

MINUTES

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

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on February 19, 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: None
Executive Action: HB 731,755,718-Tabled; HB 721,726,
693,91,374,61-Do Pass As Amended

EXECUTIVE ACTION ON HB 727

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

Discussion:

REP. SONJU requested without objection that the representative from the Secretary of State's Office give an overview to the committee members. **Michael O'Brien, Secretary of State's Office,** gave a brief overview of HB 727 which is an attempt to correct the ballot issue fought over in House District 12 during the past election. **Mr. O'Brien** stated, "What HB 727 attempts to do is eliminate a decision based on the intent of the voter, and instead base that decision on what the ballot actually shows."

The committee discussed amendments regarding the manual vote counting process.

Motion: REP. STOKER moved that HB 727 BE AMENDED.
[EXHIBIT \(juh41a01\)](#)

Discussion:

The committee discussed the amendment as to its application for "stray marks" and whether or not the vote should be counted, etc.

Vote: Motion that HB 727 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. (REPS. BECKER, CLARK, WARD voted by proxy vote.)

Motion: REP. STOKER moved that HB 727 BE AMENDED with a CONCEPTUAL AMENDMENT TO DELETE "BECAUSE OF A STRAY MARK."

Discussion:

The committee briefly discussed the amendment as to its relevance in the process of vote counting and the bill itself.

Vote: Motion that HB 727 BE AMENDED failed 9-9 by roll call vote with REP. EVERETT, REP. HARRIS, REP. KOOPMAN, REP. LANGE, REP. MCGILLVRAY, REP. RICE, REP. SONJU, REP. STOKER, and REP. WARD voting aye. (REPS. BECKER, CLARK, WARD voted by proxy vote.)

Discussion:

REP. NOENNIG and Mr. O'Brien discussed the bill regarding the manual system of vote counting and what the standard is in manual counting.

Motion/Vote: REP. NOENNIG moved that HB 727 BE AMENDED with the PREVIOUS AMENDMENT IN EXHIBIT 7 (727.01). Motion failed 8-10 by roll call vote with REP. EVERETT, REP. LANGE, REP. MCGILLVRAY, REP. NOENNIG, REP. RICE, REP. SONJU, REP. STOKER, and REP. WARD voting aye. (REPS. BECKER, CLARK, WARD voted by proxy vote.)

Discussion:

The committee again discussed the bill and the failed amendments.

Vote: Motion that HB 727 DO PASS failed 9-9 by roll call vote with REP. EVERETT, REP. LANGE, REP. MCGILLVRAY, REP. NOENNIG, REP. RICE, REP. SONJU, REP. STOKER, REP. WARD, and REP. WINDHAM voting aye. (REPS. BECKER, CLARK, WARD voted by proxy vote.)
{Tape: 1; Side: A; Approx. Time Counter: 0 - 353}

Mr. Siminich, Office of Secretary of State, rose to thank the committee for all the work the committee did on HB 727.

EXECUTIVE ACTION ON HB 733

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

Discussion:

There was minimal discussion among the committee members.

Vote: Motion HB 733 DO PASS failed 9-9 by roll call vote with REP. BECKER, REP. CLARK, REP. DRISCOLL, REP. GUTSCHE, REP. HARRIS, REP. NOONAN, REP. PARKER, REP. WILSON, and REP. WINDHAM voting aye. (REPS. BECKER, CLARK, WARD voted by proxy vote.)
{Tape: 1; Side: A; Approx. Time Counter: 353 - 405}

EXECUTIVE ACTION ON HB 721

Motion: REP. PARKER moved that HB 721 DO PASS.

Motion: REP. PARKER moved that HB 721 BE AMENDED.
[EXHIBIT](#) (juh41a02)

Discussion:

REP. PARKER explained the amendment to the committee members. The committee discussed the amendment.

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

Vote: Motion that HB 721 BE AMENDED carried unanimously by voice vote. (REPS. BECKER, CLARK, WARD, GUTSCHE voted by proxy vote.)

Motion/Vote: REP. PARKER moved that HB 721 DO PASS AS AMENDED. Motion carried 15-3 by roll call vote with REP. KOOPMAN, REP. RICE, and REP. SONJU voting no. (REPS. BECKER, CLARK, GUTSCHE, WARD voted by proxy vote.)

{Tape: 1; Side: A; Approx. Time Counter: 405 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 66}

EXECUTIVE ACTION ON HB 718

(Please Note: REP. GUTSCHE, WARD returned to the room.)

Motion: REP. KOOPMAN moved that HB 718 DO PASS.

Motion: REP. KOOPMAN moved that HB 718 BE AMENDED TO, STRIKE "AND UNION ATTACHED."

Discussion:

REP. KOOPMAN explained the amendment as to the fiscal note. This amendment will be in reference to Section 1.

Vote: Motion that HB 718 BE AMENDED carried 17-1 by voice vote with REP. WARD voting no. (REPS. BECKER, CLARK voted by proxy vote.)

Motion: REP. KOOPMAN moved that HB 718 DO PASS AS AMENDED.

Discussion:

The committee discussed the bill and amendment as to businesses who have used this provision and that the businesses pay the unemployment insurance, not the taxpayers.

Substitute Motion: REP. PARKER made a substitute motion that HB 718 BE TABLED.

Discussion:

After the **MOTION TO TABLE** (which is normally a non-debatable motion), **REP. KOOPMAN** was allowed by **CHAIRMAN RICE** to speak again about what this bill would do, much to the consternation of some committee members.

Vote: Substitute motion to **TABLE HB 718** carried 14-4 by roll call vote with **REP. EVERETT**, **REP. KOOPMAN**, **REP. MCGILLVRAY**, and **REP. STOKER** voting no. (**REPS. BECKER**, **CLARK** voted by proxy vote.)
{Tape: 1; Side: B; Approx. Time Counter: 66 - 273}

EXECUTIVE ACTION ON HB 726

(Please Note: **REP. WARD** left the room.)

Motion: **REP. GUTSCHE** moved that **HB 726 DO PASS**.

Motion: **REP. GUTSCHE** moved that **HB 726 BE AMENDED**.
[EXHIBIT](#) (juh41a03)

Discussion:

Mr. MacMaster explained the amendment to the committee members.

Vote: Motion that **HB 726 BE AMENDED** carried 17-1 by voice vote with **REP. EVERETT** voting no. (**REPS. BECKER**, **CLARK**, **WARD** voted by proxy vote.)

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

Motion/Vote: **REP. GUTSCHE** moved that **HB 726 DO PASS AS AMENDED**. Motion carried 13-5 by roll call vote with **REP. EVERETT**, **REP. KOOPMAN**, **REP. RICE**, **REP. STOKER**, and **REP. WARD** voting no. (**REPS. BECKER**, **CLARK**, **KOOPMAN**, **WARD** voted by proxy vote.)
{Tape: 1; Side: B; Approx. Time Counter: 273 - 405}

REP. HARRIS was recognized by **CHAIRMAN RICE**. The **REPRESENTATIVE** stated, "I thought I had assurances that **HB 91** would be brought up in this morning's session, can we receive assurances that **HB 91** will be brought up at noontime?" **CHAIRMAN RICE** replied, "If we want to come back in." **REP. HARRIS:** "Well, you assured [us] that we would take care of it today." **CHAIRMAN RICE** stated, "We will come back at noon."

{Tape: 1; Side: B; Approx. Time Counter: 405 - 415}

(Please Note: After a break where the REPRESENTATIVES went on the House Floor, this hearing began again at 12:00 P.M. REPS. BECKER, KOOPMAN, PARKER were absent from the room.)

EXECUTIVE ACTION ON HB 755

Motion: REP. WINDHAM moved that HB 755 DO PASS.

Substitute Motion/Vote: REP. STOKER made a substitute motion that HB 755 BE TABLED. Substitute motion carried unanimously by voice vote. (REPS. BECKER, KOOPMAN, PARKER voted by proxy vote.) {Tape: 1; Side: B; Approx. Time Counter: 421 - 422}

(Please Note: REP. KOOPMAN returned to the room.)

EXECUTIVE ACTION ON HB 693

Motion: REP. LANGE moved that HB 693 DO PASS.

Motion: REP. LANGE moved that HB 693 BE AMENDED with a CONCEPTUAL AMENDMENT.

Discussion:

REP. LANGE explained the amendment to the committee members. The amendment would be to delete: (#1)Page 4, Lines 3-9, (#2)Page 2, Section 5, (#3)Pages 3-4, Section 8.

Motion: REP. CLARK moved that HB 693 be AMENDED BY REMOVING (#3, Section 8) SEGREGATED FROM OF THE AMENDMENT. (Granted by privilege without a vote.)

Vote: Motion that HB 693 BE AMENDED by Sections #1 and #2 carried unanimously by voice vote. (REPS. BECKER, NOONAN, PARKER voted by proxy vote.)

Substitute Motion/Vote: REP. CLARK moved that HB 693 BE AMENDED by STRIKING "BY CONTRACT OR OTHERWISE" FROM LINE 30 SECTION 8, OTHERWISE LEAVING ALL OF SECTION 8. Motion that HB 693 BE AMENDED failed 3-15 by voice vote with REP. WARD, REP. CLARK, REP. MCGILLVRAY voting aye. (REPS. BECKER, NOONAN voted by proxy vote.)

Vote: Motion that HB 693 BE AMENDED by REMOVING SECTION 8 carried 16-2 by voice vote with REP. CLARK and REP. MCGILLVRAY voting no. (REP. BECKER, NOONAN voted by proxy vote.)

Motion/Vote: REP. WILSON moved that HB 693 BE AMENDED with a CONCEPTUAL AMENDMENT FOR SECTION 11, LINE 23 to INSERT AFTER BILLY "CLUB." Motion carried 17-1 with REP. GUTSCHE voting no. (REPS. BECKER, NOONAN voted by proxy vote.)

Discussion:

(Please Note REP. PARKER returned to room.)

The committee continued to discuss the amendments and HB 693 regarding many of the questioned language.

Motion: REP. CLARK moved that HB 693 BE AMENDED by DELETING SUBSECTION A on PAGE 2, LINES 26-30.

Discussion:

REP. LANGE commented on the proposed amendment and said that the removal of that language was not good. REP. PARKER then commented on the proposed amendment and stated that there are additional areas that would need to be addressed.

Substitute Motion/Vote: REP. CLARK made a substitute motion that HB 693 BE AMENDED TO DELETE ALL OF SECTION 6, PAGE 2 AND ALL OF SECTION 13 ON PAGE. Substitute motion carried 15-3 by voice vote with REP. KOOPMAN, REP. STOKER, and REP. WARD voting no. (REPS. BECKER, NOONAN voted by proxy vote.)

Motion: REP. STOKER moved that HB 693 DO PASS AS AMENDED.

Discussion:

REP. HARRIS discussed with REP. LANGE the testimony of Marty Lambert, Gallatin County Attorney, who stated that self-defense is an affirmative defense and the State of Montana does not have the burden of proving the absence of justification beyond a "reasonable doubt."

Motion/Vote: REP. WINDHAM moved that HB 693 BE AMENDED with a CONCEPTUAL AMENDMENT TO STRIKE LINES 17,18 ON PAGE 1. Motion carried 17-1 by voice vote with REP. KOOPMAN voting no. (REPS. BECKER, NOONAN voted by proxy vote.)

Motion: REP. WINDHAM moved that HB 693 BE AMENDED with a CONCEPTUAL AMENDMENT ON PAGE 4, LINE 22 AND LINE 29 TO STRIKE "JUST TO PRIOR TO USING IT TO COMMIT A CRIMINAL OFFENSE."

Discussion:

Mr. MacMaster explained to the committee the difficulties with this amendment.

Substitute Motion/Vote: REP. WINDHAM moved that HB 693 BE AMENDED with a CONCEPTUAL AMENDMENT TO STRIKE SECTIONS 10, 11, 14. Motion carried 16-2 by voice vote with REP. KOOPMAN and REP. WILSON voting no. (REPS. BECKER, NOONAN voted by proxy vote.)

Vote: Motion that HB 693 DO PASS AS AMENDED carried 12-6 by roll call vote with REP. BECKER, REP. DRISCOLL, REP. GUTSCHE, REP. HARRIS, REP. NOENNIG, and REP. PARKER voting no. (REPS. BECKER, NOONAN voted by proxy vote.)

{Tape: 1; Side: B; Approx. Time Counter: 422 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 484}

EXECUTIVE ACTION ON HB 731

Motion/Vote: REP. MCGILLVRAY moved that HB 731 DO PASS. Motion failed 7-11 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. LANGE, REP. MCGILLVRAY, REP. SONJU, REP. STOKER, and REP. WARD voting aye. (REPS. BECKER, NOONAN voted by proxy vote.)

Motion/Vote: REP. PARKER moved that HB 731 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 484 - 500}

EXECUTIVE ACTION ON HB 91

Motion: REP. SONJU moved that HB 91 DO PASS.

Motion: REP. SONJU moved that HB 91 BE AMENDED.

EXHIBIT (juh41a04)

Discussion:

The committee discussed the amendment and the bill's consistency with the federal requirements.

Vote: Motion that HB 91 BE AMENDED carried unanimously by voice vote. (REP. BECKER voted by proxy vote.)

Motion: REP. STOKER moved that HB 91 DO PASS AS AMENDED.

Motion: REP. STOKER moved that HB 91 BE AMENDED with a CONCEPTUAL AMENDMENT FOR SECTION 1, LINE 25 CHANGE \$100 TO \$20.

Substitute Motion/Vote: REP. LANGE made a substitute motion that HB 91 BE AMENDED TO CHANGE \$100 TO \$50. Substitute motion failed 6-12 by voice vote with REP. EVERETT, REP. KOOPMAN, REP. LANGE, REP. RICE, REP. SONJU, and REP. STOKER voting aye. (REP. BECKER voted by proxy vote.)

Motion/Vote: REP. STOKER moved that HB 91 BE AMENDED with the original \$20 AMENDMENT. Motion failed 5-13 by voice vote with REP. EVERETT, REP. KOOPMAN, REP. RICE, REP. SONJU, and REP. STOKER voting aye. (REP. BECKER voted by proxy vote.)

Motion/Vote: REP. RICE moved that HB 91 BE AMENDED with a CONCEPTUAL AMENDMENT for PAGE 1, LINE 26 to INSERT a NEW SUBSECTION 4. Motion failed 7-11 by voice vote with REP. RICE, REP. WILSON, REP. WARD, REP. SONJU, REP. KOOPMAN, REP. EVERETT, and REP. STOKER voting aye. (REP. BECKER voted by proxy vote.)

Vote: Motion that HB 91 DO PASS AS AMENDED carried 14-4 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. RICE, and REP. WARD voting no. (REP. BECKER voted by proxy vote.)
{Tape: 2; Side: B; Approx. Time Counter: 0 - 225}

EXECUTIVE ACTION ON HB 374

Motion: REP. HARRIS moved to BRING HB 374 FROM THE TABLE.

(Please Note: This is a "Present and Voting" Vote.)

Vote: Motion that HB 374 BE REMOVED FROM THE TABLE carried 11-6 by roll vote with REP. STOKER, REP. EVERETT, REP. KOOPMAN, REP. SONJU, REP. WARD, and REP. RICE voting no.

Motion: REP. HARRIS moved that HB 374 DO PASS.

Motion: REP. HARRIS moved that HB 374 BE AMENDED.
[EXHIBIT](#) (juh41a05)

Discussion:

Mr. MacMaster explained the amendment.

Vote: Motion that HB 374 BE AMENDED carried unanimously by voice vote. (REP. BECKER voted by proxy vote.)

(Please Note: REP. BECKER now present in the room.)

Motion/Vote: REP. HARRIS moved that HB 374 DO PASS AS AMENDED. Motion carried 12-6 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. RICE, REP. SONJU, REP. STOKER, and REP. WARD voting no.

{Tape: 2; Side: B; Approx. Time Counter: 225 - 464}

EXECUTIVE ACTION ON HB 368

Motion/Vote: REP. LANGE moved that HB 368 BE REMOVED FROM THE TABLE. Motion carried 11-7 by roll call vote with REP. BECKER, REP. CLARK, REP. DRISCOLL, REP. GUTSCHE, REP. NOONAN, REP. PARKER, and REP. WILSON voting no.

Motion: REP. LANGE moved that HB 368 DO PASS.

Motion: REP. LANGE moved that HB 368 BE AMENDED.
[EXHIBIT](#) (juh41a06)

Discussion:

REP. LANGE explained the amendment to the committee members. REP. NOENNIG requested Mr. MacMaster to explain the language of the amendment to the committee members. Mr. MacMaster informed the committee members that on 2/2/05, HB 368 was amended by REP. HARRIS'S amendment and then later tabled in the committee. The amendment struck all of Lines 14 through 20.

Substitute Motion/Vote: REP. NOENNIG moved that HB 368 BE AMENDED by a CONCEPTUAL AMENDMENT RETURNING HB 368 TO ITS ORIGINAL FORM AND INCLUDING AMENDMENT 368-01 BY REP. LANGE. Motion 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.

(Please Note: REP. CLARK absent from the room.)

Substitute Motion/Vote: REP. HARRIS made a substitute motion that HB 368 BE TABLED. Substitute motion failed 9-9 by voice vote with REP. BECKER, REP. CLARK, REP. DRISCOLL, REP. GUTSCHE, REP. HARRIS, REP. NOONAN, REP. PARKER, REP. WILSON, and REP. NOENNIG voting aye.

{Tape: 2; Side: B; Approx. Time Counter: 464 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 120}

ADJOURNMENT

Adjournment: 1:26 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh41aad0.PDF](#))