

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
57th LEGISLATURE - REGULAR SESSION  
CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 216**

**Call to Order:** By **CHAIRMAN RIC HOLDEN**, on April 10, 2001 at 1:00 P.M., in Room 137 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Ric Holden, Chairman (R)  
Sen. Dan Harrington (D)  
Sen. Corey Stapleton (R)  
Rep. Dennis Himmelberger Vice Chairman (R)  
Rep. Christopher Harris (D)  
Rep. Ken Peterson (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present: John MacMaster, Staff**

Mary Lou Schmitz, Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted:

Executive Action: **HB 216**

**Senator Holden opened the Conference Committee and asked Rep. Himmelberger to discuss his amendments.**

**Rep. Himmelberger** said he contacted **Greg Petesch** who informed him there was a Bill, HB 191, that has gone through the system with the Governor's signature and in that Bill it does say "shall". He referenced this Bill on Page 3, lines 4, 12, 30; Page 4, lines 3, 8 and 28; Page 5, line 30; Page 6, Line 3. He learned from **Mr. Petesch**, a Bill that has gone through the system can't be in conflict with another Bill.

**Motion: Rep. Himmelberger** moved to change the "mays" to "shall".

**Discussion:** **Rep. Peterson** said, from a practical standpoint, making community service mandatory is going to have a bigger effect and a more lasting impression upon the young people who are either buying, possessing, attempting to buy or using these products. He cited a personal experience with a son who had speeding tickets and was given community service and it made a far greater impression on him than a fine.

**Rep. Harris** asked **John MacMaster** for his opinion. **Mr. MacMaster** said he wasn't aware of HB 191. He referred to Page 3, line 30 of HB 216. Right now the existing law is that community service shall be ordered so he doesn't think HB 191 could have changed that to make it mandatory.

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**Rep. Himmelberger** withdrew his motion at **Senator Holden's** request, so the committee could go on to other issues while **Mr. MacMaster** left to get a copy of HB 191.

**Rep. Himmelberger** referred to **Senator Stapleton's** amendments which took out the distinction "under 18 and 18 to 21". **Rep. Himmelberger** said in the original version of the Bill, the fines were higher for under 18 than they were for 18 to 21. **Senator Stapleton** said he lowered the minor's fines to make them equal punishment for an adult, 18 to 21, who committed the same crime. **Rep. Himmelberger** said his preference would have been instead of lowering the higher to lower to raise the lower to higher. **Senator Stapleton** said he would support that. The problem he had with the Bill when it was presented on the floor, was the inequity. Kids would be charged a higher penalty than adults for breaking the same law.

**Senator Holden** said he thought some of these fines are too stiff. He supported this amendment on the floor because if you have language that requires kids to perform community service and take the "may" to "shall" that adds more impact, as **Rep. Peterson** mentioned.

**Senator Stapleton** said kids are guilty by association, who don't drink, and can be charged.

**Rep. Himmelberger** said the penalties were considerably lower for MIT than it was for attempting to purchase. He said if the committee feels better with the fines where they are now and that we are creating more of a problem by trying to raise them, then it is more important to him to get the Bill through than it is to get fines up another \$50 or \$100 and then lose the Bill.

**Rep. Harris** asked if they could compromise and reinsert "shall" but leave the fines where the Senate left them. **Rep. Himmelberger** said he understands they have to and believes they can't do anything with the Bill unless they do change to "shall".

**Mr. MacMaster** said he looked at HB 191 and it doesn't even amend the parts of the Bill where this Bill substitutes "may" for "shall" so "may" can be left in here without a problem.

**Motion:** **Rep. Himmelberger** made a motion to change the "mays" to "shall" on page 3, lines 4, 12, 30; page 4, lines 3, 8, 28; page 5, line 30 and page 6, line 3.

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**Discussion:** **Rep. Harris, Senator Stapleton, Rep. Peterson, Senator Harrington, Rep. Himmelberger** gave opinions and concerns.

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**Further Discussion:** **Senator Stapleton, Senator Harrington, Rep. Peterson, Rep. Harris.**

**Vote:** Motion failed 4-2 with Senators Harrington and Stapleton voting no, which did not reflect a majority with the Senators.

**Discussion:** **Mr. MacMaster** said, in response to a question by **Rep. Himmelberger**, of the seven or eight places included in the motion where "may" was replaced by "shall", **Rep. Harris** did find a place where HB 191 added the word "shall" so there is a conflict now. In view of the fact the motion failed, since this Bill will pass with "may" in it and HB 191 has already been passed into law with "shall" in it, then another motion should be included in HB 191 a coordination instruction which will simply say that this Bill, HB 191, has been changed to substitute "shall" for "may" on Page 1.

**Motion:** **Senator Harrington** moved a coordination clause to identify the two Bills. Motion carried unanimously. 6-0.

**Mr. MacMaster** announced to the Committee that **Greg Petesch** may say the Committee does not need a coordination instruction.

After conferring with **Mr. Petesch, Mr. MacMaster** said a Free Conference Committee would have to decide the conflict between HB 216 and HB 191. A notice was sent to all Committee members advising same.

**ADJOURNMENT**

Adjournment: 1:45 P.M.

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SENATOR RIC HOLDEN, Chairman

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Mary Lou Schmitz, Secretary

RH/mls

**EXHIBIT (cch81hb0216aad)**