

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **ACTING CHAIRMAN REINY JABS**, on March 4, 1997,
at 9:00 a.m., in Senate Judiciary, Room 325.

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
Judy Keintz, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 292, 2/24
HB 40, 2/24
HB 337, 2/24
HB 195, 2/24

Executive Action: HB 292, HB 337, HB 40, HB 195

HEARING ON HB 292

Sponsor: REP. ED GRADY, HD 55, Canyon Creek

Proponents: Larry Clifford, East Helena Police Department
Jim Oberhofer, Montana Board of Crime Control

Opponents: None

Opening Statement by Sponsor:

REP. ED GRADY, HD 55, Canyon Creek, introduced HB 292. This bill includes that a peace officer who leaves full-time or part-time employment and enters an active reserve status within 36 to 60 months retains basic certification status after entering reserve status for as long as the peace officer remains an active reserve officer. If 36 or more months have passed since the peace officers last full-time or part-time employment and the peace officer returns to full-time or part-time employment, the peace officer shall upon return to full-time or part-time employment comply with this section. This means they would need to go back to the Law Enforcement Academy. This would save these people from having to spend \$12,000 to go back to the Academy.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 9:08; Comments: .}

Larry Clifford, East Helena Police Department, stated he has been in law enforcement for 20 years. He graduated from Northern Montana College, worked a short time as a teacher and then began his career as a deputy sheriff in Wheatland County. In 1977, he went to work for the Lewis and Clark County Sheriff's Department as a deputy sheriff in charge of their police service dog program. He left that position, purchased a major franchise and began his own business. He also worked as a reserve officer. Eventually, he went to work full-time for the East Helena Police Department. He is still working there and is a graduate student at MSU.

House Bill 292 addresses a retention problem which exists with professional certification of peace officers in Montana. They now have professional certification of peace officers which is called police officer standing and training certification. Basic post certification is necessary to work as a peace officer in Montana. There are other post certifications in addition to the basic certificate and these range from the basic certificate to administrative or executive certification. Only the basic post certification is needed to work as a peace officer in the State of Montana. This requires a basic Montana Law Enforcement Academy Program, which is twelve weeks long and also there is the requirement of being employed as a full-time police officer for one year. If a professional officer cannot retain this certification, the officer cannot work in Montana.

An attorney who decides not to practice law, does not lose his certification because he goes on to another profession for a time. A teacher can retain certification, even if not teaching, by picking up 12 credits every five years. Nurses and doctors can renew their certification on a regular basis, even if not working in the medical profession. A peace officer has no mechanism to retain this valued post certification if they get into another profession. This bill would allow a post certified

officer to retain their post certification if they worked as a reserve officer. This bill reduces liability because it encourages experienced officers to work as reserve law enforcement officers. This does not require any law enforcement agency to use or appoint post certified officers as reserve officers. This would not replace any full-time officers. State law prohibits any department to reduce its force by using reserve officers in lieu of full-time officers. This would allow a department to enhance its program with experienced people.

Their budget is less than \$200,000 per year. If they had to train people to be in charge of STEP and DARE Programs, they would need to send that person to the Law Enforcement Academy. They have just had to do so at the cost of \$12,000 to the department. **EXHIBIT 1**

Jim Oberhofer, Montana Board of Crime Control, stated they were opposed to the bill until the amendments were added. They are now in favor of the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 9:14; Comments: .}

SEN. MIKE HALLIGAN asked if the 36 month timeframe was used in other jurisdictions?

Mr. Oberhofer explained that currently an officer retains his certification for 36 months. After 36 months up to 60 months, he must attend the equivalency training before they can go back into full-time work.

SEN. SUE BARTLETT asked if a certified peace officer were to leave that type of work and did not enter reserve status, would that person lose his or her certification?

Mr. Oberhofer stated they would. If they were out of the workforce for five years and wanted to reenter, they would need to attend the Academy. They are not familiar with new laws.

SEN. BARTLETT asked if the active reserve status was irrelevant?

Mr. Oberhofer stated that after 36 months they would join a reserve unit and thereby stay updated on the laws, work the road on occasion and therefore stay current with their skills. If they remained active with the reserve force and after five years decided to go back to a particular department, they would be allowed to do so. They would need the equivalency test. This is a written, physical agility, and firearms test. This also includes a two week legal school. They need to pass each test.

SEN. AL BISHOP commented if a peace officer did not go into active reserve, would he need to go to the Academy.

Mr. Oberhofer explained there was a 36 month timeframe in which they could return without any training and without having been a member of a reserve unit. Between 36 and 60 months, when reentering the workforce, they would need to go through equivalency training. From that point forward, as long as they remain active as a reserve officer, they would be able to reenter without going back to the Academy but would still need to take the equivalency test.

SEN. BISHOP asked if after 48 months, he could go into active reserve status?

Mr. Oberhofer stated that he could. Once you become an active reserve officer, after the five year period you would be allowed to challenge the equivalency test without going through the Academy.

Closing by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 9:20; Comments: .}

REP. GRADY felt this would encourage officers to stay in reserve duty and would save them money. The reserve duty officers are involved in a lot of training which keeps them up to speed with anything new. They did not have any opponents in the House.

HEARING ON HB 40

Sponsor: REP. JOHN COBB, HD 50, Augusta

Proponents: Beth Baker, Department of Justice
David Woodgerd, Department of Revenue
David Scott, Department of Labor
Lawrence Hubbard, State Fund

Opponents: None

Opening Statement by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 9:21; Comments: .}

REP. JOHN COBB, HD 50, Augusta, introduced HB 40 which would allow another two years for bankruptcy enforcement functions of the attorney general. Last session they passed a bill which consolidated bankruptcy under the Department of Justice. They put a two year sunset on the legislation. They have shown that this is cost effective for the state. He provided a handout for the committee, EXHIBIT 2, which explained the HB 135, last session's legislation. The fiscal note explained the FTEs. EXHIBIT 3 They have collected over \$362,000 and have an operated budget of a little over \$100,000. A typical case involves about

\$20,000 in state claims. About 1/5 of the cases involve claims of less than \$1,000. They do a lot of work out-of-state. They handle pre-bankruptcy planning. They help other state departments with information and claims. State agencies do not have bankruptcy experts and debts were not collected. Montana has anywhere from 1800 to 2700 filings in bankruptcy court annually.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 9:25; Comments: .}

Beth Baker, Department of Justice, stated they requested this bill. She explained her handouts, **EXHIBIT 4**. The brown sheet gives the background of the bankruptcy unit, the legal services study that recommended it, and what the unit has accomplished so far. They have no objections to the House amendment to continue this for another two years. Bankruptcies are more and more common. Montana filings have increased in the last decade. The Administrative Office of the United States Courts has predicted that Montana will be one of the fastest growing states in the number of bankruptcy filings over the last quarter century. By having a presence in the bankruptcy court, the state has equal footing with other creditors in making sure that debts owed to the state treasury are repaid. In one case, the Child Support Enforcement Division had filed an objection to the debtor's plan to resolve the bankruptcy. At the time of the hearing, their attorney was present for another case, the bankruptcy judge reviewed the case where the objection had been filed and overlooked the objection. He was prepared to approve the plan, but their attorney was able to explain that there was an objection and that the state did have an interest in the case and the case was not approved until the state's interests were considered.

David Woodgerd, Department of Revenue, spoke in support of HB 40. Agency attorneys don't have time to become experts in the bankruptcy area. In one conference the attorney for the taxpayer was arguing that a certain provision of the bankruptcy code prevented their assessment. Mr. Nolte was able to convince the attorney he was wrong on that provision and the assessment went forward.

David Scott, Department of Labor, appeared in support of HB40. Bankruptcy law has its own rules and procedures as well as its own court.

Lawrence Hubbard, State Fund, stated that since 1993 they have filed \$93,000 worth of proofs of claim in bankruptcy courts. In 1996 this rose to \$300,000. It is important to have a resource to negotiate debts and collections through the bankruptcy process.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 9:33; Comments: .}

SEN. BARTLETT asked if the money recovered was returned to the General Fund?

REP. COBB stated that it was.

CHAIRMAN JABS questioned why these needed to be approved every session?

REP. COBB felt it was the only way to pass the bill.

Closing by Sponsor:

REP. COBB closed on HB 40.

HEARING ON HB 195

Sponsor: REP. BILL TASH, HD 34, Dillon

Proponents: Mary Phippen, MT Assoc. of Clerks of Dist. Court
Nancy Sweeney, Clerk of Court for Lewis & Clark County
Anita Vandolah, Clerk of Court for Pondera Co.
David Scott, Department of Labor
Dave Woodgerd, Department of Revenue
Kathleen Brewer, Clerk of District Court, Missoula
Laurie Maloney, Clerk of District Court, Butte-Silver Bow County

Opponents: None

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Count: 9:36; Comments: .}

REP. BILL TASH, HD 34, Dillon, introduced HB 195 on behalf of the clerks of court. The administrative orders filed by the state are absorbed by the district court budgets. They would charge \$45 for this service. This would be government paying for government. This is a large unfunded mandate. Some are recoverable. There is a substantial fiscal note. This bill was rerouted to House Taxation. They melded three bills. This bill now includes HB 237 and HB 277. On page 1, line 30, was REP. ROSE's bill. This included the \$10 fee for filing and entering papers received by transfer from other courts or on appeal from courts of limited jurisdiction. On page 2, line 5, the language speaks to fees in a contested estate proceeding, which was HB 277. The filing fee was increased from \$60 to \$70 for that filing. Handout - EXHIBIT 5

Proponents' Testimony:

Mary Phippen, Montana Association of Clerks of District Court, presented her written testimony on HB 195. **EXHIBIT 6**

{Tape: 1; Side: B; Approx. Time Count: 9:40; Comments: .}

Nancy Sweeney, Clerk of Court for Lewis and Clark County, presented her written testimony in support of HB 195. **EXHIBIT 7** She commented further that only are the warrants of distrains for residents of Lewis and Clark County filed in her office, but the warrants of distraint for out of state residents are filed in Lewis and Clark County.

Anita Vandolah, Clerk of Court for Pondera County, spoke in favor of the bill. Eighty one percent of their filing fees are generated by state agencies. The \$45 fee can be assessed back to the obligor at the time of the filing. She presented a letter from **Emile Kimmet, EXHIBIT 8.** She also presented a letter from **Jean Thompson, Yellowstone County Clerk of Court, EXHIBIT 9.**

David Scott, Department of Labor, spoke in support of HB 195. State agencies should pay for their use of district court services. They have, however, not included the projected costs in their budgets and have a difficult time collecting the original amounts. Clerks of Court have been extremely helpful to their agency.

Dave Woodgerd, Department of Revenue, spoke in favor of the concept of HB 195. They have concerns with the fiscal note. The fiscal note shows that the DOR in FY 98 will spend \$202,000 and in FY 99, \$270,000. That money is not in their budget. They are in favor of the amendment on page 3, lines 17 through 21, which specifically provides authority for the DOR to include the \$45 fee in the judgment with the warrant for distraint. They only collect about 25% of those, however. They do not have the ability to collect from all the obligors.

Kathleen Brewer, Clerk of District Court, Missoula, stated that in her county this would be a non-revenue source of an excess of \$11,000.

Laurie Maloney, Clerk of District Court, Butte-Silver Bow County, stated the district court's pie is a pie which everyone wants to get their fingers in. The clerks of court proposed three bills which have been consolidated into HB 195. She commented that **Sheila Brunkhorst, Clerk of Court, Beaverhead County,** stated that a review of their judgment docket shows that the DOR, in a five year period, filed liens in which 71% have already been released. A high percentage of these fees are recoverable by the state.

Opponents' Testimony: None

Informational Testimony:

Pat Chenovick, Montana Supreme Court, stated that the modification of fees would cause no additional costs for programming. Some of the fees in HB 195 will assist in helping make the judges retirement system actuarially sound. There was a constitutional passed in the last general election to fund the public retirement system in an actuarially sound basis.

Questions From Committee Members and Responses:

{Tape: 1; Side: b; Approx. Time Count: 10:04; Comments: .}

SEN. SHARON ESTRADA asked which additional bill was rolled into this bill?

REP. TASH stated that was HB 237, which was presented by REP. ROSE.

SEN. ESTRADA asked how the county treasurers regarded the bill.

Ms. Vandolah felt they would be highly in favor of the bill for revenue purposes.

SEN. LORENTS GROSFIELD was confused with the fiscal note. It appeared to him that the state agencies would pay \$45 to the county and then the county would return a portion back to the state.

Ms. Phippen explained that 57% of the clerk's fees which are collected are transmitted to the state to fund state agencies. The majority of the fees collected in the district courts do not stay there. They are looking for revenue. They would get 32% of the filing fees for the warrants of distraint and 68% would be transmitted back to the state.

REP. TASH stated that in FY 99 the district courts would receive \$506,500 additional revenue dollars from fees paid by state agencies. That would be broken down by 32% which would be \$162,100 and would be deposited to the district court fund to pay for district court operations. The remaining 68% or \$344,400 would be sent to the state treasury to the credit of the judges pension trust fund. If sufficient fees have already been collected in the judges pension trust fund to pay the required 34.71% transferred to PERS, any additional funds would be transferred to the state General Fund.

SEN. GROSFIELD asked how much of the 68% would end up in the general fund?

REP. TASH stated it would vary from district to district.

SEN. BARTLETT stated that the amount of money which has come from the fees to fund the judges retirement system has been

inadequate. To address that situation, the PERS had introduced HB 61 which will allow the money collected in court fees that has been going to the judges retirement system would not go there any longer but would go to the General Fund. The full amount needed to make the judges retirement system actuarially sound would be appropriated from the General Fund to the judges retirement system.

SEN. GROSFIELD asked why the fee wasn't lower and therefore could remain with the counties?

REP. TASH stated that that was suggested in House Judiciary. There was also a suggestion that the judges retirement system be amended out of the bill. The bill probably would not have passed in that state.

SEN. GROSFIELD asked why the DOR only collected 25%? He also wondered when they collect the fee?

Mr. Woodgerd stated the amendment to the bill would give them the authority to add the fee on to whatever reason they are filing the warrant for distraint. Their problem is they file multiple warrants in different counties for the same debt.

SEN. BARTLETT asked what is the priority order of the distribution of money?

Mr. Woodgerd stated that when they get a partial payment they start with the penalty, interest and then the tax.

SEN. BARTLETT asked if their rules could be modified, with the passage of this bill, to reflect that in a recovery when less than the full amount has been collected that the cost of the action could be the first thing paid?

Mr. Woodgerd stated that would be possible.

Closing by Sponsor:

{Tape: 1; Side: b; Approx. Time Count: 10:20; Comments: .}

REP. TASH stated that in his district the court was collecting 71%.

HEARING ON HB 337

{Tape: 2; Side: A; Approx. Time Count: 10:21; Comments: .}

Sponsor: REP. JOHN C. BOHLINGER, HD 14, Billings

Proponents: Joan Miles, Director of Lewis and Clark
City/County Health Department
Dr. Quinn, retired dentist
David Hemion, Montana Dental Association

Mary Alice Cook, Children and Families
Rus Hill, MTLA

Opponents: None

Opening Statement by Sponsor:

REP. JOHN C. BOHLINGER, HD 14, Billings, introduced HB 337. He brought this bill on behalf of dentists who would like to volunteer their time, without pay, to care for the poor, uninsured and homeless people of our community. This bill will make them immune from lawsuits except in cases of gross negligence or willful or wanton acts or omissions. There are two volunteer clinics operating in conjunction with community health centers in Montana. One is in Billings and the other is in Helena. Participation by local dentists has been limited because those who are actively working in their practices have very little time for volunteer work. A number of retired dentists would be willing to volunteer their time, if they didn't have to worry about being sued. The heart of the bill is found on lines 11 through 15. This states that dentists, who for charitable purposes, provide care or assistance without compensation, or who offer services at a minimum rate to provide for reimbursement for supplies and overhead costs, are not liable for civil damages. In Billings, \$20,000 worth of services was provided by retired dentists.

Proponents' Testimony:

{Tape: 2; Side: a; Approx. Time Count: 10:32; Comments: .}

Joan Miles, Director of Lewis and Clark City/County Health Department, stated they operate a federally funded, primary health care clinic which is called the Cooperative Health Center. They operate a dental clinic as part of the services of this federal clinic. There are currently three clinics in Montana which offer dental services. The Cooperative Health Center in Helena, the Deering Clinic in Billings, and the Partnership Health Center in Missoula. They were the first clinic to start dental services. She is very nervous about liability shields. The clients they serve are least able to access traditional medical care. They are also the least able to access the legal system if something goes array. They are interested in trying to get more dental care to people who are unable to get dental care through the traditional medical system. This would be very primary dental care and thus the liability risk would be fairly minimal. They are asking that the dentists who provide services be immune from ordinary negligence, not gross negligence. She presented a handout to the committee, **EXHIBIT 10**. They have 9 volunteer dentists. Since 1995, they have seen over 1200 people in this community. Their dentists have volunteered over 680 hours of care and the hygienists have assisted with 160 hours. They have given over \$95,000 in dental services to the indigent, uninsured and underinsured in this community. Complicated

procedures are referred out to specialists. They still have 150 people on a waiting list for dental care. It is very difficult to wait an unknown length of time for dental care. Their volunteer dentists are all practicing dentists. Their time is limited. Retired dentists would have more time. They only offer services ten to twelve hours a week. They have a fully equipped clinic. They are hoping this bill will open the door for retired dentists who cannot continue to carry liability insurance once they are no longer practicing.

Dr. Quinn, retired dentist, presented his written testimony, **EXHIBIT 11**. He has more time to volunteer now that he is retired than he did when he was in practice.

David Hemion, Montana Dental Association, spoke in support of HB 337. They represent approximately 90% of the dentists in the state. There are several initiatives which attempt to provide care to the indigent. This is one piece of that puzzle.

Mary Alice Cook, Children and Families, commented that this bill will increase the number of dentists who will participate in these types of clinics.

Rus Hill, MTLA, stated this is the second time in his tenure as a lobbyist when he has supported an immunity bill. They support this bill because of the standard enacted in terms of immunity which would still allow liability against the dentist for gross negligence. In dental care as opposed to medical care, the potential for catastrophic injury is less pronounced. The county has the back up liability. The need is more pressing in the dental context because of the Federal Tort Claims Act which includes doctors but not dentists.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 2; Side: a; Approx. Time Count: 10:35; Comments: .}

SEN. GROSFIELD asked why doctors were excluded from the bill, since they were originally included?

REP. BOLINGER stated that came about because of conversations he had with **Ms. Miles**. There is a greater need for dentists to be immune from lawsuits.

Ms. Miles stated they are a federally funded clinic and thus covered by the Federal Tort Claims Act. Their physicians are covered by the Act. It does not cover dental services even though dental care is within the scope of their grant. That would be a better, long-term solution. Doctors are not personally liable for negligence. The cause of action would be filed against the federal government.

SEN. GROSFIELD asked if it is common for a retired dentist to retain his licensure?

Mr. Hemion stated that retired dentists who keep up their licensure are required to pay the fee and to continue participating in the continuing education requirements. This would be about 20 hours per year. Some retired dentists work for other dentists on occasion.

SEN. GROSFIELD asked if this bill only applied to retired dentists who do maintain their licensure.

Mr. Hemion stated that was correct.

SEN. HALLIGAN was concerned about the broad language of the bill. If he was a dentist who had a Medicaid patient or charged a patient a lower fee in his normal practice, he could be totally immune from liability. He understood the testimony as the immunity being attached to a public service.

Mr. Hill felt there could be problems with the definition about charitable care and minimal compensation because of the problems of cost shifting. **Ms. Miles** looked at limiting this to federally funded clinics or specific charitable care clinics. In this session, this was the best they thought they could do.

SEN. HALLIGAN questioned how far this would reach for a dentist who might see an indigent person during the day? Would this immunity only cover outside of the regular practice?

Ms. Miles stated that they had discussed trying to better define what kind of entity would provide charitable care as a public service. They talked about limiting it to the federally funded clinics. She would not be concerned with narrowing this down to retired dentists who had a limited license which the Board of Dentistry could issue.

SEN. HOLDEN stated government needs to promote volunteerism. In small towns, they do not have programs for indigents. This bill can work for all of Montana.

REP. BOLINGER hoped that this immunity would encourage dentists all over the state would open their doors to those who do not have dental care. He stated that **Mr. Hemian** stated that it would be impossible for a dentist to offer dental services exclusively to Medicaid patients. There aren't enough dollars available for that. The practice would have to include all clients.

CHAIRMAN JABS asked **Ms. Miles** how long their clinic had been in operation?

Ms. Miles stated that they started in January of 1995. They were the first in the state to have a clinic which dedicated to providing care for people who are unable to get it otherwise.

CHAIRMAN JABS asked how patients would be charged?

Ms. Miles explained that through a federally funded clinic they are required to serve everyone. They can accept private pay. People who do have insurance have a regular dentist. They have a sliding fee scale which is usually applied to supplies only. This is set up by federal guidelines.

SEN. ESTRADA asked if dentists had release forms which released them from liability?

SEN. HALLIGAN stated that under the Federal Tort Claims Act there are certain things they would not be able to release themselves from liability. There would always be the question if the release was a knowing and voluntary release.

SEN. ESTRADA stated that in her district there is a lady who works two part-time jobs to raise four girls. She would love to go to the dentist. She is not on any program. The last thing in the world she would do is spend money on herself, because of her little girls. Would the release form work in her case?

SEN. HALLIGAN stated a dentist could use a release form if he worked for free.

Closing by Sponsor:

{Tape: 2; Side: a; Approx. Time Count: 10:53; Comments: .}

REP. BOLINGER commented that dentists would need to keep up their licensure. The reimbursement does not compensate the dentists for their work. It is not unreasonable to ask the client to pay for supplies used in providing a service. A release form for dentists who did not charge was a good and workable idea.

{Tape: 2; Side: b; Approx. Time Count: 11:16; Comments: break between hearing and executive session}

EXECUTIVE ACTION ON HB 292

Motion: **SEN. HALLIGAN MOVED HB 292 BE CONCURRED IN.**

Discussion: **SEN. BISHOP** stated that he was bothered with the possibility of someone having quit full-time employment 48 months previously would have to go back to the Academy to be recertified. However, at the end of 48 months that same person could go into the reserve program for a week and then go back to part-time or full-time employment.

SEN. HALLIGAN felt that if a person wanted to go back into the reserve they would have criteria to comply with.

SEN. GROSFIELD stated that if the time elapsed was over 36 months, they would have to comply with 7-32-303(5)(c) which

stated they had to satisfy the basic educational requirements by successfully passing a basic equivalency test and successfully completing a legal training course conducted by the Academy. If the peace officer fails the basic equivalency test, the peace officer shall complete the basic course within 120 days of the date of the test.

Vote: The MOTION CARRIED UNANIMOUSLY by voice vote.

EXECUTIVE ACTION ON HB 40

Motion: SEN. HALLIGAN MOVED HB 40 BE CONCURRED IN.

Discussion: SEN. JABS felt that bringing this bill back to the legislature every session was a costly procedure. He felt that this should be in statute permanently.

Vote: The MOTION CARRIED UNANIMOUSLY on voice vote.

EXECUTIVE ACTION ON HB 337

Motion: SEN. HOLDEN MOVED HB 337 BE CONCURRED IN.

Substitute Motion: SEN. HALLIGAN MOVED TO AMEND HB 337.

The amendment would be on line 13, strike "who offers services at a minimum rate to provide" and insert "provides care or assistance without compensation except for reimbursement for supplies" strike "and overhead costs" and then "is not liable." The person could still be reimbursed for supplies but is not liable for civil damages. He would strike "or who offers services at a minimum rate to provide" and make sure that it reads "for charitable purposes provides care or assistance without compensation except for reimbursement for supplies." This should still maintain the integrity of the bill.

SEN. HOLDEN recapped that SEN. HALLIGAN wanted to take out the wording "who offers services at a minimum rate".

SEN. HALLIGAN stated he also wanted to take out the issue about overhead costs. Dentists will have overhead costs whether they are doing something for charity or not. The key is to make sure there is immunity for the charitable act, where the person is donating their time, and possibly being able to be reimbursed for supplies. It is not intended to give you immunity when you are reimbursed for overhead costs which are part of your normal operations. He is striking "the minimum rate" because that is wide open and then the overhead costs and just dealing with the issue of supplies.

SEN. HOLDEN wanted to make sure supplies were left in the bill.

SEN. JABS stated that if the dentist offered services for a minimum charge they would not be immune.

SEN. HALLIGAN stated that if the dentist wanted to offer services on a sliding scale they could do that. They could also have a form for someone to sign that makes them immune from liability. No one will sign it, but they can try to do that. In order to qualify for this bill, they would have to do it without compensation except for the reimbursement of supplies.

SEN. BISHOP stated that if he were a dentist he would not charge for supplies. When you start charging, you need to justify what you charge is not more than what you have put out. This is a good substitute motion. You wouldn't want to charge for rent, receptionist, or another dentist in your office. Supplies would be so minimal, why would that be left in? **SEN. HOLDEN** mentioned denture materials. They are not providing that type of service. This is just the basic dental services which would be filling, cleaning, etc.

SEN. HALLIGAN stated he questioned if the proponents had any problems with the amendment.

Mr. Hemion said he did not.

SEN. HOLDEN stated he would vote for the amendment as long as the word "supplies" was left in the amendment.

Vote: The MOTION CARRIED UNANIMOUSLY.

Motion: SEN. ESTRADA MOVED HB 337 BE CONCURRED IN AS AMENDED.

Vote: The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 195

{Tape: 2; Side: b; Approx. Time Count: 11:25; Comments: .}

Motion: SEN. HOLDEN MOVED HB 195 BE CONCURRED IN.

Discussion: **SEN. HOLDEN** stated he felt it would be a waste of time to have state employees sending local government employees funds and then having the local government employees wasting time by sending the same money back to the state. Instead of a \$45 fee, he would change that to a flat \$15 fee so the money would not be shifted back and forth.

Ms. Sweeney stated that the Child Support Enforcement Division had 50% of the liens and they are federally funded.

SEN. GROSFIELD asked if the \$45 fee would be authorized under the federal funding set up for the Child Support Enforcement Division and also that this would be additional money for the state.

Ms. Sweeney believed that to be the case.

SEN. GROSFIELD questioned whether the Department of Revenue could be charged a different fee? Child Support Enforcement Division could be charged \$45 while the Department of Revenue would be charged \$15. This would be to address the situation of money going from pocket to pocket.

Ms. Sweeney stated that they were not advocating for the Judges Retirement Program. They are, however, a big recipient of the funds they would be collecting. This \$45 fee would be charged to individual civil litigants. They did not try to interfere with the appropriation of the money.

SEN. GROSFIELD stated the Departments of Labor and Transportation were also involved here.

Ms. Sweeney stated they limited the three types of actions they were dealing with in this area. In Lewis and Clark County there is much more litigation which the county taxpayers fund. They very specifically discussed warrants for distraint, which are for unpaid income taxes, abstracts of administrative order and final administrative order, as presented by Child Support Enforcement. The certificates of liens would be unemployment insurance.

SEN. HOLDEN felt that if the fee was left at \$45 it would offset the fees of people who did not pay.

SEN. GROSFIELD asked what percent of the fees owed by the Child Support Enforcement Division would be paid?

Ms. Sweeney stated that she assumed all the agencies would do their best to collect the entire amount owing. The Beaverhead County Clerk of Court stated that 76% were satisfied within a five year period. She is not sure of the accuracy of the Department of Revenue's figures that they only collect 25% of their collections owing.

SEN. GROSFIELD stated this could be set up so that the charge for a warrant for distraint would be \$15. The types of services provided for the Child Support Enforcement Division could be \$45.

SEN. BARTLETT asked **Ms. Sweeney** to explain the accounting process in the Clerk of Court's Office as well as the County Treasurer's Office in regard to a single state agency having a lower fee to pay and thereby allowing all the money to stay in the county versus the current structure of accounting.

Ms. Sweeney stated they have a very complex disbursement of all fees of the district court. They provide the treasurer with a final transmittal sheet and they handle the administrative function of designating which state fund is earmarked for those funds. Most counties are on a computerized system. Leaving the disbursement schedule intact would require no changes to their current computerized system. She felt that disbursing the funds separately may cause some major computer programming changes.

The clerks who handle this by hand would spend many additional hours in disbursing these amounts.

SEN. BARTLETT stated this separate disbursement schedule would involve changing forms to add a line. The computer programming would have to be written to add another account and everything flowing from that. She did not object to the goal attempting to be achieved, but she felt that it would create more of a problem for the clerks of court and the county treasurers and would end up being more of disservice than a benefit to the counties.

SEN. ESTRADA stated the intent of the bill is to leave the money in the counties. In Yellowstone County that would be over \$20,000. The money would come out of the General Fund.

Ms. Sweeney stated that at least 50% of the money would be coming from the federal government and not the state General Fund.

SEN. ESTRADA felt that was not explained in the fiscal note.

Ms. Sweeney explained that when the fiscal note was prepared, this was not taken into consideration. During the House Judiciary Committee hearing they were informed by the Child Support Enforcement Division informed them that the majority of their budget was from federal funds.

SEN. GROSFIELD stated that page 3 of the bill talked about funds (d) through (i) being deposited in a district court fund. That would be only a few of the laundry list of (a) through (q). Subsection (2) states that 32% of all fees collected by the clerk would be deposited in the district court fund but (7) states that all the funds collected in (d) through (i) are deposited in that fund.

Ms. Sweeney stated that in general they are a collection agency to fund various and sundry state programs. This is very complex and throughout their entire fee statute, there are certain fees earmarked. In general, there is a broad category which splits the 32% to 68% which goes to a certain type of action. There are still exceptions and then the remainder is split at a 32% to 68% basis.

{Tape: 3; Side: a; Approx. Time Count: 11:40; Comments: .}

SEN. GROSFIELD felt the Department of Revenue could be added to the (d) through (i) exception which shouldn't require much additional work.

SEN. BARTLETT wanted to verify that with the people in the Supreme Court Administrator's Office who handled the programming.

SEN. GROSFIELD felt they needed more information before amending the bill.

SEN. HOLDEN withdrew his motion.

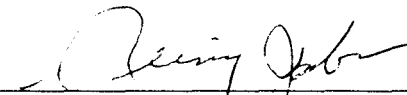
Ms. Sweeney added that each fee which requires a different distribution has a pop-up screen to distribute. Instead of one general area for judgments, transcripts or liens, there would be one selection would need at least three pop-up screens.

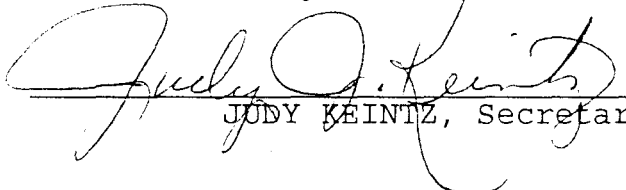
SEN. GROSFIELD felt that 25-1-201 required an unusually complicated accounting by the clerks of district court. He felt that the cost for this accounting would be quite high. This was a good example of extreme paperwork shuffle.

SEN. CRIPPEN felt that would be a good study for next session.

ADJOURNMENT

Adjournment: The meeting adjourned at 11:50 a.m.


SEN. REINY JABS, Acting Chairman


JUDY KEINTZ, Secretary

RJ/JJK