

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON LEGISLATIVE ADMINISTRATION

Call to Order: By CHAIRMAN MIKE FOSTER, on January 22, 1997, at  
5:30, in Room 331

#### ROLL CALL

##### Members Present:

Sen. Mike Foster, Chairman (R)  
Sen. Charles "Chuck" Swysgood, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Thomas A. "Tom" Beck (R)  
Sen. Bruce D. Crippen (R)  
Sen. John "J.D." Lynch (D)

Members Excused: None

Members Absent: None

Staff Present: Greg Petesch, Code Commissioner,  
Legislative Services Division,  
Shelli Winslow, Committee Secretary

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

##### Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 186, 1/22/97  
Executive Action: January 27, 1997

#### HEARING ON SB 186

Sponsor: SENATOR DEL GAGE, SD 43, Cut Bank

Proponents: Karla Gray, Justice of the Supreme Court; Senator  
Steve Doherty; Anne Hedges, Mt. Environmental Information Center;  
John Shontz, Mt. Association of Realtors

Opponents: None

##### Opening Statement by Sponsor:

SEN. DEL GAGE, SD 43, Cut Bank This is a bill that I have talked  
about to leadership ever since my second session here. Most of  
my suggestions have been considered thumbs down. I have talked  
to attorneys from all over the state as I have run into them.  
I've talked to Supreme Court Justices at various times. I've

talked to State Agency people numerous times and I've looked at the rules, which require that we keep minutes of committee meetings. We continually tell people that we want the public to know what we are doing here and we want them to have access to information. That is what this bill does; it requires the House and the Senate to keep records of Second Reading. We require minutes of all of our meetings with the exception of second reading. The Committee of the Whole is just as much a committee as any of the other committees that we have. We don't take public testimony but we have all kinds of amendments that go on bills with no record of any of the discussion on those amendments or the bill itself. Russ Hill, lobbyist for the Trial Lawyers, said, "one thing you might tell them that may be of interest to them is that when there are bills here that we think are very important to the Trial Lawyers we tape the testimony on those bills."

**Proponents' Testimony:**

**Karla Gray, Justice of the Montana Supreme Court** It is rare that members of our Court come over on a bill, particularly a bill that doesn't have a direct nexus or mention of the Supreme Court in it. I come here today on behalf of myself and I'm also authorized to speak for Justice Nelson, who was intending to be here. I urge passage of this bill. This is a legislative bill and this is the Legislative Administration Committee. You don't need me to tell you how important the records of these bodies are to the State and the people of Montana. My perspective is a different one as you know. On occasion, some of the inevitable tensions arise between the branches of government due to our respective roles and functions. We do recognize that you are the primary lawmakers in the State and we try very hard not to intrude into your arena. However, we are at the same time frequently called upon to interpret statutes that these bodies have enacted into law. By having minutes, it will provide the Supreme Court with better tools for examining the legislative history and trying to ascertain what the legislature's intent was in passing the bill. The Committee minutes and copies of opponents and proponents testimony about the bills does not give us much to go on as far as what the Committee of the Whole really was voting on and why. We don't have any record at all of those matters as you know. As you'll also know there is usually a large number of arguments that can be put together in support of any given bill, some of which may have been winnowed out by the time the argument on the bill has come to the Committee of the Whole. Only certain arguments are offered and presumably responded to by the members of the Committee of the Whole. On behalf of helping us do our job in ascertaining your intent better, I would hope you would give this bill your favorable consideration.

**SEN. STEVE DOHERTY**, I think you know the parameters and why it is important. I think the legal arguments are very stark, but I think that there is a public policy reason for doing this. The Senate thinks the things we do are important, but by not taking

minutes they become very unimportant. What we do and what we say on the Committee of the Whole means little or nothing in trying to determine legislative intent because there is no official record. It diminishes our work by not according it the respect and the authority that legislative history and legislative intent should have. When we diminish our work, we make it less important and we make it less important for Montanans to check on us. I think it is important for that public policy reason to pass this bill. I know there are costs but democracy is kind of a messy, expensive thing on occasion. This is important, and it should have been done a long time ago. By operating in a two-bit legislative mode as opposed to a decent responsible mode that the people of Montana deserve, I think that we diminish ourselves and our work.

**John Shontz, Montana Association of Realtors** The association strongly supports this legislation because it creates something that is missing, that is a legislative record. Not only is it difficult to ascertain the intent of the legislature's issues without minutes of the Committees of the Whole. There is nothing in the legislative record that gives any legal indication as to the actual intent of the legislature. If minutes were kept in some form, legal issues could be settled earlier. If the fiscal note is too much, then the proceedings on second reading should be taped and sealed with an affidavit and sent to the Historical Society. By recording the minutes you will save people less confusion and less legislation to clear ambiguities from the previous session. I strongly encourage you to pass this amendment.

**Anne Hedges, Montana Environmental Information Center** The organization strongly supports this good government bill.

Opponents' Testimony:None

Informational Testimony:None

Questions From Committee Members and Responses:

**SEN. CRIPPEN** asked **SEN. GAGE** how many other states take minutes and to what extent do they take minutes.

**SEN. GAGE** said he did not know the information that **SEN. CRIPPEN** requested. He said that he or the council will check on that information and get back to the committee.

**SEN. CRIPPEN** asked **Justice Karla Gray** where the Courts go if they are trying to find out the intent of the legislature.

**Justice Gray**, responded by telling the committee that they go to the law library.

**SEN. CRIPPEN** asked, "If you look at intent, would you look at simply the typed versions of the minutes?"

**Justice Gray**, said that the courts do not listen to the tapes because they are not readily available, which is not to suggest that the same thing would happen if you were to amend the bill. I think that you understand the limitations on the committee record, whatever that committee record might be. We don't know what arguments were made on the Floor for the bill. And those are the most likely arguments to have persuaded your colleagues on the floor to support the bill.

**SEN. CRIPPEN** asked, **Justice Gray** "Would a taped copy of the minutes suffice to give you additional insight as to the intent of the legislature?"

**Justice Gray** responded, "It would help to have the taped copies, but it would not be as good as a written transcription. It would be significantly better than what we have now."

**SEN. CRIPPEN** stated that he did not want to send the bill over to the House if it had no chance of passing Second Reading.

**SEN. BARTLETT** asked **SEN. GAGE**, "The bill on Line 16 talks about a summary of the discussion on each bill, which to me contemplates written minutes. When the bill was drafted, did you consider using tape recordings for your minutes?"

**SEN. GAGE** said that they had talked about that, but **Justice Nelson** felt that it was more convenient for the Court to go to the Law Library and get the written minutes that are available from the committee hearing. The bill was drafted like the committees are doing now with their minutes. The committees do not transcribe the minutes word for word; they summarize the tapes, which causes him some concern. Some of the secretaries might think that one thing is a lot more important than another and they may leave something out. Taping would be less cumbersome for the Senate because all that they would have to do is get a tape recorder and have somebody on the rostrum turn it on when Second Reading starts and turn it off when finished. In that perspective, it would be less costly as well as less cumbersome because no one has to transcribe or summarize the tapes. He has no preference either way but would rather see the taped minutes and those preserved. He has tried to get tapes of some of the meetings that he has had but was told that when they get done transcribing the minutes they use the tapes over again. He doesn't know if that is customary but that bothered him.

**SEN. BARTLETT** wanted to know if the minutes would be separate from the journal.

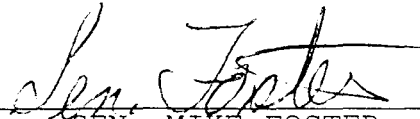
**SEN. GAGE**, thought that minutes might be too lengthy and costly so they would be separate from the journal.

Closing by Sponsor:

SEN. DEL GAGE, I close. I would have rather had this bill be put in the Rules Committee, but it is okay that it was put into Legislative Administration.

ADJOURNMENT

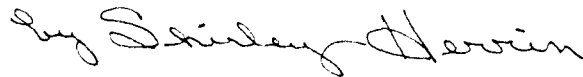
Adjournment:



SEN. MIKE FOSTER, Chairman



SHELLI WINSLOW, Secretary



MF/SW