

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY**

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 12, 2001 at 10:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

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

Committee Business Summary:

Executive Action: SB 334, SB 382, SB 386, SB 392,
SB 158

EXECUTIVE ACTION ON SB 334

Motion: SEN. HOLDEN moved SB 334 DO PASS. Amendments were handed out **EXHIBIT**(jus35a01).

Discussion:

SEN. WALT MCNUTT asked for a clarification of the treatment needed in remote areas. **CHAIRMAN LORENTS GROSFIELD** said page 2

attempts to explain the remote areas and the issues involved. He said it allows an alternative procedure for people who live in remote areas.

SEN. MCNUTT was concerned that the drivers should be treated the same whether or not they have a program to attend.

SEN. JERRY O'NEIL wondered if a sunset clause should be added. **CHAIRMAN GROSFIELD** said two years might not be enough time to get this program set up. He said by adding language pertaining to persons living in an area where there isn't a program available, the department can not take their license away. He pointed to the bottom of page 6 explaining the program for people who are not in the area.

SEN. O'NEIL asked if the judge would be allowed to relieve the people from this requirement or would there need to be special language in the bill to provide for this issue. **CHAIRMAN GROSFIELD** answered it was administrative and upon the decision of the department, but the department could take away their licenses if they do not attend the program.

Brenda Nordlund, Motor Vehicle Division, said a criteria could be set and submitted to the department, then they would waive the suspension. **SEN. O'NEIL** said it could cause a loophole and he felt the judge should be the deciding factor. He asked if this made a difference. **CHAIRMAN GROSFIELD** said Section 2 allows authority to the department to suspend licenses.

SEN. MCNUTT said he understood the department to collect the points and notify the driver so the judge would not be involved.

SEN. RIC HOLDEN asked for clarification of what people in rural areas are doing now. **CHAIRMAN GROSFIELD** said some of these programs are available and municipal, justice of peace judges as well as district judges utilize this program in these areas.

SEN. HOLDEN asked where in the bill, would it state people in rural areas have to go to these programs. He asked if a judge could assist them. **SEN. MIKE HALLIGAN** said if the points add up on a driving record the defenders are sent a letter and required to go to a program wherever available. He pointed out that judges would work with the defenders prior to attending a program.

SEN. HOLDEN asked what these defenders do to get to this point of suspension. **Brenda Nordlund** explained point structures vary for the offenses.

SEN. HOLDEN said if this bill was put into effect, private companies could expand into these remote areas.

SEN. AL BISHOP asked how long do these programs of rehabilitation last for the defender. **CHAIRMAN GROSFIELD** said these programs are not extended, they are one or two days.

SEN. BISHOP pointed out the application form for one of the programs and he asked if the extent of these programs are only four hours. **CHAIRMAN GROSFIELD** answered that is correct.

SEN. BISHOP said he didn't understand how in half a day these defenders could be rehabilitated.

Substitute Motion: **SEN. O'NEIL** moved to add language on page 6, line 29: "after a period to not exceed 6 months or until successful completion of course".

Discussion:

CHAIRMAN GROSFIELD explained this addition would allow the defender to get their license back within 6 months if they have completed the program. He said this bill is to help improve the driving of these defenders.

Vote: Substitute Motion carried unanimously.

Vote: Motion SB 334 DO PASS AS AMENDED carried unanimously.

EXECUTIVE ACTION ON SB 382

Motion: **SEN. HALLIGAN** moved SB 382 BE AMENDED. Amendments were handed out **EXHIBIT(jus35a02)**.

Discussion:

Valencia Lane explained the amendments and the clarifications added.

SEN. HALLIGAN said he worked with the language of the bill to make it clear and understandable.

Vote: Motion SB 382 BE AMENDED carried unanimously.

Motion/Vote: **SEN. MCNUTT** moved SB 382 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 386

Motion: SEN. HALLIGAN moved SB 386 DO PASS.

Discussion:

{Tape 1; Side B}

SEN. HALLIGAN explained the bill and asked how this bill would be affected in the house with a similar bill. **Valencia Lane** said the rule is if a bill is killed in one house, it cannot be introduced into the other house.

SEN. HOLDEN felt this bill was different and should be allowed into the house even if the similar bill was not passed.

CHAIRMAN GROSFIELD asked if the similar bills are different due to the fiscal impact. SEN. HALLIGAN said yes, that was correct.

SEN. MCNUTT asked if this bill was to be mandatory and is now discretionary. SEN. HALLIGAN answered yes, that is the difference.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 392

Discussion:

SEN. HOLDEN handed out amendments for this bill **EXHIBIT (jus35a03)**, and explained the changes in the language.

Motion: SEN. HOLDEN moved #1 & #4 to SB 392 BE ADOPTED.

Discussion:

SEN. DUANE GRIMES agreed with SEN. HOLDEN and wondered if this bill would still carry because the sponsor may not want these sections taken out. He asked if the sponsor was contacted regarding the changes on the amendments. SEN. HOLDEN said he had contacted the sponsor and was told to go ahead with the changes.

Vote: Motion TO ADOPT #1 & #4 carried with SEN. DOHERTY and CHAIRMAN GROSFIELD voting no.

Motion: SEN. HOLDEN moved #2, #3, & #5 SB 392 BE AMENDED.

Discussion:

SEN. BISHOP asked if the language of avoidance was taken out, and wondered if people were suppose to hit the animal straight on.

SEN. HOLDEN explained by avoiding the animal people would then drive into a ditch or hit a pole and that would be considered a collision loss instead of a comprehension loss.

SEN. O'NEIL wondered if this committee was trying to set policy for Montana allowing to hit a deer rather than to avoid the deer.

CHAIRMAN GROSFIELD said through driver education and training, people should stay on their course of travel. He felt the language of avoidance adds many speculations with hearsay from people, who may take their vehicles in and just say they were avoiding a deer in the road.

Vote: Motion TO ADOPT #2, #3, & #5 carried with SEN. HALLIGAN voting no.

Motion: SEN. HOLDEN moved SB 392 #6 BE ADOPTED.

Discussion:

Valencia Lane explained Section 6 of the amendment and said it would strike the remaining language.

SEN. HOLDEN mentioned he had asked the sponsor how this would effect the bill. **Valencia Lane** commented she did not draft this bill and the language is similar to what is currently on the books as existing law.

SEN. HOLDEN asked if a high risk driver could not take advantage of this piece of legislation. **Valencia Lane** said it is the opposite. She explained high risk drivers can only receive insurance through a certain program to keep driving.

SEN. GRIMES said this amendment looks as if it goes the opposite direction. He thought if this amendment was adopted and a person hits an animal, this may have created a presumption in the law.

Greg VanHorsen, Lobbyist for Insurance Companies, said Section 6 opens the door for problems in the law. He said it prohibits cancellations of driving records or non-renewals.

Motion Withdrawn: SEN. HOLDEN withdrew his amendment for Section 6 of SB 392.

Discussion:

CHAIRMAN GROSFIELD said the number of times for these violations could be added to this bill. **SEN. HOLDEN** said he was not following the idea in relation to adding this language.

CHAIRMAN GROSFIELD said it deals with the habitual negligent driver in violation of hitting animals. He said on page 3, line 16 it would add a subsection stating "has not had four or more collisions with a game animal, fur-bearing animal or predatory animal within the previous five year period".

SEN. STEVE DOHERTY felt the language should not be limited because the bill offers people premium increases, but they will only be offered if they fall within the sections that are listed in this amendment.

Motion: **SEN. DOHERTY** moved **SB 392 DO PASS AS AMENDED.**

Discussion:

SEN. HOLDEN said these type of insurance claims get out of proportion due to the number of accidents the driver has. He added that licenses of drivers do not get terminated because they hit an animal and insurance agencies want to keep their customers.

{Tape 2; Side A}

SEN. O'NEIL agreed with **SEN. HOLDEN** that insurance companies would not take the policy away from a client due to an accident with an animal. He felt no more laws were needed to be added to this state for insurance companies to keep racking up funds.

SEN. BISHOP asked about domestic animals and why are they not dealing with this topic. **SEN. HOLDEN** answered domestic animals are usually in the person's yard in captivity. He said fences are usually up and with farm animals there is a certain amount of control whether or not the animals venture out on the roads.

SEN. BISHOP said it sounded like liability, and thought about the driver who hits the animals. He felt the "other" was an entirely separate issue for this bill.

SEN. GRIMES thought there should be notification for Montana Fish Wildlife and Parks. He pointed out the game management practices and it could be a factor for this bill.

Vote: Motion carried 7-2 with **SEN. GRIMES** and **SEN. O'NEIL** voting no.

Miscellaneous Discussion:

SEN. DOHERTY mentioned a bill brought to him by the Cascade County Attorney's office dealing with the need for additional investigative resources in felony non-support cases of children. He handed out the letters he received in regard to this action **EXHIBIT(jus35a04)** **EXHIBIT(jus35a05)**.

SEN. O'NEIL felt this committee didn't have the jurisdiction to consider this bill. He asked if anyone would like to bring his bill, SB 109, off the table in order to revise and allow authority that **SEN. DOHERTY** was proposing.

SEN. DOHERTY said there was a difference with this bill dealing with the rules of procedure. He said he was bringing this request forward and will not make a motion on this action.

SEN. O'NEIL mentioned amending MCA codes and handed out a revision **EXHIBIT(jus35a06)**.

EXECUTIVE ACTION ON SB 158**Discussion:**

CHAIRMAN GROSFIELD explained the amendments that were handed out **EXHIBIT(jus35a07)**. He said one of the issues this deals with is how cases are removed from the court of appeals from the supreme court. He pointed out it depends upon the timing issue and if the supreme court has removed the case for the appellate court to take action on.

Karla Gray, Chief Justice Montana Supreme Court, said by classifying a case it becomes traditional for the supreme court and there is an up-front period in the notice of an appeal. She explained how the practice takes place and, after the stages, the case appears to the supreme court for a decision.

CHAIRMAN GROSFIELD said the concern was the timing when cases would be separated within each court and these amendments address that issue. He pointed out the sections in the amendments that address this concern and the removal of cases would be done by (a) involving a question of first impression, (b) involving a constitutional issue, (c) if it raises validity of a statute or, (d) dealing with inconsistency of decisions that have been made in the past.

SEN. O'NEIL asked if this appellate court has jurisdiction to decide the rules of the supreme court. **Karla Gray** said this is a

statutory court, not a constitutional court. She said this court doesn't have jurisdiction on a universal extent. She was not convinced this committee could tell the supreme court what type of cases to deal with.

CHAIRMAN GROSFIELD stated within Article 7, Section 1 of the constitution, the state was vested in one supreme court and district courts, justice courts and other courts may be provided by law.

SEN. O'NEIL asked if this statutory court would allow jurisdiction to be determined and what type of qualifications for practicing before this court would it have. **Karla Gray** said this bill sets forth the qualifications within the first section. She said this appellate court could not set the rules as to who could practice before the court.

CHAIRMAN GROSFIELD mentioned the bill explains the supreme court may make rules governing practice and procedure for all other courts.

SEN. O'NEIL asked what the difference of practice and procedure is for the supreme court and this appellate court. **Karla Gray** said this bill doesn't establish rules of procedure for the court of appeals, it is setting up the structure and parameters for this court that is to be created.

SEN. HALLIGAN asked if a chief judge or the members of the court of appeals request a case to be removed. **Karla Gray** said the language in this bill may need to be more specific. She said it might be best to invest authority with the chief judge because to do it otherwise it would require the court of appeals to get far enough into a case to take a majority vote to make the recommendation.

{Tape 2; Side B}

SEN. HALLIGAN asked if the case was a big tax case and it ended up going to the appellate court, does the chief judge decide they cannot work on it. **Karla Gray** said that is the matter within this committee to make that decision.

CHAIRMAN GROSFIELD said the chief judge should have the authority. Due to the lack of resources available and not having all the other judges bothered with time, it would make sense to have the chief judge make the discretion.

SEN. O'NEIL asked if they left the amendment as it currently was could the court make the internal operating rules of how they

were going to do a case. **CHAIRMAN GROSFIELD** said they may be able to do that procedure, but it could get into more legalities.

Valencia Lane pointed out the significant change in the amendments on page 4 limiting the types of cases that can be reviewed by the supreme court. She explained other changes regarding the case load of the supreme court and said that it would limit Section 6 of the bill, changing time requests of petition review from 30 to 20 days. **CHAIRMAN GROSFIELD** said this allows the appeals court to be the last stop on cases that aren't included in this section. **Valencia Lane** mentioned the section in the amendment that allows the Governor to appoint members as opposed to being elected. She said that a change needs to be made within the title of the bill to better reflect what the bill will now do.

SEN. HALLIGAN thought it would be good to vote on these amendments separately for discussion purposes.

Motion: **SEN. GRIMES** moved **Sections 1 through 14 SB 158 TO BE AMENDED.**

Discussion:

SEN. HOLDEN asked if amending the bill would affect the fiscal note. **CHAIRMAN GROSFIELD** said this bill would eventually go to the Finance Committee. He said there are ways of cutting the fiscal note down and he gave examples.

SEN. MCNUTT asked if the section that the committee is voting on includes the chief judge amendments. **CHAIRMAN GROSFIELD** answered yes.

Vote: Motion Sections 1 through 14 SB 158 BE AMENDED carried unanimously.

Motion/Vote: **SEN. GRIMES** moved **SB 158 SECTIONS 15 THROUGH 18 BE AMENDED.** Motion carried with **SEN. HALLIGAN** voting no.

Motion: **SEN. GRIMES** moved **SB 158 DO PASS AS AMENDED.**

Discussion:

SEN. GRIMES wanted to make sure of the clarity of these amendments and referred to page 3. He said the bill will allow the chief judge discretion, even if there are questions of first impression of needing to go to the supreme court and he asked if

this was correct. **Karla Gray** said this does not allow the chief judge to forward cases to the supreme court, so that is correct.

SEN. HOLDEN said there is too much litigation going on currently and they need to try and cut back on the case load. He felt by adding another layer of judiciary would encourage more lawsuits to take place.

SEN. O'NEIL thought some of the things that are being done with this bill could be done internally with operating rules of the supreme court. He tried to point out ways to save money and time.

Vote: Motion carried with **SEN. O'NEIL** voting no.

ADJOURNMENT

Adjournment: 12:00 P.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus35aad)