

MINUTES

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

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **VICE CHAIRMAN DEE L. BROWN**, on February 9,
2005 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Dee L. Brown, Vice Chairman (R)
Rep. Veronica Small-Eastman, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Sue Dickenson (D)
Rep. Emelie Eaton (D)
Rep. Robin Hamilton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. Hal Jacobson (D)
Rep. William J. Jones (R)
Rep. Gary MacLaren (R)
Rep. Bruce Malcolm (R)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)

Members Excused: Rep. Larry Jent, Chairman (D)
Rep. Mary Caferro (D)

Members Absent: None.

Staff Present: Marion Mood, Committee Secretary
Sheri Heffelfinger, Legislative Branch

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

Committee Business Summary:

Hearing & Date Posted: HB 488, 2/2/2005;
HB 288, 2/2/2005
Executive Action: HB 288; HB 488
DPAA DP

HEARING ON HB 488**Opening Statement by Sponsor:**

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 488**, Revise penalty for political civil libel. **REP. GALLIK** advised this bill sought to increase the penalty for political libel from \$1,000 to \$4,000, citing the dramatic increase in campaign costs. He felt the prospect of a \$1,000 fine was not enough of a deterrent.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:

Gordon Higgins, Commissioner of Political Practices, stated he was available for questions.

Questions from Committee Members and Responses:

REP. ALAN OLSON, HD 45, ROUNDUP, asked the Sponsor if anyone had ever been prosecuted under this law. **REP. GALLIK** replied he was aware that charges had been levied but he was not sure how far the process had gone; he asked to defer to **Mr. Higgins** who advised a number of complaints had been filed under this statute but the county attorney had opted not to pursue them. **REP. A. OLSON** inquired whether the \$4,000 fee would encourage county attorneys to take action. **Mr. Higgins** did not know why the attorneys opted not to pursue this, he speculated it could be due to the low number of cases or the nature of the infractions.

REP. GORDON HENDRICK, HD 14, SUPERIOR, wondered why this substantial increase was sought since there had been so few complaints. **Mr. Higgins** stated he had no opinion on this issue as it was a policy decision.

REP. HENDRICK posed the same question to the Sponsor. **REP. GALLIK** stated he had decided in favor of a penalty increase to provide a real deterrent to libel as the cost of campaigns was increasing to the point where a mere \$1,000 was considered pocket change. His goal was to make candidates think twice before issuing untruthful statements in this era of negative campaigns.

(REP. JACOBSON left at 8:10 A.M.)

REP. WILLIAM JONES, HD 9, BIGFORK, hypothesized that a constituent wanted to write a letter to the local newspaper's editor, criticizing a lawmaker's voting record; he inquired if this law would serve to suppress this. **Mr. Higgins** stated that voting records are public records and contended this bill served to put people on notice to do due diligence during election campaigns.

Closing by Sponsor:

REP. GALLIK closed.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 14.6}

HEARING ON HB 288

Opening Statement by Sponsor:

REP. MARK NOENNIG (R), HD 46, opened the hearing on **HB 288**, Department of Corrections to collect supervisory fees instead of clerk of court. He advised the Department may want to change the effective date which he would not oppose.

Proponents' Testimony:

Nancy Sweeney, Lewis & Clark County Clerk of District Court, submitted written testimony.
EXHIBIT (sth32a01)

Due to a prior commitment, Ms. Sweeney could not stay for the entire hearing. **VICE CHAIR BROWN** broke with protocol and allowed questions from the Committee prior to having heard all other testimony.

Questions from Committee Members and Responses:

REP. BERNIE OLSON, HD 10, LAKESIDE, wondered if this bill would help defray some of the cost to local offices. **Ms. Sweeney** stated the amounts would be negligible but it served to eliminate some traffic in that defendants did not have to stop at the District Court offices.

REP. BRUCE MALCOLM, HD 61, EMIGRANT, asked Ms. Sweeney whether her office was reimbursed for collecting these fees, referring to the 20% which the Department of Corrections would keep to fund administrative costs associated with their new duties. **Ms. Sweeney** referred to Laura Brent's letter, to be introduced by another proponent, which makes reference to the 20% being allowed statewide to help defray administrative costs. District court

clerks do collect this 20% but transmit it to the State along with the supervisory fees.

REP. MALCOLM wondered if the \$37,102 would be transmitted directly to Lewis & Clark County. **Ms. Sweeney** advised this amount represented the supervisory fees; the administrative fees totaled \$7,400. **REP. MALCOLM** asked if her office would lose the \$7,400 as it would no longer collect fees. **Ms. Sweeney** advised that even though it is broken down between the supervisory and administrative amounts, the counties do not get to keep it. All of this money goes to the State and into a Special Revenue Account; therefore, the counties would not be losing any money.

VICE CHAIR BROWN asked whether probation officers were employees of the Department of Corrections, which **Ms. Sweeney** confirmed.

REP. GARY MACLAREN, HD 89, VICTOR, inquired whether probation officers currently collect fees. **Ms. Sweeney** stated while she could not speak to other counties' practices, they certainly did in Lewis & Clark County. **REP. MACLAREN** ascertained that her office collected fees as well. **Ms. Sweeney** advised her office collected a number of different fees, including the supervisory fee, but they collected them from the probation officers.

REP. HENDRICK referred to the second page of the fiscal note and asked about the potential financial loss to local counties. **Ms. Sweeney** stated that all fees collected by district court clerks are transferred to the State; there will be no loss to the counties.

Additional Proponents' Testimony:

Mary Phippen, Montana Association, Clerks of District Court, clarified that until July 1, 2003, district court clerks were allowed to retain 20% of the fees collected. Since then, the total amount collected has been transferred to the Department of Corrections. This had not been brought up in previous testimony and was the reason behind the bill. She proceeded to read the above mentioned letter by Laura Brent, Clerk of District Court, Yellowstone County, to the Committee, making special mention of the attached fee table.

{Tape: 1; Side: B}

She explained that the \$85,058 collected Ms. Brent represented 5,670 payments. She echoed previous testimony, stating it would be more efficient and better serve the counties if this responsibility was turned over to the Department of Corrections. She added her association had no objections to the effective date

being changed to October 1, 2005 in order to allow for the transition in the administration.

EXHIBIT (sth32a02)

Charles Brooks, Yellowstone Board of County Commissioners, rose in support of HB 288 because it would streamline and add efficiency to the collection of fees from parolees.

Mike Ferriter, Administrator, Community Corrections, Department of Corrections, stated HB 288 simply changes the way offenders pay their statutorily required supervision fees. He contended it was time to manage the collection of fees in a different fashion since the number of offenders on parole has grown to more than 7,300. He submitted that HB 288 allowed the Department to monitor the funds more closely and ensure that offenders are held accountable for a portion of the cost of their supervision. He asked the Committee to delay the bill's effective date to October 1, 2005, so that administrative and accounting procedures could be put in place.

Ms. Phippen came forward and added that the Montana Association of Counties also supported HB 288.

Opponents' Testimony: None

Continued Questions from Committee Members and Responses:

REP. MALCOLM referred to the fiscal note which states it will be necessary to add three Full-Time Equivalents (FTEs) to administer the collection of fees, asking of Mr. Ferriter which additional duties were envisioned for them. **Mr. Ferriter** advised that there are 7,300 offenders on probation in the 23 judicial districts; parole officers monitor them and collect and receipt the supervisory fees which are then transferred to the Department. He pointed to the 20% portion of the fees which the district courts were allowed to keep for administrative purposes up until 1993. HB 288 shifts the administration to the Department, and the 20% would go to fund additional staff within the Department.

REP. MALCOLM ascertained that the three full-time employees would be accounting staff. **Mr. Ferriter** agreed, adding that the Department would receive a check from the district courts which then is transferred to a Special Revenue Account. The funds go towards training and equipment for parole officers.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 8}

VICE CHAIR BROWN noticed Director Bill Slaughter, Department of Corrections, in the audience and related to him the Committee's concern over the three full-time employees mentioned in the

fiscal note; she asked him to address this issue as well as explaining the need for "rent." **Director Slaughter** advised there was a need for additional staff but was not sure whether three would be necessary. As to the rent issue, he recounted that they used to rent a building across from the Mall which housed administrative support staff. The recent budget crisis dictated a reduction in staff, thereby eliminating the need for the additional space. With the increased workload, the Department was in dire need of more space and was anticipating the necessity to rent space again. **VICE CHAIR BROWN** referred to the 3 FTE's and asked whether it would be less expensive to contract this service out. **Director Slaughter** replied that the department did contract for some services, adding they were reluctant to do so with regard to collecting fees, though. He cited Mr. Ferriter's testimony, stating the 20% would be sufficient to fund additional staff and equipment. He assured the Committee they would not run out and hire three FTEs just because the funds were available and added, depending on the workload, they would fill one or two positions to get them trained and ready take on the new responsibility. He informed the Committee the money saved on administrative costs would be used for training parole officers and for purchasing bullet-proof vests, fire arms and safety equipment as it would revert to the Department's operating fund.

(REP. SMALL-EASTMAN left at 8:45 A.M.)

REP. HENDRICK asked Director Slaughter if he felt is Department would be more effective in collecting these fees than the district court clerks. **Director Slaughter** commended the district court clerks for the great job they had done. He told about a new division within the department which collects fees for victims; he was confident they would be involved in the new duties and would rise to the occasion.

Closing by Sponsor:

REP. NOENNIG closed, stating it made no sense to have district court clerks collect the fees as they were no longer reimbursed for the associated costs as stipulated in a 2003 law. The Department recognized the dilemma: either the 20% is left with the district courts or the responsibilities are transferred to the department which was getting the 20% anyway.

EXECUTIVE ACTION ON HB 288

Motion: **REP. B. OLSON** moved that **HB 288 DO PASS.**

Motion: **REP. MACLAREN** moved that **CONCEPTUAL AMENDMENT TO HB 288 BE ADOPTED.**

VICE CHAIR BROWN clarified the amendment would eliminate Section 3 of the bill and asked him to restate his motion.

Motion/Vote: **REP. MACLAREN** moved that **SECTION 3 BE DELETED**. Motion carried unanimously by voice vote; **REPS. JENT, CAFERRO, SMALL-EASTMAN** and **JACOBSON** voted aye by proxy; **REPS. JENT, CAFERRO, SMALL-EASTMAN** and **JACOBSON** voted aye by proxy.

Motion/Vote: **REP. B. OLSON** moved that **HB 288 DO PASS AS AMENDED**. Motion carried unanimously by voice vote; **REPS. JENT, CAFERRO, SMALL-EASTMAN** and **JACOBSON** voted aye by proxy.
{Tape: 1; Side: B; Approx. Time Counter: 8 - 19.1}

Note: Amendment HB028801.ash was provided after the hearing.
[EXHIBIT \(sth32a03\)](#)

EXECUTIVE ACTION ON HB 488

Motion: **REP. B. OLSON** moved that **HB 488 DO PASS**.

Discussion:

REP. A. OLSON was not so much concerned with the amount of the fine but the "free advertising" the candidate's opponent would get if there was a conviction.

REP. JONES objected to taking executive action when four committee members were absent. **VICE CHAIR BROWN** asked the Democrat members about their feelings on the subject, saying she would honor any objection.

REP. SUE DICKENSON, HD 25, GREAT FALLS, stated these two bills were not contentious, and she did not think the absent members would feel compelled to be part of the debate. She felt she could speak for them in casting their proxy votes.

VICE CHAIR BROWN subsequently declined to give in to **REP. JONES'** objection.

REP. B. OLSON stated that no matter what the Committee decided, he was not concerned with the amount of the penalty since libel had not been a real problem.

REP. JONES voiced his opposition to the bill; he saw it as an imposition as it would cause a reluctance to comment on candidates' voting records.

REP. TERESA HENRY, HD 96, MISSOULA, recounted that the recent Governor's race became ugly early on and welcomed this discussion at a time when there was no campaigning. She stated this law was already on the books, and there had been only a handful of complaints which never made it to court. She thought making the public aware of the discussion would suffice.

REP. HENDRICK concurred, and emphasized it was up to each candidate to make sure they did the right thing and did not engage in slander. He did not see why a fine which had not been levied in the first place should be increased.

(REP. JACOBSON returned at 8:55 A.M.)

REP. JOAN ANDERSON, HD 59, FROMBERG, commented that in some legislative races, the \$4,000 was more than they spent on their entire campaign; she recalled a 2003 bill, requiring the person levying charges on a voting record to specify which vote he was referring to, such as First Reading, Second Reading and so on. She felt this should take care of validating someone's charges; therefore, this bill was not necessary. With regard to the \$4 million campaign, she remarked \$4,000 would not be a deterrent, so why not increase the fine to \$100,000 to give it some teeth.

REP. DICKENSON referred to Line 10 of the bill, stating that the real culprits were groups speaking on behalf of candidates since they seemed to be the most ugly and misleading; she wondered whether "person" could also include these groups because if it did, a \$4,000 fine would not matter much to them.

VICE CHAIR BROWN asked **Sheri Heffelfinger, Legislative Services Division,** to answer this question. **Ms. Heffelfinger** advised that "person" is defined as "individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or candidate as defined in Subsection (6)."

REP. HAL JACOBSON, HD 82, HELENA, contended that some legislative campaigns in the Helena area cost between \$14,000 and \$20,000.

{Tape: 2; Side: A}

REP. JACOBSON submitted this bill did not address the issue of libel, citing a recent local campaign where the candidate was taken to task as having supported a certain piece of legislation because he had voted for a tabling motion. He claimed this bordered on being specious but was not misleading.

REP. A. OLSON asked **REP. JACOBSON** for the definition of "specious." **REP. JACOBSON** replied it meant "false."

REP. EMELIE EATON, HD 58, LAUREL, felt the common tendency was towards negative campaigns and she did not know what could be done to deter it. She stated she would not run a campaign which would invite complaints and hoped her opponent would do likewise. The bill had merit only if this fine would factor in as a deterrent.

VICE CHAIR BROWN added while \$4,000 was a lot in terms of some local campaigns, on a statewide basis, a \$100,000 fine was a real deterrent in her opinion.

Vote: Motion carried 9-7 by roll call vote with **REP. ANDERSEN, REP. BROWN, REP. HENDRICK, REP. JONES, REP. MACLAREN, REP. MALCOLM,** and **REP. A. OLSON** voting no; **REPS. SMALL-EASTMAN, CAFERRO** and **JENT** voted aye by proxy.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 6.3}

ADJOURNMENT

Adjournment: 9:05 A.M.

REP. LARRY JENT, Chairman

MARION MOOD, Secretary

LJ/mm

Additional Exhibits:

EXHIBIT ([sth32aad0.PDF](#))