

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 7, 2005 at 9:53 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jeff Mangan (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: SJ 6, SB 139, SB 111, SB 62, SB
103, 1/4/2005
Executive Action: SB 36 & SB 62

CHAIRMAN WHEAT introduced **Attorney General Mike McGrath** to the Committee. **Attorney General McGrath** addressed the Committee and offered his office's assistance to the Committee. He then introduced members of his staff and their specific job responsibilities.

CHAIRMAN WHEAT requested that **SENATOR MCGEE** chair the Committee for his presentation of SJ 6.

HEARING ON SJ 6

Opening Statement by Sponsor: SEN. MIKE WHEAT (D), SD 32, BOZEMAN, opened the hearing on SJ 6, Study legal services for low and moderate income Montanans. **SEN. WHEAT** informed the Committee that SJ 6 had been brought before the Committee at the request of the Department of Justice. He went on to state that it was asking for approval of a study to assess low income Montanans and their access to the civil legal system and determine whether any changes in funding would be appropriate. **SEN. WHEAT** proceeded to discuss the major facts pointed out in the WHEREAS clauses. He then talked about the statistical facts related to the number of people living at or near the federal poverty level and the fact that federal funding for legal aid is going down. **SEN. WHEAT** continued by discussing the large percentage of low income people that experience at least one legal problem per year. He went on to say that the problem is that these people do not have the money to obtain legal assistance when these problems do arise. **SEN. WHEAT** stated that SJ 6 was asking the Montana Legislature to designate an Interim Committee or provide adequate staff to review access to the legal system in Montana that is provided to low income Montana residents and determine changes that might be appropriate. **SEN. WHEAT** then listed the requirements for the study. **SEN. WHEAT** concluded by saying that this is a serious problem and SJ 6 is needed and hopefully will be passed.

Proponents' Testimony:

Mike McGrath, Attorney General, State of Montana, provided some background on the Montana Legal Services and explained that they were talking about providing legal services on the civil side not the criminal justice side of the system. He went on to explain the cutting of federal funding over the years for the legal services and the reasons provided for making those cuts and who should be providing those services. **Attorney General McGrath** explained that the reason they were in support of the Resolution was they know, when people do not have access to legal assistance, it can spiral out of control and then the people get into deeper trouble and then find themselves caught up in the criminal justice system. He then stated that his department

would be more than willing to participate with an Interim Committee in tying the study into what role the State should have if any.

Klaus Sitte, Executive Director, Montana Legal Services, presented the Committee with a handout, attached as Exhibit 1. He then talked about the lack of availability of legal assistance for low income residents of Montana. **Mr. Sitte** proceeded to cite sections of the law that guarantee that no one shall be denied the right of legal representation. **Mr. Sitte** then walked the Committee through the information provided in his handout. He concluded by asking for support of SJ 6.

EXHIBIT(jus05a01)

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, spoke about the number of sexual violence victims her organization had served and the number of those that had received legal services from Montana Legal Services. She went on to say that domestic violence victims need access to free legal assistance because they often come from households where the finances are controlled. **Ms. Cholewa** informed the Committee that changes at the federal level and funding patterns were going to leave 44 of the 56 counties in Montana without any free legal assistance to domestic violence victims. **Ms. Cholewa** stated that the Coalition stood in absolute support of the resolution. She concluded that the problem is so severe that there were three pieces of legislation being introduced to address the problem.

Keith Maristuen, President, State Bar of Montana, and an attorney in Havre, talked about the new rules enacted by the Supreme Court, in particular Rule 6.1, wherein it provides that a lawyer should provide at least 50 hours of pro bono legal services per year. He then informed the Committee about the revisions made by the State Bar to include participation by attorneys in pro bono services and the manner in which this could be accomplished. **Mr. Maristuen** proceeded by explaining steps taken in Havre when they lost their funding to handle the need for pro bono services. He concluded by saying that attorneys were doing their part and SJ 6 was asking the State to do its part.

Susan Gecho Gobbs, People's Law Center, stated that they were one of the stakeholders in the fight to obtain equal justice for Montanans for civil legal assistance. **Ms. Gobbs** explained the size of her organization and what they do, the type of work they do and their successes. She then talked about the number of unserved people and the reason why they were not seeking assistance. She concluded by saying the situation is desperate

and there is great need for the State to study the problem and help them provide a basic right to all citizens.

Mary Phippen, appearing as a taxpayer and resident of Glacier County, talked about the funding cuts and need for free legal services. **Ms. Phippen** strongly urged support for SJ 6.

Ann Gilkey, Equal Justice Coordinator, State Bar of Montana, talked to the Committee about the Legal Needs Study that had been mentioned and what that study had accomplished. She went on to say that the preliminary information they had received showed that about 84% of those surveyed had at least one legal incident per year and of those only 16% had an attorney to help them. **Ms. Gilkey** explained that although they had done this study it was only a beginning and showed them that there is a need in the State of Montana and that there is a need for more resources to help the neediest of the State's citizens. She concluded by stating that she felt it was time for the State and the Legislature to get involved. **Ms. Gilkey** strongly urged support of SJ 6.

Leah Comeau, told the Committee of legal problems she had dealt with and the fact that had it not been for the help from Legal Services she may in fact not have been here to talk to the Committee and urge their support of this Resolution.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. WHEAT stated that as elected officials it was the Legislatures responsibility to pass laws for the State of Montana. He went on to say that if they are going to live up to the principles to which they pledge themselves, when they pledge the flag, they need to pass SJ 6.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 34.7}

CHAIRMAN WHEAT resumed the chair.

HEARING ON SB 139

Opening Statement by Sponsor: **SEN. JOHN ESP (R), SD 31, BIG TIMBER,** opened the hearing on SB 139, Review and modification of child support orders.

SEN. ESP referred to the 2001 session wherein a bill was passed for the Department of Public Health and Human Services as a result of the Seubert decision, which in essence stated the Division did not have the authority to modify child support orders of the Court without the Court's approval. He went on to explain that the process since that time has worked fairly well.

SEN. ESP explained that the bill he was presenting would lessen the time it takes to modify child support and would still comply with the federal regulations that 75 percent of the modifications they do must be completed within 180 days. He continued that it would also reduce the amount of paperwork and the amount of resources, postage and services costs involved in the process by eliminating one minor part of the modification process. **SEN. ESP** stated the Department felt this change would speed up the process without infringing on service. **SEN. ESP** went through the bill and explained the various sections of the bill and how it would help to accomplish everything which was required to be accomplished for a modification to take place.

Proponents' Testimony:

Lonnie Olson, Child Support Enforcement Division (CSED), Department of Public Health and Human Services, spoke in support of SB 139. **Mr. Olson** explained that the purpose of the bill was to make CSED's job less burdensome, cheaper and faster. He further discussed district court orders, federal government regulations, service of modification documents and the Seubert decision. **Mr. Olson** stated that they were in support of SB 139 and would hope that the Committee would pass the bill.

{Tape: 1; Side: B; Approx. Time Counter: 15.5 - 32}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MCGEE asked **Ms. Amy Pfeifer** of the **Child Support Enforcement Division**, if the service issue had not been discussed in the House Judiciary Committee in 1997. **Ms. Pfeifer** stated that it had been a big bill and service issues had probably been dealt with, however, that bill had not dealt with modifications.

SEN. MCGEE asked **Ms. Pfeifer** to explain to the Committee the Rule 5 Procedures and how they differ from current service by person or certified mail. **Ms. Pfeifer** explained that currently they have to serve by personal service, certified mail or an

acknowledged Acknowledgment which is service under Rule 4. However, under Rule 5 they would be able to serve documents by mail to the last known address where the individual was originally served. She continued that Rule 5 allowed them to provide service in a continuing action.

SEN. MCGEE inquired of **Ms. Pfeifer** what the last document served might be, and asked if it were a letter. **Ms. Pfeifer** replied that it could be a proposed Order, the Notice of whatever the next step was along with an instruction sheet that would be sent by regular mail, not certified or by personal service.

SEN. O'NEIL asked **Ms. Pfeifer** if service was complete when the recipient signed the Return Receipt. **Ms. Pfeifer** responded that if they served by certified mail, service would be complete upon the signing of the Return Receipt. She continued that they would need the green card back in order to know that the person had received the document.

SEN. O'NEIL then inquired of **Ms. Pfeifer** if service was complete upon sending the letter whether it was received or not. **Ms. Pfeifer** replied that it would be if they were serving in accordance with Rule 5.

SEN. O'NEIL went on to ask **Ms. Pfeifer** if a child support order had been levied against someone, could it be modified retroactively. **Ms. Pfeifer** stated that **SEN. O'NEIL** was correct. An order could not be modified retroactively by state law as well as federal law.

SEN. O'NEIL referred **Ms. Pfeifer** to page 19 of the bill and asked if a person were served with an order by mail, did not receive that order, then found out three years later that the order had been entered, if that person could go back and modify that order retroactively. **Ms. Pfeifer** explained that the person would have originally been served personally or by certified mail, that the documents from the following two or three steps of the process would have been personally served and that they were only talking about the proposed order, therefore, the individual would be aware of the action and would not be able to modify an entered order retroactively.

SEN. CURTISS referred **Ms. Pfeifer** to Page 7, Line 11 and asked her to explain 4D payments. **Ms. Pfeifer** stated that 4D services are Child Support Enforcement Services that the agency provides. **Ms. Pfeifer** then informed the Committee of the services her agency provides. She concluded by saying, if they are providing TANF services, the child support payments must be paid to the

Department so the people can be credited with the payments they have made.

SEN. CURTISS stated that she had some real concerns relative to the bill and hopes that the Committee would be given adequate time to look the bill over well. She went on to say that she has constituents that question the validity of some of the out-of-state orders that come in.

SEN. SHOCKLEY asked **Ms. Pfeifer** if a Court Order could be modified by the Agency without it having to go back to the District Court. **Ms. Pfeifer** stated that parties could go either to the District Court or to CSED for a modification. She went on to say that this was because it is a federal requirement that every state agency have a process to modify every order that they are enforcing. **Ms. Pfeifer** continued by saying that parties have a choice of going to the appropriate tribunal, district court, or if they have left the state, whatever Court would have jurisdiction over the modification.

SEN. SHOCKLEY asked **Ms. Pfeifer** if a person had chosen to use CSED for their modification and they lost if they would have the right to go to the district court. **Ms. Pfeifer** replied that there were various avenues available to end up in district court. She then went on to say that if, for instance, they were dealing with a Montana District Court their order to modify would not become final until it had been approved by the district court. **Ms. Pfeifer** went on to explain that if the order being modified were one of their orders, their order would be the final order, however, the parties would still be able to take the order to district court for judicial review.

SEN. SHOCKLEY then inquired of **Ms. Pfeifer** if the order came from another state's jurisdiction for someone to pay child support would that order be treated by Montana CSED as if it came from Montana's jurisdiction. **Ms. Pfeifer** replied that under federal regulation any administrative or court child support order would be entitled to full faith and credit.

SEN. SHOCKLEY asked **Ms. Pfeifer** if an agency order from another state would have to be domesticated. **Ms. Pfeifer** replied they would not. **SEN. SHOCKLEY** and **Ms. Pfeifer** continued to discuss the issue of domestication of orders.

SEN. LASLOVICH referred **Ms. Pfeifer** to Page 12, Line 26 and asked where the requirement language comes into play in the bill. **Ms. Pfeifer** responded that they were deleting the requirement to have to register a district court order of the state for the reason that it is ultimately ending up back with the district court

anyway. She went on to say that they were registering foreign orders if they were going to be made the final modification order.

SEN. LASLOVICH asked **Ms. Pfeifer** about the title, saying that the bill is eliminating the requirement to register a Montana District Order and then using the word "may" so he was not seeing that it was a requirement. **Ms. Pfeifer** stated that they do see it as a requirement to register to obtain jurisdiction, so they do register all of them. She further explained that they were asking for permission to no longer register a Montana District Court Order.

SEN. O'NEIL asked **Ms. Pfeifer** about the order that established that the Department could not establish a child support order without approval and finalization by the district court because of the separation of power and if the bill changed that. **Ms. Pfeifer** stated that the existing statutory structure took care of the issue raised in Seubert and that is the reason for the district court having to finalize any modification proposed to a district court order. She went on to say that the present bill was not intended to address the issues raised by Seubert as the existing process addresses Seubert. **Ms. Pfeifer** replied that what they were trying to do is speed up the process, make it less confusing and less costly for the agency and the parties involved.

SEN. LASLOVICH asked **Ms. Pfeifer** where in the bill the requirement was eliminated. **Ms. Pfeifer** stated that it was eliminated on Page 12, Lines 26 and 27.

Closing by Sponsor:

SEN. ESP spoke of the substantive issues in the bill of the elimination of the one process and the reduction of the requirement of personal service. He continued by asking the Committee to thoughtfully consider the bill, fix it up if necessary and pass it out of Committee.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 25.2}

HEARING ON SB 111

Opening Statement by Sponsor: **SEN. KEN HANSEN (D), SD 17, HARLEM,** opened the hearing on SB 111, Revise definition of "practice of law". **SEN. KEENAN** stated that he was co-sponsoring the bill with **SEN. O'NEIL**. He went on to say that he was be happy to carry the bill as he felt that it was a good bill from his personal perspective and discussed the many ways in which it could be

misconstrued that individuals were engaging in the practice of law.

Proponents' Testimony:

Jerry Driscoll, Montanan State AFL-CIO, spoke in favor of the bill asking the Committee to at least make it legal for them to represent their members before quasi-judicial boards. He explained to the committee the ways in which this bill could help his organizations.

Roger McGlenn, Executive Director of the Independent Insurance Agents Association, stated that he stood in support of the bill for clarification purposes because of potential allegations or interpretations that insurance producers and adjusters could be providing legal advice. **Mr. McGlenn** explained to the Committee the ways in which they discuss the law that could be misconstrued as to their practicing law without a license.

SEN. O'NEIL talked about his theme, "Access to Justice" and explained how he was going about working to fulfill that theme. He then discussed what he had done in his private life to help individuals gain access to justice. **SEN. O'NEIL** then addressed the lawsuit which was brought against him for practicing law without a license. **SEN. O'NEIL** told the Committee that SB 111 did not infringe upon the jurisdiction of the Supreme Court and explained why he felt that way. He then outlined various professions that the bill would protect by stating that they were not practicing law when they gave advice about laws that pertained to their professions and areas of expertise.

Matthew Sissler, resident of Missoula, testified in support of SB 111. He stated that he felt the law, as written, should be amended and discussed three reasons for doing so.

{Tape: 2; Side: B; Approx. Time Counter: 7.6 - 24.7}

Opponents' Testimony:

Keith Maristuen, State Bar of Montana, spoke in opposition to SB 111. He stated that people need to know the true meaning of what practicing law means. **Mr. Maristuen** discussed giving advice, the acts which are and are not permitted under the present law. He then read from the ethics code and concluded by asking the Committee to kill the bill.

Tammie Fagan, Paralegal Section of the State Bar of Montana, testified in opposition of SB 111. **Ms. Fagan** informed the Committee of the parameters for the paralegal profession.

Tina Sunderland, Paralegal Section of the State Bar of Montana, stated she did not believe the bill protected the public and that she agreed with the other individuals who had spoken in opposition to the bill. **Ms. Sunderland** provided the Committee with a letter from Carol Bronson, CLA, in opposition to SB 111, attached hereto as Exhibit 2.

EXHIBIT(jus05a02)

Informational Testimony:

James Nybo, Montana Mediation Association, stated that he opposed the bill and felt that it needed to be cleaned up. **Mr. Nybo** provided written testimony attached as Exhibit 3.

EXHIBIT(jus05a03)

Chris Manos, State Bar of Montana, talked to the Committee about a conversation he had with Greg Petesch and discussed Mr. Petesch's remarks. He then gave a summary of some pending litigation which could make this bill premature. **Mr. Manos** then reiterated on **SEN. O'NEIL'S** case and gave background information for that case. **Mr. Manos** provided the Committee with an exhibit outlining **SEN. O'NEIL'S** case which is attached as Exhibit 4.

EXHIBIT(jus05a04)

{Tape: 3; Side: A; Approx. Time Counter: 0 - 27.8}

Questions from Committee Members and Responses:

SEN. CROMLEY asked **SEN. O'NEIL** to list the professions he felt should be included under this bill. **SEN. O'NEIL** referred to SB 111 and read the professions listed on Page 1, Lines 21 through 23.

SEN. CROMLEY asked **SEN. O'NEIL** if they could take out the references to occupations. **SEN. O'NEIL** indicated that he would be amenable to an amendment which would take out the reference to occupations.

SEN. CROMLEY and **SEN. O'NEIL** discussed the meaning of discussing the law.

SEN. CROMLEY then stated his concerns regarding SB 111.

SEN. CROMLEY asked **SEN. O'NEIL** how the language in the bill would allow individuals to know that they were not breaking the law.

SEN. O'NEIL replied that discussing the law was not the same as giving advice. He went on to say he felt that present law was denying individuals equal protection under that law. He concluded by saying that the definition was subjective and did not allow reasonable minds to understand what was allowed and what was not.

SEN. MCGEE asked **Mr. Maristuen** why discussing the law was not practicing the law. **Mr. Maristuen** responded discussing what the law does and giving advice on the consequences were two different things.

SEN. MCGEE asked **Mr. Maristuen** if individuals could be taken to Court for discussing the law under the current statutes. **Mr. Maristuen** replied that he could not say if they could be charged or not.

SEN. MCGEE asked **Mr. Maristuen** if the statute could be clarified as to what was and what was not the practice of law. **Mr. Maristuen** responded that discussing the law in the context of an individual's profession is not the practice of law, however, giving legal advice regarding the consequences of a legal action would be practicing the law.

SEN. MCGEE asked **Mr. Maristuen** if under the current practice of law he could be taken to court for the illegal practice of law. **Mr. Maristuen** stated that he did not know, he could not say that he could not ever be charged.

Closing by Sponsor:

SEN. KEENAN stated that it had been an interesting hearing, he now understood that the bill was vague and ambiguous. He concluded by stating that the language needed to be cleared up.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 28.2}

HEARING ON SB 62

Opening Statement by Sponsor: **SEN. GARY PERRY, SD 35, MANHATTAN,** opened the hearing on SB 62, Clarify that A contested case decision must be in writing. **SEN. PERRY** discussed the need to amend the bill and insert the word "written" on Page 3 under section 2-47-02 under Paragraph 2a on line 20. He went on to say that this bill had been brought forward because of a case that initiated before an Agency Commission which ruled against the client and quoted the applicable section of the law. When the attorney prepared his appeal to insure that a timely filing would

be received within the statute, the Commission was able to reconsider its decision in light of the appeal, consequently a final decision was rendered which contained different applicable law other than what the original decision had been based upon.

SEN. PERRY stated that this was not consistent with the idea of fairness and justice.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

CHAIRMAN WHEAT asked **SEN. PERRY** if what he was asking for and seeking was, if an agency made a decision in a contested hearing, that decision would have to be in writing. **SEN. PERRY** responded that was what the bill was asking.

Closing by Sponsor:

SEN. PERRY closed saying that this section of the law needed to be tightened and clarified so that all parties would know and understand that the final decision is the written decision.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 5.3}

HEARING ON SB 103

Opening Statement by Sponsor: **SEN. BRENT CROMLEY, SD 25, BILLINGS**, opened the hearing on SB 103, Define prohibited internet gambling. **SEN. CROMLEY** explained that this bill had been brought forward at the request of the Attorney General's Office. He went on to say that it could be an important statute to pass as it would clarify that internet gambling is not allowed in this State. **SEN. CROMLEY** then talked about the gambling that is legal in Montana. He continued by explaining how widespread internet gambling was becoming, the use of credit cards to pay for this type of gambling and, the fact, that a large amount of the money goes outside of the United States where there are no regulations. **SEN. CROMLEY** concluded by saying that the bill would allow the State of Montana to enforce the law against those places that conduct such illegal internet gambling games. This bill would also provide a definition for internet gambling. **SEN. CROMLEY** provided the Committee with a written information on SB 103 attached hereto as Exhibit 5.

EXHIBIT(jus05a05)**Proponents' Testimony:**

Gene Huntington, Administrator, Gambling Control Division, Department of Justice stated that the bill was a request of the Department of Justice. He went on to say that the bill was also a recommendation of the Gaming Advisory Council. **Mr. Huntington** pointed out that they were trying to provide something that would explain to the public what would be legal or illegal when it involves the internet. He then talked about exceptions and getting an understanding so that they would not do anything that would create problems for the state lottery and other legal gaming areas when there is an electronic connection involved. Furthermore, **Mr. Huntington** stated they did not want to do anything that would be in conflict with federal regulations regarding Class II Gaming. **Mr. Huntington** informed the Committee that they were also looking at other states strategy involving internet gambling.

Dan Krebill, Co-Pastor, First Presbyterian Church, Bozeman and a Member of the Board of the Montana Association of Churches, stated that the Association had been opposing the legalization of gambling since 1976. He continued by saying that gambling was nonproductive, provides non-essential services to a community, undermines economic and social order, places added strain on family structure, corrupts government on all levels and creates the potential for many related crimes and law enforcement problems. **Mr. Krebill** then gave statistical data regarding crimes committed by individuals as a result of gambling. He then provided the Committee with the Montana Association of Churches' Position Statement, attached as Exhibit 6, for the Committee's information.

EXHIBIT(jus05a06)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ELLINGSON inquired of **Mr. Huntington** if the Department had considered the fact that so many of the gambling establishments have ATM machines which provide easy credit for folks who are gambling. **Mr. Huntington** responded that ATM machines had not been an issue, the legislature provided a specific provision in law to allow the machines. He went on to say that ATM machines had not been a credit issue with them. **Mr. Huntington** stated

that he felt credit gambling was a problem. He continued that the ATM cards were not credit cards and would not allow individuals to take more money than they had available. He then talked of the past when people would hold checks for folks who were gambling, therefore, allowing people to lose more money than they had available.

SEN. ELLINGSON questioned **Mr. Huntington** regarding enforcement ability of offshore gambling sites. **Mr. Huntington** stated that passage of the bill would have an affect on offshore gambling, however, they did not have the strategy or resources to effectively deal with those web sites. He then gave some examples and stated that they would need federal legislation to be able to enforce the law where offshore web sites were involved.

SEN. ELLINGSON asked **Mr. Huntington** if there was a strategy that would result in enforcement of the law regarding sites that were within the states. **Mr. Huntington** responded that with passage of the law they would be in a better position to enforce the law.

SEN. O'NEIL asked **Mr. Huntington** if internet gambling was presently competing with the State's gambling. **Mr. Huntington** replied that he did not have any data, however, considering what he had seen on national statistics it is a rapidly growing sector of gaming.

SEN. O'NEIL asked **Mr. Huntington** what Class I gaming was on an Indian Reservation. **Mr. Huntington** responded that the Federal Indian Gaming Act divided gaming into three classes. He continued that Class I was traditional games such as hand games played at Pow Wows. He went on to explain the other two classes of gaming.

SEN. O'NEIL asked **Mr. Huntington** if the bill would stop internet gambling on reservations. **Mr. Huntington** replied that, if there were to be internet gambling on a reservation and the tribe that hosted the site wanted to allow it, they would have to negotiate with the Governor to have it in their compact. He did not believe the federal government would allow a compact that would allow a tribe to host a site that offered gambling some place other than another reservation.

SEN. O'NEIL asked **Mr. Huntington** what they called a video gambling machine. **Mr. Huntington** asked **SEN. O'NEIL** if he was asking in the context of the Indian Gaming Act. **SEN. O'NEIL** responded "No" he was asking if he went to a local tavern and put his money in a machine, what that machine would be called. **Mr. Huntington** said that it would be called a video gambling machine.

SEN. O'NEIL asked **Mr. Huntington** if there were computers in the video gambling machines. **Mr. Huntington** replied that there were electronic components in the video gambling machines that have intelligence, and that intelligence could be contained in a hard drive. He went on to say that there was no communication allowed between the machines, nor was there any direct communication from the machines, except for an accounting system.

SEN. O'NEIL asked **Mr. Huntington** if it were true that the proposed law did not require there to be an internet connection to the internet gambling and referred to and read the language directly from the bill, and inquired further if the bill did not, in fact, refer to persons putting money into a video gambling machine that would have a computer in it. **Mr. Huntington** stated that the key term was "the use of communications technology". He continued stating that right now people are selecting the game on the game, they are on the computer they are not connecting to it with the internet.

{Tape: 4; Side: A; Approx. Time Counter: 5.3 - 29.8}

SEN. MCGEE inquired of **Mr. Huntington** if on the reservation Class III Gambling included internet gambling. **Mr. Huntington** replied that he believed Class III gambling would have to include internet gambling. He then referred to a federal case "Coeur d'Alene Tribe" who attempted to start internet gambling and the resulting determination was that internet gambling could exist between reservations. He concluded that there could not be internet gambling from reservations to the general public.

SEN. MCGEE asked **Mr. Huntington** if the bill was dealing with an individual person playing a gambling game on the internet or if the bill was concerned with an individual creating a site where others could gamble. **Mr. Huntington** responded that it was a good question. He went on to say that their intent was with individuals creating gambling sites.

SEN. MCGEE further asked **Mr. Huntington** if the intent of the bill was to create a compelling state interest for the interference of the right of privacy clause of the Constitution with regard to an individual's right to play his computer and gamble wherever he chose to gamble rather than inhibit an individual from creating a site where someone else could gamble. **Mr. Huntington** stated that he thought that was a correct assumption.

SEN. MCGEE asked **SEN. CROMLEY** about the compelling state interest and how it would dovetail with what the bill was trying to do.

SEN. CROMLEY responded that he did not feel he had the background to reply to his question regarding compelling state interest. He

went on to say that a person could look at the present laws regarding the internet and how they could be applied. **SEN. CROMLEY** gave some examples of internet crimes.

SEN. PERRY asked **Mr. Huntington** if the bill would infringe upon an individual's rights. **Mr. Huntington** replied they were trying to make the act illegal, therefore, the person participating could be determined to be doing something illegal. He continued that in terms of enforcement that was not their intent, but it could happen.

Closing by Sponsor:

SEN. CROMLEY stated he felt there had been good discussion and was looking forward to Executive Action on the bill so they could explore the matter further.

{Tape: 4; Side: B; Approx. Time Counter: 5 - 16.1}

EXECUTIVE ACTION ON SB 36

Motion/Vote: **SEN. MCGEE** moved that SB 36 DO PASS. Motion carried unanimously with **SEN. ELLINGSON** voting aye by proxy.

EXECUTIVE ACTION ON SB 62

Motion: **SEN. PERRY** moved that SB 62 DO PASS.

Discussion:

SEN. MCGEE referred the Committee to Page 3, Lines 12 and 20, and stated he would like to propose a conceptual amendment to include the word "written" between the words "final and decision".

Motion/Vote: **SEN. MCGEE** moved that SB 62 BE AMENDED. Motion carried unanimously. **SEN. MANGAN** and **SEN. ELLINGSON** voted aye by proxy.

Motion/Vote: **SEN. MCGEE** moved that SB 62 DO PASS AS AMENDED. Motion carried unanimously. **SEN. MANGAN** and **SEN. ELLINGSON** voted aye by proxy.

The Committee discussed possible amendments to SB 49. It was determined that **SEN. MCGEE** and **Valencia Lane** would work on the amendments.

CHAIRMAN WHEAT asked **SEN. LASLOVICH** if there were any amendments to SB 30.

SEN. LASLOVICH replied that there were not, however, he did have a memo given to him by Pam Bucy which he presented to the Committee, attached as Exhibit 7.

EXHIBIT(jus05a07)

It was determined that they had not received the fiscal note so they could not take Executive Action.

{Tape: 4; Side: B; Approx. Time Counter: 16.1 - 24.8}

ADJOURNMENT

Adjournment: 12:08 P.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/MP

Additional Exhibits:

EXHIBIT ([jus05aad0.PDF](#))