

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on February 18, 2005 at 7:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 705, 709, 718, 721, 726, 727,
730, 731, 733, 735, 2/10/2005

Executive Action: HB 617, 641, 735-Tabled, HB 705-Do
Pass, HB 61, 709, 730, 240-Do Pass
As Amended, HB 727-Tied

EXECUTIVE ACTION ON HB 641

(Please Note: REPS. KOOPMAN, PARKER, WILSON out of room.)

Motion/Vote: REP. RICE moved that HB 641 DO PASS. Motion failed 8-10 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. LANGE, REP. MCGILLVRAY, REP. RICE, REP. SONJU, REP. STOKER, and REP. WARD voting aye. (REPS. KOOPMAN, PARKER, WILSON voted by proxy vote.)

Motion/Vote: REP. LANGE moved that HB 641 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 58}

EXECUTIVE ACTION ON HB 240

(Please Note: REPS. KOOPMAN, PARKER, WILSON back in room.)

Motion: REP. HARRIS moved that HB 240 DO PASS.

Motion: REP. HARRIS moved that HB 240 BE AMENDED.

[EXHIBIT \(juh40a01\)](#)

Discussion:

The committee discussed the amendment, with REP. MCGILLVRAY stating the list is too short, "...we should add homely, fat, etc...." The committee continued to discuss this amendment.

Vote: Motion that HB 240 BE AMENDED carried 17-1 by roll call vote with REP. WARD voting no.

Motion: REP. HARRIS moved that HB 240 DO PASS AS AMENDED.

Substitute Motion/Vote: REP. STOKER made a substitute motion that HB 240 BE TABLED. Substitute motion failed 8-10 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. LANGE, REP. MCGILLVRAY, REP. RICE, REP. SONJU, REP. STOKER, and REP. WARD voting aye.

Vote: Motion that HB 240 DO PASS AS AMENDED carried 10-8 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. LANGE, REP.

MCGILLVRAY, REP. RICE, REP. SONJU, REP. STOKER, and REP. WARD
voting no.

{Tape: 1; Side: A; Approx. Time Counter: 58 - 320}

EXECUTIVE ACTION ON HB 91

REP. HARRIS Moved that HB 91 Do Pass. CHAIRMAN RICE did not
recognize the motion.

{Tape: 1; Side: A; Approx. Time Counter: 320 - 325}

EXECUTIVE ACTION ON HB 617

Motion: REP. KOOPMAN moved that HB 617 DO PASS.

Motion: REP. KOOPMAN moved that HB 617 BE AMENDED.

[EXHIBIT](#) (juh40a02)

Discussion:

REP. KOOPMAN explained the amendment to the committee members.

(Please Note: REP. PARKER left the room.)

Vote: Motion that HB 617 BE AMENDED failed 9-9 by roll call vote
with REP. EVERETT, REP. KOOPMAN, REP. LANGE, REP. MCGILLVRAY,
REP. NOENNIG, REP. RICE, REP. SONJU, REP. STOKER, and REP. WARD
voting aye. (REP. PARKER voted by proxy vote.)

(Please Note: REP. PARKER returns to the room.)

Vote: Motion that HB 617 DO PASS failed 8-10 by roll call vote
with REP. EVERETT, REP. KOOPMAN, REP. LANGE, REP. MCGILLVRAY,
REP. RICE, REP. SONJU, REP. STOKER, and REP. WARD voting aye.

Motion/Vote: REP. WINDHAM moved that HB 617 BE TABLED AND THE
VOTE REVERSED. Motion carried unanimously.

{Tape: 1; Side: A; Approx. Time Counter: 325 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 39}

EXECUTIVE ACTION ON HB 61

Motion: REP. CLARK moved that HB 61 DO PASS.

Motion: REP. CLARK moved that HB 61 BE AMENDED with GREY BILL.
[EXHIBIT](#) (juh40a03)

Discussion:

Mr. MacMaster explained to the committee members what a Grey Bill will do is strike out what the committee members don't want and inserts what the committee members do want by computer. REP. CLARK wanted to amend Page 3, Line 1, to strike "disseminate description." The committee discussed this amendment.

Motion: REP. NOENNIG moved a Conceptual Amendment TO INSERT "IF ANY" AND STRIKE "IN WRITING" REFERENCING PAGE 3, SUBSECTION 5.

Motion: REP. CLARK moved TO COMBINE AMENDMENTS: "IF ANY" AND "IN WRITING."

(Please Note: REP. KOOPMAN left the room.)

Vote: Motion that HB 61 BE AMENDED with COMBINED AMENDMENTS carried 17-1 by roll call vote with REP. WILSON voting no. (REP. KOOPMAN voted by proxy vote.)

Motion/Vote: REP. STOKER moved that HB 61 DO PASS AS AMENDED. Motion carried 16-2 by voice vote with REP. BECKER and REP. WILSON voting no. (REP. KOOPMAN voted by proxy vote.)
{Tape: 1; Side: B; Approx. Time Counter: 39 - 455}

EXECUTIVE ACTION ON HB 222

Mr. MacMaster discussed HB 222 as to the "Silver Bullet" that was used to move HB 222 out of the committee on 2/17/2005. He stated that the language should read "as amended." REP. LANGE informed the committee that he would handle HB 222.

(Please Note: The corrected Standing Committee Report is in these records.)

{Tape: 1; Side: B; Approx. Time Counter: 455 - 500}

HEARING ON HB 721

Sponsor: REP. JOHN PARKER, HD 23, GREAT FALLS

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, opened the hearing on HB 721, Montana Drug Offender Accountability and Treatment Act.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 45}

Proponents' Testimony:

C.B. Genelioson, Cascade County Sheriff, rose in support of HB 721 and stated that incarceration will not fix the problem and that there must be some other means of treatment.

{Tape: 2; Side: A; Approx. Time Counter: 45 - 52}

Pam Bucy, Assistant Attorney General, rose in support of HB 721 and stated, "...we must use a more creative approach...."

{Tape: 2; Side: A; Approx. Time Counter: 52 - 59}

John Larson, Missoula County District Court Judge, rose in favor of this allocation of funds and referred to Page 5, Line 5, asking the committee to delete "should" and insert "shall" on Page 5, Line 15.

{Tape: 2; Side: A; Approx. Time Counter: 59 - 103}

Ron Alsbery, Department of Corrections, rose in support of HB 721.

{Tape: 2; Side: A; Approx. Time Counter: 103 - 113}

Peggy Beltram, Cascade County Commissioner, spoke in support of HB 721 and related the story of her brother and his addiction to heroin to the committee and what a success story he is now, after the treatment that was provided to him.

{Tape: 2; Side: A; Approx. Time Counter: 113 - 136}

Jed Fitch, self, stood in support of HB 721 and spoke to the members of the committee about "Seth," a graduate from drug treatment camp.

{Tape: 2; Side: A; Approx. Time Counter: 136 - 152}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. HARRIS closed the hearing on HB 721 and stated, "...this treatment is not an entire solution to the "meth" crisis, but it will help...."

{Tape: 2; Side: A; Approx. Time Counter: 152 - 163}

HEARING ON HB 705

Sponsor: REP. JOHN PARKER, HD 23, GREAT FALLS

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, opened the hearing on **HB 705**, Revise crimes by youth that may be filed in district court. The sponsor stated that 41-5-206, MCA would be amended by this bill.

{Tape: 1; Side: A; Approx. Time Counter: 163 - 200}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. PARKER closed the hearing on HB 705.

{Tape: 1; Side: A; Approx. Time Counter: 200 - 205}

HEARING ON HB 718

Sponsor: REP. ROGER KOOPMAN, HD 70, BOZEMAN

Opening Statement by Sponsor:

REP. ROGER KOOPMAN (R), HD 70, opened the hearing on **HB 718**, Revise requirements for job-attached worker seeking unemployment benefits. **REP. KOOPMAN** spoke to the committee about his employment placement business and how job attachment situations affect his business.

The REPRESENTATIVE informed the committee:

- 1) 2003 54.5% of unemployed people were job attached resulting in a total of \$54,194,000 of total benefits paid.
- 2) 2004 61.3% paid out in total benefits for unemployed people, were job attached benefits.

EXHIBIT (juh40a04)

{Tape: 2; Side: A; Approx. Time Counter: 205 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 23}

Proponents' Testimony:

Keith Allen, International Brotherhood of Electrical Workers, rose in support of HB 718 and spoke to the committee members how job attachment interferes with business decisions.

{Tape: 2; Side: B; Approx. Time Counter: 23 - 48}

Darrell Holzer, Montana State AFL-CIO, spoke to the committee about when job attached employees and union workers who must follow the protocol during layoffs.

{Tape: 2; Side: B; Approx. Time Counter: 48 - 66}

Opponents' Testimony: None

Informational Testimony:

Ray Mulvaney, Depart of Labor and Industry, informed the committee members that he would be available to questions.

{Tape: 2; Side: B; Approx. Time Counter: 66 - 73}

Questions from Committee Members and Responses:

REP. DRISCOLL began her questions of the sponsor by asking about his business and how he finds potential employees for placement referrals.

REP. HARRIS questioned Mr. Mulvaney if there are any abuses of the system by job attached people. **Mr. Mulvaney** did not have that information for the REPRESENTATIVE. He did say that the employer gets notified and the employee then receives the unemployment benefits.

{Tape: 2; Side: B; Approx. Time Counter: 73 - 123}

Closing by Sponsor:

REP. KOOPMAN closed the hearing on HB 718 and stated that this is a business subsidy through planned assistance.
{Tape: 2; Side: B; Approx. Time Counter: 123 - 142}

HEARING ON HB 709

Sponsor: REP. HOLLY RASER, HD 98, MISSOULA

Opening Statement by Sponsor:

REP. HOLLY RASER (D), HD 98, opened the hearing on HB 709, Revise chiropractics legal panel laws.
{Tape: 2; Side: B; Approx. Time Counter: 142 - 168}

Proponents' Testimony:

MaryLou Garrett, Montana Chiropractic Legal Panel, rose in support of HB 709.
{Tape: 2; Side: B; Approx. Time Counter: 168 - 190}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. RASER closed the hearing HB 709 by saying that this is a simple bill.
{Tape: 2; Side: B; Approx. Time Counter: 190 - 200}

HEARING ON HB 727

Sponsor: REP. ALAN OLSON, HD 45, ROUNDUP

Opening Statement by Sponsor:

REP. ALAN OLSON (R), HD 45, opened the hearing on HB 727, Revise determination of invalid votes. The REPRESENTATIVE referred to Page 5, Line 28 for an explanation of HB 727.
{Tape: 2; Side: B; Approx. Time Counter: 200 - 213}

Proponents' Testimony:

Brad Johnson, Secretary of State, rose in support of HB 727 and stated, "...this will move resolution of elections out of the courts and back to the voters."

{Tape: 2; Side: B; Approx. Time Counter: 213 - 240}

Elaine Gravely, election's director, Secretary of State, rose to support HB 727.

{Tape: 2; Side: B; Approx. Time Counter: 240 - 261}

Pam Bucy, Assistant Attorney General, rose in support of HB 727 and stated that this is not a partisan bill.

{Tape: 2; Side: B; Approx. Time Counter: 261 - 270}

Brad Martin, Montana Democratic Party, stood in support of HB 727 and stated that this bill will improve the voting process.

{Tape: 2; Side: B; Approx. Time Counter: 270 - 289}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. OLSON closed the hearing on HB 727.

{Tape: 2; Side: B; Approx. Time Counter: 289 - 312}

HEARING ON HB 730

Sponsor: **REP. MICHAEL LANGE, HD 55, BILLINGS**

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, opened the hearing on **HB 730**, Revise judicial bypass provisions under parental notice of abortion act. The sponsor referred to Page 1, Line 29 as to the language regarding, "the court, by clear and convincing evidence" would clarify the procedure regarding parental notification.

REP. LANGE informed the members of the committee that this bill would allow the court to act on the "best interests of a minor." Further, that the current statute in the MCA is not workable.

{Tape: 2; Side: B; Approx. Time Counter: 312 - 373}

Proponents' Testimony:

Eric Schiedermayer, Montana Catholic Conference, rose in support of HB 730 and informed the committee that the other states that have similar laws have seen a drop in teen pregnancies and a drop in teen abortions. He further stated that minors do not have the wisdom to make [these] decisions.

{Tape: 2; Side: B; Approx. Time Counter: 373 - 422}

Steve Ertelt, LifeNews.com, rose to support HB 730 and recited for the committee the United States Supreme Court 1997 ruling re: Lambert v. Wickland; the ruling that upheld the parental notification law.

Mr. Ertelt stated that 24 other states have the parental notification statutes.

{Tape: 2; Side: B; Approx. Time Counter: 422 - 469}

Rachel Roberts, Montana Family Foundation, stood in support of HB 730 and said, "...two weeks ago you [the committee] passed HB 245 requiring parents to be notified before a minor may receive a body piercing; this bill should also require the same parental notification."

{Tape: 2; Side: B; Approx. Time Counter: 469 - 500}

Dallas Erickson, Montana Family Coalition, stood to support HB 730 and spoke to the committee that this bill does not go too far. He also stated that he was speaking for Harris Himes, who is also in support of HB 730.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 13}

Opponents' Testimony:

Jan Van Riper, ACLU, rose to oppose HB 730 and also spoke about the Lambert v. Wickland ruling. **Ms. Van Riper** spoke about the unconstitutionality of the other states' law. She objects to HB 730 for the reasons applicable to the privacy provisions and the equal protection provisions.

Ms. Van Riper spoke to the committee about a similar bill in Senate Judiciary that failed in the committee and also failed in efforts for the bill to be "blown out" to the floor.

EXHIBIT (juh40a05)

{Tape: 3; Side: A; Approx. Time Counter: 13 - 74}

Jeri Duran, Planned Parenthood of Montana, rose in opposition to HB 730 for the reason that this bill is not necessary. She stated that in her experience working with minors, minors tell their parents approximately 88% of the time.

{Tape: 3; Side: A; Approx. Time Counter: 74 - 96}

Kate Cholewa, National Abortion Rights Action League (NARAL), stated that she would support a motion to TABLE HB 730.

{Tape: 3; Side: A; Approx. Time Counter: 96 - 101}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS asked Ms. Van Riper about how this bill could be amended as to the similarity of the Wickland decision. **Ms. Van Riper** stated that it would be difficult. The REPRESENTATIVE then discussed the equal protection and privacy issues within HB 730.

{Tape: 3; Side: A; Approx. Time Counter: 101 - 144}

Closing by Sponsor:

REP. LANGE closed the hearing on HB 730 by stating that this bill is not about consent; it is about is the clarification of court decisions regarding minors and their parents.

{Tape: 3; Side: A; Approx. Time Counter: 144 - 200}

HEARING ON HB 733

Sponsor: **REP. TIM DOWELL, HD 8, KALISPELL**

Opening Statement by Sponsor:

REP. TIM DOWELL (D), HD 8, opened the hearing on **HB 733**, Repeal provision that public utility's rates may not allow for certain recovery. The sponsor of HB 733 stated that this bill will repeal 69-8-215.

{Tape: 3; Side: A; Approx. Time Counter: 200 - 241}

Proponents' Testimony:

Allan McGarvey, attorney, informed the committee that his firm is the plaintiff's attorney in the lawsuit against Montana Power Company (MPC). He spoke about how the employees of MPC are the losers, not the company itself. This bill is about the settlement case and if the plaintiffs choose to "opt out" of the class action and then those litigants are not be able to sue.

[EXHIBIT \(juh40a06\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 241 - 328}

Jed Fitch, Montana Trial Lawyers Association, rose in support of HB 733.

{Tape: 3; Side: A; Approx. Time Counter: 328 - 337}

Eric Schiedermayer, self, rose in support of HB 733 and related a story to the committee members about his father who had worked at MPC for 31 years, retired and who is now forced to work a minimum wage job in order to live adequately.

{Tape: 3; Side: A; Approx. Time Counter: 337 - 343}

Opponents' Testimony:

Stan Kaleczyc, attorney, rose in opposition to HB 733. **Mr. Kaleczyc** spoke to the committee members about 69-8-215 and its applicability to the MPC litigation, Touch America, the bankruptcy court and other entities named in the lawsuits.

Mr. Kaleczyc completed his testimony by stating, "...[there] should be a separation of powers [and it is] through the courts to decide, not the legislature."

[EXHIBIT \(juh40a07\)](#)

[EXHIBIT \(juh40a08\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 343 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 18}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS began his questioning of Mr. Kaleczyc with a comment that he was offended by the last remark Mr. Kaleczyc made in his testimony. The REPRESENTATIVE stated, "...it is [the] prerogative [of the legislature] to take on matters of [the] constitution." **Mr. Kaleczyc** replied that it is still better left to the courts.

The REPRESENTATIVE and the witness continued with their discussion of this bill and the previous SB 458 that was signed into law after the 2003 Legislature.

REP. HARRIS continued with questions for Mr. McGarvey. They discussed SB 458 and its ramifications to the rights of the possible plaintiffs.

REP. STOKER discussed with Mr. McGarvey, the "collusion" between NorthWestern Energy, MPC and the law firm of Goldman, Sachs & Company.

REP. HARRIS again questioned Mr. McGarvey regarding HB 733 and if it were to pass what would happen next. **Mr. McGarvey** spoke to the settlement issue, the people who would opt out of the class action litigation and that the settlement may, "...fall apart...."

REP. RICE inquired of Mr. Kaleczyc to explain what in his opinion would happen if HB 733 were to pass. **Mr. Kaleczyc** responded that it could expose NorthWestern Company rate payers to pay the judgement of the class action lawsuit and of the people who opt out and litigate also.

REP. NOONAN spoke with Mr. McGarvey about the fear that the settlement would "unravel" if this bill were to pass. **Mr. McGarvey** replied that if the litigants want to opt out, they should be able to do just that. The REPRESENTATIVE said that there is a concern that people who do opt out could be in litigation forever. **Mr. McGarvey** responded by talking about the employees who lost everything in MPC, and how the other creditors have not lost and finally that if the settlement unravels how it would be beneficial for the State of Montana.

REP. STOKER posed this question to Mr. McGarvey, "...what about Pennsylvania Power and Light (PPL)?" **Mr. McGarvey** replied, "...the lawsuit did involve all, including PP&L...." He also spoke about the Goldman, Sachs & Co., and other attorneys who will also be defendants.

{Tape: 3; Side: B; Approx. Time Counter: 18 - 237}

Closing by Sponsor:

REP. DOWELL closed the hearing on HB 733 and stated to the committee that this bill is about the retirees from MPC who were counting on their retirements and now do not have that retirement.

{Tape: 3; Side: B; Approx. Time Counter: 237 - 263}

HEARING ON HB 726

Sponsor: **REP. GAIL GUTSCHE, HD 99, MISSOULA**

Opening Statement by Sponsor:

REP. GAIL GUTSCHE (D), HD 99, opened the hearing on **HB 726,** Revise law on community corrections to allow day reporting. The sponsor stated that this bill would allow the judges and the Department of Corrections (DOC) more options as to where to send non-violent offenders.

REP. GUTSCHE further informed the committee that the probationers could be at day programs instead of Montana State Prison (MSP).

EXHIBIT (juh40a09)

{Tape: 3; Side: B; Approx. Time Counter: 263 - 309}

Proponents' Testimony:

Michelle Jenicek, Department of Corrections, spoke in support of HB 726 and proceeded to inform committee that currently probationers are not allowed in pre-release centers and that if this bill were to pass; it would make the probationers more accountable to the system.

{Tape: 3; Side: B; Approx. Time Counter: 309 - 353}

Brenda Thompson, Department of Corrections, rose in support of HB 726 and spoke about possible amendments to this bill regarding the offenders payment of fees for the funding.

{Tape: 3; Side: B; Approx. Time Counter: 353 - 370}

Mike Ruppert, Boyd Andrews Community Services, rose to support HB 726 and spoke to the benefits of out-patient services.

{Tape: 3; Side: B; Approx. Time Counter: 370 - 400}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. RICE questioned Ms. Jenicek about the fiscal note and the assessment of a \$50 fee at the sentencing of the offender to fund the program.

{Tape: 3; Side: B; Approx. Time Counter: 400 - 449}

Closing by Sponsor:

REP. GUTSCHE closed the hearing on HB 726 and stated that she would be amenable to Ms. Jenicek's amendment regarding the imposition of the \$50 fee to fund this program. She further stated that this would allow the offenders a chance to not be sentenced to MSP.

{Tape: 3; Side: B; Approx. Time Counter: 449 - 500}

HEARING ON HB 735

Sponsor: REP. RALPH LENHART, HD 38, GLENDIVE

Opening Statement by Sponsor:

REP. RALPH LENHART (D), HD 38, opened the hearing on HB 735, Liability for fire cleanup. The sponsor distributed the fiscal note.

EXHIBIT (juh40a10)

{Tape: 4; Side: A; Approx. Time Counter: 0 - 26}

Proponents' Testimony:

Alec Hansen, Montana League of Cities, rose in support of HB 735 and stated that this bill is from the cities of Glendive and Butte.

Mr. Hansen spoke briefly about the bill relative to the financial pressure that is applied to city governments when fires occur and the clean-up is not paid for and/or completed. He suggested, however; that the committee "Table" this bill as this bill cannot fix this problem.

{Tape: 4; Side: A; Approx. Time Counter: 26 - 69}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. LENMARK closed the hearing on HB 735 and requested the committee to "Table" this bill.

{Tape: 4; Side: A; Approx. Time Counter: 69 - 96}

HEARING ON HB 731

Sponsor: REP. ROGER KOOPMAN, HD 70, BOZEMAN

Opening Statement by Sponsor:

REP. ROGER KOOPMAN (R), HD 70, opened the hearing on HB 731, Authorize supreme court justice recall for failure to perform duties. The sponsor spoke to the committee about the people's extreme frustration and feelings of isolation from the Montana Supreme Court.

REP. KOOPMAN said that this law would be specific to just the Supreme Court of Montana and that this bill would, "... allow the people to decide for whatever reason to recall a justice."

[EXHIBIT\(juh40a11\)](#) (HB 718 previously heard that day)

[EXHIBIT\(juh40a12\)](#)

[EXHIBIT\(juh40a13\)](#)

{Tape: 4; Side: A; Approx. Time Counter: 96 - 200}

Proponents' Testimony:

Dallas Erickson, Montana Family Coalition, rose in support and spoke for Harris Himes who is also in support of HB 731.

{Tape: 4; Side: A; Approx. Time Counter: 200 - 210}

Esther Fishbaugh, self, rose in support of HB 731 and spoke to the committee about how it is currently impossible to recall any of the justices and that any recall, "...would not be on a whim." She further stated, "The Montana Supreme Court needs to be recalled due to their decision on education in Montana."

{Tape: 4; Side: A; Approx. Time Counter: 210 - 250}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MCGILLVRAY began the questioning of the sponsor by asking if there was anything in HB 731 that could provide for the recall of a legislator. **REP. KOOPMAN** responded, "No, it would be limited to the supreme court justices." They continued to discuss the executive branch of the government and the legislative branch of the government and how well the legislative branch is doing. This bill would address the "greatest uproar" happening with the Montana Supreme Court.

REP. HARRIS inquired of the sponsor to talk about the many people who are extremely frustrated; with **REP. KOOPMAN** replying, "...that was an unfair question and that this bill would give the people an opportunity...."

The sponsor deferred the question to Mr. Himes who stated the Jore decision and the Gryczan decision as examples of where the Montana Supreme Court has gone awry. **REP. KOOPMAN** commented that the impeachment process should have been, "...put before the people...."

{Tape: 4; Side: A; Approx. Time Counter: 250 - 414}

Closing by Sponsor:

REP. KOOPMAN closed the hearing on HB 731 and stated that he is writing a letter to Chief Justice Gray stating, "The Montana Supreme Court is viewed as laughingstock around the country."
{Tape: 4; Side: A; Approx. Time Counter: 414 - 442}

EXECUTIVE ACTION ON HB 735

Motion/Vote: REP. STOKER moved that HB 735 BE TABLED. Motion carried 17-1 by voice vote with REP. PARKER voting no.
{Tape: 4; Side: A; Approx. Time Counter: 442 - 477}

EXECUTIVE ACTION ON HB 730

Motion: REP. LANGE moved that HB 730 DO PASS.

Motion: REP. LANGE moved that HB 730 BE AMENDED.

Discussion:

REP. LANGE explained the Conceptual Amendment for Page 2, Line 4, striking, "by clear and convincing evidence."

Vote: Motion that HB 730 be amended carried 13-5 by voice vote with REP. BECKER, REP. CLARK, REP. GUTSCHE, REP. PARKER, and REP. WILSON voting no.

Motion: REP. LANGE moved that HB 730 DO PASS AS AMENDED.

Discussion:

The committee discussed the bill as to the constitutionality of HB 730.

Vote: Motion that HB 730 DO PASS AS AMENDED carried 12-6 by roll call vote with REP. BECKER, REP. CLARK, REP. DRISCOLL, REP. GUTSCHE, REP. PARKER, and REP. WILSON voting no.
{Tape: 4; Side: A; Approx. Time Counter: 477 - 500}
{Tape: 4; Side: B; Approx. Time Counter: 0 - 75}

EXECUTIVE ACTION ON HB 705

(Please note: REP. HARRIS absent from the room.)

Motion: REP. PARKER moved that HB 705 DO PASS.

Discussion:

The committee discussed the bill and the possibility of an amendment for Page 2, Line 9, however; no amendment was forthcoming.

Vote: Motion that HB 705 DO PASS carried 12-6 by roll call vote with REP. CLARK, REP. GUTSCHE, REP. KOOPMAN, REP. MCGILLVRAY, REP. NOONAN, and REP. SONJU voting no. (REP. HARRIS voted by proxy vote.)

{Tape: 4; Side: B; Approx. Time Counter: 75 - 230}

EXECUTIVE ACTION ON HB 709

Motion: REP. WINDHAM moved that HB 709 DO PASS.

Motion: REP. STOKER moved that HB 727 BE AMENDED.

Discussion:

Mr. MacMaster explained the Conceptual Amendment for Page 1, Line 22-striking "the application" and inserting "a list" and for Page 1, Line 24-striking "each" and inserting "the" into the language.

Vote: Motion that HB 709 BE AMENDED carried unanimously by voice vote. (REP. HARRIS voted by proxy vote.)

Motion/Vote: REP. STOKER moved that HB 709 DO PASS AS AMENDED.

Motion carried 17-1 by voice vote with REP. KOOPMAN voting no.

(REP. HARRIS voted by proxy vote.)

{Tape: 4; Side: B; Approx. Time Counter: 230 - 270}

(Please Note: REP. HARRIS returned to room, REPS. CLARK, WILSON absent from the room.)

EXECUTIVE ACTION ON HB 727

Motion: REP. WINDHAM moved that HB 727 DO PASS.

Discussion:

The committee discussed the bill as to the hand recounts, the over-under vote, human judgement and the election judges.

Vote: Motion that HB 727 DO PASS failed 9-9 by roll call vote with REP. BECKER, REP. EVERETT, REP. MCGILLVRAY, REP. NOENNIG, REP. PARKER, REP. RICE, REP. STOKER, REP. WILSON, and REP. WINDHAM voting aye. (REPS. CLARK, WILSON voted by proxy vote.)
{Tape: 4; Side: B; Approx. Time Counter: 270 - 500}

EXECUTIVE ACTION ON HB 91

REP. HARRIS tried to MOVE HB 91; CHAIRMAN RICE did not recognize the motion. REP. HARRIS requested assurances from CHAIRMAN RICE that HB 91 would have Executive Action tomorrow. CHAIRMAN RICE stated that the committee, "...will do our best...."
{Tape: 5; Side: A; Approx. Time Counter: 0 - 48}

EXECUTIVE ACTION ON HB 733

Motion: REP. GUTSCHE moved that HB 733 DO PASS.

Discussion:

REP. KOOPMAN revealed to the committee that as an investor; he would like to abstain from the voting on HB 733.

CHAIRMAN RICE stated that as long as the REPRESENTATIVE had revealed that information to the committee members; he would be allowed to vote on HB 733.

The discussion continued with the members of the committee voicing their opinions as to the constitutionality and the liability issue, the legislature's interference regarding the ability to file lawsuits and the rates paid by Montanans being raised if HB 733 were to pass.

(Please Note: REPS. KOOPMAN, CLARK, SONJU left the room, REP. WILSON returned to the room.)

Vote: During the Roll Call Vote; when the secretary came to REP. KOOPMAN'S name; **CHAIRMAN RICE** directed the secretary that REP. KOOPMAN'S vote was to be recorded as a "No" vote. The committee members interrupted the Roll Call vote process and requested that **REP. KOOPMAN** be noted as "Abstaining" from the vote. **CHAIRMAN RICE** continued with the direction of the REPRESENTATIVE'S vote being a "No" vote.

The Roll Call vote taking was halted.

REP. HARRIS stated that he would be appealing this action to the Rules Committee. **REP. LANGE** then explained the procedure for appealing to the Rules Committee. **REP. PARKER** and **REP. LANGE** both stated they would support the appeal to the Rules Committee.

REP. LANGE stated he would like to listen to the tape of the hearing and suggested that the vote on **HB 733** be postponed.

The committee, without objection, postponed the vote on HB 733.
{Tape: 5; Side: A; Approx. Time Counter: 48 - 430}

ADJOURNMENT

Adjournment: 12:07 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh40aad0.PDF](#))