

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 21, 1991,
at 9:05 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chair (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Jessica Stickney and Thomas Lee

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

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

EXECUTIVE ACTION ON HB 101

Motion: REP. RUSSELL MOVED HB 101 DO PASS.

Motion: REP. RUSSELL moved HB 101 be amended. EXHIBIT 1

Discussion:

REP. RUSSELL stated one of the amendments is on page 7 line 8
following the final sentence add, "Community-based pre-release

centers may accept or reject any defendant referred by the sentencing court". The other amendment is to delete the word "secure" from the language on page 1, line 7 and on page 6, line 25.

Vote: Motion carried.

Motion/Vote: REP. RUSSELL MOVED HB 101 DO PASS AS AMENDED.
Motion carried.

EXECUTIVE ACTION ON HB #71

Motion: REP. MEASURE MOVED HB 71 DO NOT PASS.

Discussion:

REP. MEASURE stated he believes in the intent of the bill. You are not leaving much to the discretion of the judge. Some type of arbitrary determination has to be made as to what the ability is. I don't think there are many people that have the ability to pay. The judge could take away personal property from an individual to pay the costs of incarceration and I am afraid of the impact it would have on families.

REP. TOOLE stated he concurs with REP. MEASURE.

REP. BROWN stated he concurs with Rep. Measure. The courts already have this ability. What we are doing is setting public policy in the state of Montana. When the state sets public policy then there is the obligation of the state to cover these costs.

Vote: Motion failed 8 to 12. EXHIBIT 2

Motion: REP. BROWN MOVED TO REVERSE THE VOTE.

Vote: Motion carried. Outcome of vote was DO PASS.

EXECUTIVE ACTION ON HB #92

Motion: REP. GOULD MOVED HB 92 DO NOT PASS.

Discussion:

REP. BROWN stated he had talked with someone from the California Correction Center and they had stated they were having problems with the ignition device. He also stated he could foresee a group of kids running around town after 2 a.m. getting drunks to pay them to get into their car and get it started for them.

Motion/Vote: REP. RICE moved to amend HB 92 by excluding first

offenders from being sentenced with the ignition device. Motion carried.

Motion: REP. GOULD MOVED HB 92 DO NOT PASS AS AMENDED.

Motion/Vote: REP. BROWN MADE SUBSTITUTE MOTION HB 92 BE TABLED. Motion carried 12 to 8 with Rep's: Johnson, Messmore, Clark, Boharski, Darko, Rice, Lee and Strizich voting no.

HEARING ON HB #159

ALLOW CAUSE OF ACTION AGAINST BIDDER FAILING TO CARRY INSURANCE

Presentation and Opening Statement by Sponsor:

REP. CROMLEY, HOUSE DISTRICT 8, this bill would allow an unsuccessful bidder, that later found out the contractor that did get the bid, didn't pay his worker's comp or his unemployment insurance, can sue that contractor for damages. We also have some amendments presented by proponents of the bill. EXHIBIT 3

Proponents' Testimony:

Gene Fenderson, Montana State Building and Construction Unions, stated they do not have the figures for the state of Montana on what it has done to the construction companies or the workers, but we found the best study done in California. That study found that anyone who paid or receives cash for work performed without reporting the transaction to the appropriate taxing authorities has engaged in cash pay transaction has paid in the underground economy. Such transactions are common. The state of Montana is having difficulty in insuring Worker Compensation Laws. Other states using HB #159 do not seem to have this problem.

Questions From Committee Members:

REP. TOOLE asked REP. CONNELLY has their been any discussion on what the amount of the damage should be or how they are measured? REP. CONNELLY said no there hasn't been at this point. I thought I could meet with the department and work out those kinds of problems.

REP. RICE asked REP. CONNELLY asked if the person bringing the suit would be able to recover from the successful bidder the amount of profit he expected to make from the job. Is that the concept? REP. CONNELLY said yes. REP. RICE stated the bill does not specify that it would have to be the second lowest bidder, it could be 9th or 10th lowest bidder. Is this correct? REP. CONNELLY said yes. They should be allowed to do this, but you might want to restrict it somewhat.

REP. MEASURE asked Mr. Fenderson if Montana has a similar statutory scheme to California? Mr. Fenderson said no they don't, but in the Connecticut situation a number of contractors have

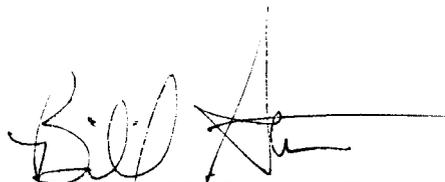
gotten together as a group and gone after the bidder that had been cheating on the state. REP. MEASURE asked if Connecticut or California passed a law in response to those abuses or are they operating and prosecuting those abuses under existing law? Mr. Fenderson said they have passed special legislation similar to this.

Closing by Sponsor:

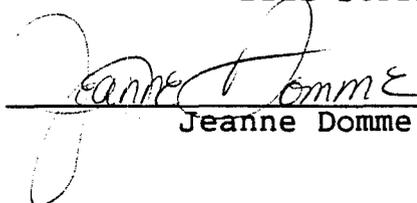
REP. CONNELLY stated the Connecticut law took effect Oct. 1 of last year. What this does is protect the registered contractor. We all know the problem the Workers Compensation has had here and this bill will help force these people to pay who've held back.

ADJOURNMENT

Adjournment: 10:00 a.m.



Bill Strizich, Chair



Jeanne Domme, Secretary

BS/jmd

[Handwritten signature]

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE Jan. 21-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN		<i>WFB</i>	
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE		/	
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/	<i>TR</i>	
REP. JESSICA STICKNEY		<i>DA</i>	/
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

11:50 AM
1-22-41
JOB

HOUSE STANDING COMMITTEE REPORT

January 21, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 101 (first reading copy -- white) do pass as amended .

Signed: [Signature]
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 7.

Strike: "SECURE"

2. Page 4, line 18.

Page 6, line 25.

Strike: "secure"

3. Page 5, line 1.

Page 7, line 8.

Following: "53-1-203."

Insert: "The prerelease center may accept or reject a defendant referred by the sentencing court."

11:30 AM
1-21-91
AD

HOUSE STANDING COMMITTEE REPORT

January 21, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 71 (first reading copy -- white) do pass.

Signed: 
Bill Strizich, Chairman

EXHIBIT 1
DATE 1-21-91
HB 101

Amendment to House Bill 101
First Reading Copy

Prepared by Department of Institutions
January 10, 1991

Page 7, line 8.

Following the final sentence add, "Community-based pre-release centers may accept or reject any defendant referred by the sentencing court".

EXHIBIT 2
 DATE 1-21-91
 HB 71

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 1-21-91 BILL NO. 71 NUMBER _____

MOTION: DO NOT PASS

NAME _____ AYE _____ NO _____

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON		/
REP. VERNON KELLER	/	
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE	xx	/
REP. LINDA NELSON		/
REP. JIM RICE		/
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN		/
TOTAL	8	12

Amendments to House Bill No. 159
First Reading Copy

EXHIBIT 3
DATE 1-21-91
HB 159

For the Senate Judiciary Committee

Prepared by Gene Fenderson
January 19, 1991

1. Title, lines 7 and 8.

Following: "INSURANCE" on line 7.

Strike: "OR"

Insert: ", "

Following: "INSURANCE" on line 8

Strike: "."

Insert: "OR PREVAILING WAGE RATES."

2. Page 1, lines 17 and 19.

Following: "39-51-1103," on line 17

Strike: "or"

Following: "39-71-401" on line 19

Strike: "."

Insert: "or does not pay the proper prevailing wage, on public
works contracts as required by 18-02-403."

