' Testimony: John Connor, Prosecutor, Department of Justice. I apologize for not having an opportunity to visit with SENATOR BISHOP earlier. There may be an unforeseen consequence, as a definition could be changed in justice court for misdemeanors, and subsequently be changed in district court. I tried to figure out better language with Valencia Lane this morning, and have a proposal for her to review. CHAIRMAN CRIPPEN. I see no problem with that.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: SENATOR BISHOP made no closing comments.

{Tape: 1; Side: A; Approx. Time Count: #8.7; Comments: None.}

HEARING ON SB 143

Sponsor: SENATOR DARYL TOEWS, SD 48, Lustre.

Proponents: None

Opponents: Ray Myers, Boulder
John Bloomquist, Montana Stock Growers Association,
Helena

Larry Brown, Agricultural Preservation Association, and
for Les Graham, Montana Wool Growers Association
and Montana Cattlewomen
Ted Lange, Northern Plains Resource Council
Janet Ellis, Montana Audubon Society

Opening Statement by Sponsor: SENATOR DARYL TOEWS, SD 48, Lustre.
This bill was drafted to address a specific problem in Eastern Montana, where lending institutions are insisting upon written right-of-way before they will lend money on landlocked property. The bill does not change the present landowners bundle of rights, and is taken from an 1895 Wyoming law.

If property is legally landlocked, the bill sets up a local committee of three to look at the situation, as set up by the County Commissioner's office. The committee would report to the Commissioners, who would then make judgment.

In an example from several years ago, one family had four ways to get to and from their property for many years, all via verbal agreements with adjacent landowners. They needed money, and went to their neighbors to get written approval of access to their land, but the neighbors would not provide it. I believe we're experiencing a different culture in Montana now, where people don't want to be neighbors.

{Tape: 1; Side: A; Approx. Time Count: #12.5; Comments: None.}

(EXHIBIT #1). I have provided the Committee with a map of the roads in the area of the property I just spoke of. It takes two to three years to go through the court system, and about \$10,000. This family only needed the money to purchase a vehicle. I want the Committee to be aware that North Dakota has all open section lines, and that Montana doesn't now.

There is a friendly amendment to the bill (EXHIBIT #1, page 2).

Proponents' Testimony: None

Opponents' Testimony: Ray Myers, Boulder. I believe we have a good, fair subdivision law now, and ranchers cannot afford to hire defense attorneys in these situations. I don't like to see county commissioners having the authority to take my property rights.

For example, someone buying land in the 'toolies', and getting an access across others' land, and then turning it into a subdivision. This is an actual situation, where they want to put a road across the second mile of a narrow strip of land which also contains a creek at the other end providing water to cattle. That landowner would have to put a fence on both sides of the access road to keep people off his land, which would cut the cattle off from their water. He would also have to depend upon

people to keep the gate closed. Because of eminent domain, I don't see where we need this law.

{Tape: 1; Side: A; Approx. Time Count: #19; Comments: None.}

John Bloomquist, Montana Stock Growers Association, Helena. A decision of the county commissioners could become more political in nature, rather than judicial, and the number of scenarios is endless. Mining claims, rail road property, etc., could all force access upon the landowner.

If one has the right to appeal to district court, what would be the standard of review? This must be considered.

In Section 1 of the bill. The notice provision may be subject to constitutional challenge concerning due process. I urge the Committee to vote no on this bill.

Larry Brown, Agricultural Preservation Association, and for Les Graham, Montana Wool Growers Association and Montana Cattlewomen. Mr. Brown reiterated what Mr. Bloomquist said, but also referred to federal lands in addition to rail road property and mining claims.

Lenders and insurance companies would benefit from people not doing their homework on this bill, especially when land has changed hands often. I believe this is not the particular way to resolve this situation.

Ted Lange, Northern Plains Resource Council. The implications of the bill raise considerable concerns. For example, the Tongue River Railroad situation. The largest concern is shifting in the balance of power from the person being trespassed against to the trespasser.

{Tape: 1; Side: A; Approx. Time Count: #24.0; Comments: None.}

Janet Ellis, Montana Audubon Society (EXHIBIT #2). The section on page 2, lines 2-9 set up a process of reviewers and appraisers to locate and mark out a private road through which the least amount of damage is done. It seems an engineer should be involved, rather than lay people.

{Tape: 1; Side: A; Approx. Time Count: #27.0; Comments: None.}

Questions From Committee Members and Responses: VICE CHAIRMAN LORENTS GROSFIELD. In checking Chapter 30, Property Title, a 'person' is not defined. Is it to be a broad term to include the federal government? **SENATOR TOEWS.** It may be an individual or a corporation, and not the government.

VICE CHAIRMAN GROSFIELD. Page 1, line 13, deals with resident agents and 30-day notice. What about snow-birds or those on vacation? How will you know or verify if there is a resident

agent? **SENATOR TOEWS.** There needs to be due diligence such as a registered letter, and I don't see it in this bill.

VICE CHAIRMAN GROSFIELD. In isolated tracts of private land, is there some kind of easement to get to this land? Is this a huge problem? **Boyd Skelton, Helena real estate broker.** When I represent property, if there is no easement, I do not represent it as having one. I do a thorough title insurance search. To represent an implied easement would be very dangerous on my part. An easement by necessity could be somewhat advantageous.

Ward Shanahan, Helena attorney. I have been an attorney in Helena for 40 years, and have tried eminent domain cases for rail roads and others. If I sold a landlocked tract, the law implies I'm granting you a right-of-way. This is also in statute form in federal law.

A specific right of eminent domain to reach agricultural land or residential land should be under the administration of the court, and not the county commissioners as implied by this bill. Most zoning laws require setting aside property for this purpose.

{Tape: 1; Side: A; Approx. Time Count: #37.9; Comments: None.}

SENATOR SHARON ESTRADA. Is this a common problem in your area?

SENATOR TOEWS. In the past few years, some lending institutions have had a problem gaining access to repossessed landlocked land, so they've taken the position of requiring written authority prior to lending money on such lands. This is where agricultural loans are going, while most people in Montana believe there are open sections in the state.

{Tape: 1; Side: B; Approx. Time Count: 00; Comments: None.}

SENATOR SUE BARTLETT. What about the right of eminent domain?

SENATOR TOEWS. Eminent domain is already in place, as stated by Ward Shanahan. This bill only provides an administrative way to go through this process.

SENATOR BARTLETT. I don't see language pertaining to agricultural or residential land in the bill. **SENATOR TOEWS.** This bill applies to private roads and can get very specific, to even the time of day the road can be used.

SENATOR RIC HOLDEN. If the county commissioners agree, who builds the road? **SENATOR TOEWS.** The person making the application would build the road.

SENATOR HOLDEN. I know what you're talking about, as I've been there, when I purchased landlocked property. We need to know whose property rights we're talking about. Are you trying to say using the county commissioners would reduce the cost of gaining access to landlocked property? **SENATOR TOEWS.** I am looking to accomplish the process in three-six months. I went to other

states, and didn't like what Nebraska does, but I did like the long history of Wyoming. Eminent domain won't work primarily because of the length of time, plus the \$10-12,000 cost.

SENATOR AL BISHOP. Is this to be an easement or a right of way, exclusive or non-exclusive? **SENATOR TOEWS.** It would be a very exclusive easement.

SENATOR BISHOP. Who pays the taxes on the easement? Would it be within the authority of the county to grant it? **Ward Shanahan.** I agree with the sponsor about the change in climate, especially with respect to the federal government. With the right of eminent domain, there must be a specifically state, orderly process. The person in the position of having the right-of-way problem has hindsight now, and that is the crux of the debate.

SENATOR REINY JABS. Existing statute outlines use rights of eminent domain for power lines, farmers' ditches to reach agricultural land, and these are under a specific time limit. The process you're trying to resolve shouldn't take three years, but it could. There have been some cases with the Great Northern Railroad which were completed within a year. **Ward Shanahan.** In looking at Lee Sheep Co. v United States and State of Wyoming, I would have to analyze **SENATOR JABS'** situation to answer him.

{Tape: 1; Side: B; Approx. Time Count: 11.6; Comments: None.}

CHAIRMAN CRIPPEN. If an individual negotiated an easement in perpetuity, and the bank asked you for an opinion, would you recommend to the bank to lend the money? **Ward Shanahan.** It is key that the person noticed he has the rights.

{Tape: 1; Side: B; Approx. Time Count: #14.0; Comments: None.}

VICE CHAIRMAN GROSFIELD. I read the Wyoming statute you provided, and the notes following it are extensive, pertaining to a wide variety of court cases. Has this statute been ruled unconstitutional in Wyoming? **SENATOR TOEWS** to address this question in his closing remarks.

SENATOR HALLIGAN. Who drafted this bill? I'm concerned that the notice provisions need to be stiffer, and meet due process. They don't appear to follow each other right now. There was no response to the question.

Closing by Sponsor: SENATOR TOEWS. I didn't read the information read by Senator Grosfield, and relied on the bill drafters. The county commissioners in my district agreed that something needs to be done, otherwise they may need to resort to prescriptive easements of about 1,000 miles in each county.

{Tape: 1; Side: B; Approx. Time Count: #19.2; Comments: None.}

EXECUTIVE ACTION ON SB 142

Amendments: Valencia Lane explained the amendments. I asked the attorneys on the Committee to look at page 1, line 27. Ought this to grant trial *de novo* appeals from both justice and city court. I talked with John Connor of the Department of Justice this morning, and he agreed. 36-110 governs municipalities (this would apply to Missoula only) and city courts. (EXHIBIT #2a)

{Tape: 1; Side: B; Approx. Time Count: #21.4; Comments: None.}

SENATOR BARTLETT. The District Court said a revocations hearing is not a trial. The Supreme Court said no, that's wrong (lines 19-20). This bill rewrites statute to make it very clear that it is a trial *de novo* in justice court.

Motion/Vote: SENATOR JABS moved to amend page 1, line 27, following "court" by inserting "or city court". The motion CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR JABS MADE A MOTION THAT HB 142 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 44

Amendments: Farmers Insurance Group amendments

Motion: SENATOR HOLDEN MADE A MOTION THAT SB 44 DO PASS.

{Tape: 1; Side: B; Approx. Time Count: #33.; Comments: None.}

Discussion: Ward Shanahan presented proposed amendments to SB 44 from Farmer's Insurance Group, along with group cost statistics on uninsured motorist coverage requested at the hearing. EXHIBITS #3, #4). SENATOR HALLIGAN. What are "FZE" and "MCA" codes on the example? Ward Shanahan. I'm not able to answer that.

Valencia Lane. I spoke to both proponents and opponents for a one page explanation of the bill, i.e., what the law is now and what the bill will do.

SENATOR GROSFIELD. I believe the bill is trying to clarify language, but page 1 seemed to be confusing, so I read the Code book. Page 1, lines 21-23 said "may not be added together", and so it seems to me the law is fairly straight forward".

If we forget what the Legislature meant in the past, and consider what is relevant now, we will have a bigger advantage if people have more than one carrier. I believe SB 44 is a good bill, and will support it.

{Tape: 2; Side: A; Approx. Time Count: #3.1; Comments: None.}

SENATOR HALLIGAN. Does it prohibit underinsuring in every case, and uninsured stacking in every case? **SENATOR HOLDEN.** I will make "coverage" plural to include all three aspects, and to clarify language which may have confused the Court before. **Ward Shanahan.** In Farmers Alliance v. Holman, which was referred to the Montana Supreme Court by the U.S. District Court for interpretation, they said insureds can stack all others covered in recovery, based on the coverage on the vehicle involved in the accident.

{Tape: 2; Side: A; Approx. Time Count: #4.8; Comments: None.}

SENATOR HALLIGAN. I don't believe the public understands the differentiations. I believe there needs to be a specific spot on an insurance policy where the owner signs to acknowledge understanding of specifics of coverage. **SENATOR HOLDEN.** State Farm and Farmers Insurance specifically identify coverage on the face of the policy. Some companies lump these under liability headings. I brought this to the attention of corporate headquarters of my company in Los Angeles.

{Tape: 2; Side: A; Approx. Time Count: #7.1; Comments: None.}

SENATOR BARTLETT. You said uninsured coverage applies to residents of the household in any vehicle, and as a pedestrian? **Ron Ashabraner.** Uninsured coverage in the policy provides protection. As an illustration, if the wife, as a resident member of that household, crosses the street and is struck by an uninsured motorist, she can pick the vehicle with the highest coverage to draw from. **Ward Shanahan.** The purpose of offering the amendments was to take care of the hole where an insured is driving a car that isn't insured.

SENATOR HALLIGAN. I would like for people to speak with an insurance representative so that when people review their policy, they understand they can't stack (EXHIBITS #5, #6). **SENATOR ESTRADA.** I agree with **SENATOR HALLIGAN.**

{Tape: 2; Side: A; Approx. Time Count: #12.9; Comments: None.}

Vote: **SENATOR HOLDEN'S MOTION** that SB 44 DO PASS CARRIED with all members voting aye, except **SENATORS BARTLETT, ESTRADA AND HALLIGAN.** **SENATOR DOHERTY** was excused and did not leave a vote.

EXECUTIVE ACTION ON SB 46

Amendments: Department of Justice and committee amendments (EXHIBITS #7 and #8)

Motion/Vote: **SENATOR HALLIGAN MADE A MOTION THAT THE DEPARTMENT OF JUSTICE AMENDMENTS BE ADOPTED. THE MOTION CARRIED UNANIMOUSLY.**

{Tape:2; Side: A; Approx. Time Count: #15.8; Comments: None.}

Discussion: SENATOR HALLIGAN. This is a middle-ground approach.

{Tape: 2; Side: A; Approx. Time Count: #18.5; Comments: None.}

VICE CHAIRMAN GROSFIELD. I am referring to page 3, line 8, following "time period" and on page 6, line 26, following "time period". Another bill says "30-day period", but that may not pass. I don't want to give juvenile probation officers unlimited time of jurisdiction. SENATOR HALLIGAN. I believe 30 days is much too short - 180 days would be more appropriate.

CHAIRMAN CRIPPEN. Do they have the authority to take a drivers' license again and again, as necessary?

{Tape: 2; Side: A; Approx. Time Count: 20.5; Comments: None.}

VICE CHAIRMAN GROSFIELD. Would it mean 30 days per confiscation? SENATOR HALLIGAN. We need to have a hammer, and the longer the better.

Valencia Lane. I could suggest a new sentence the end of line 11 on page 3 to state "a youth's drivers license may be confiscated more than once, and may be returned at the discretion of the officer".

Motion/Vote: SENATOR HALLIGAN MADE A MOTION TO ADOPT THE AMENDMENTS sb0040601.av1. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR ESTRADA MADE A MOTION THAT SB 46 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.

{Tape: 2; Side: A; Approx. Time Count: #24; Comments: None.}

EXECUTIVE ACTION ON SB 32

Discussion: SENATOR HALLIGAN. I am concerned with language on page 2, lines 12-13, "any summons...restraining order", pertaining to administrative duty. Valencia Lane explained that the Committee could strike "in addressing...procedure necessary", and insert "either when or if the Clerk of the District Court issues a". On page 2, line 13, the Committee could strike "issued", following "chapter, and strike "must contain" and insert "the clerk shall issue and include with the summons".

{Tape: 2; Side: A; Approx. Time Count: #28.0; Comments: None.}

SENATOR HOLDEN. What if a couple were in the midst of a divorce and had to sell their cattle? Where would the sale dollars go?

SENATOR HALLIGAN. There is nothing to prevent transfer of property at this time.

SENATOR GROSFIELD. In situation where the couple is not speaking and needs to make a disposition, what happens? SENATOR HALLIGAN.

They must do a separate motion in court to stop, stay, vacate what they've already done. This adds to delay and greater costs in attorney fees.

SENATOR ESTRADA. I like the bill, and believe it would make people talk to each other.

Vote: SENATOR HALLIGAN'S MOTION TO ADOPT THE AMENDMENTS TO SB 32 CARRIED UNANIMOUSLY.

(EXHIBITS #9, #10) **SENATOR HALLIGAN.** Attorneys cannot charge a lump sum fee in family law. They're required to charge hourly fees.

Motion/Vote: SENATOR HALLIGAN MADE A MOTION THAT SB 32 DO PASS AS AMENDED. This motion includes the change in his amendments on page 2, line 20. THE MOTION CARRIED UNANIMOUSLY.

{Tape: 2; Side: B; Approx. Time Count: #00, 12:07 p.m.
; Comments: None.}

EXECUTIVE ACTION ON SB 145

Amendments: Department of Justice amendments (EXHIBIT #11)

Discussion: John Connor, Department of Justice. I believe this is the most complicated are of criminal law, because of the two courts with separate, overlapping jurisdictions. In Sword, the Court said it's confusing.

By striking all of this language, it could allow someone, although probably rare, to be charged with both a misdemeanor and felony in separate courts. For example, felony theft could be charged as a misdemeanor in order to make \$600 restitution. Separate and overlapping concurrent jurisdiction seems to be the same thing.


I believe this amendment would clarify this situation for the court, and give the legislative intent on page 1, lines 16-17. We don't want to prosecute someone for the same problem twice.

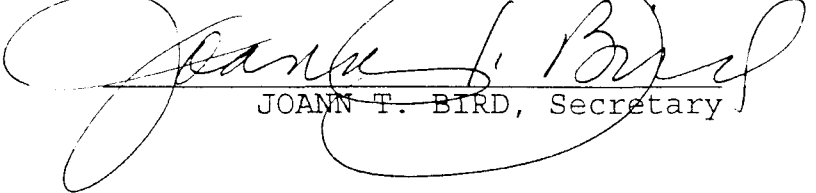
Motion/Vote: SENATOR BISHOP MADE A MOTION THAT THE AMENDMENTS PROPOSED BY JOHN CONNOR BE ADOPTED. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR BISHOP MADE A MOTION THAT SB 145 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 12:10 p.m.


SEN. BRUCE D. CRIPPEN, Chairman


JOANN T. BIRD, Secretary

BDC/JTB