

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY  
SECOND MEETING**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on March 25, 1999  
at 4:30 p.m. in Room 325 Capitol. Note: This is the second  
meeting of the day.

**ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Walter McNutt (R)

**Members Excused:** Sen. Reiny Jabs (R)

**Members Absent:** None.

**Staff Present:** Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: None  
Executive Action: HB 361, HB 407, HB 339,  
HB 109, HB 482, HB 54, HB 59  
HB 255

**EXECUTIVE ACTION ON HB 361**

**Motion/Vote:** SEN. HALLIGAN moved that HB 361 BE CONCURRED IN.  
Motion carried unanimously - 8-0.

**EXECUTIVE ACTION ON HB 407**

**CHAIRMAN GROSFIELD** explained that conceptual amendments have been proposed, **EXHIBIT (jus67b01)**. The amendments would strip the bill and state that the Water Court shall develop rules with respect to acting on its own motion and with respect to interactions with the Department of Natural Resources (DNRC). This does not maintain that the Supreme Court shall promulgate rules.

**SEN. HALLIGAN** remarked that the first amendment was more encompassing than the second amendment which applied to post-decree department assistance in the Water Court.

**SEN. DOHERTY** raised the concern that no other court has been directed to develop rules for when it can make a motion on its own initiative. When a special master is assigned in a post-decree situation, the special master ought to investigate and obtain information from both sides. If a court is not acting properly, the Supreme Court is the entity that addresses this situation.

**SEN. HALLIGAN** added that in **Judge Loble's** letter, **EXHIBIT (jus67b02)**, he stated that he would issue an order creating the uniform method of requesting assistance, etc. **SEN. HALLIGAN** did not believe that the bill was necessary.

**SEN. DOHERTY** suggested that the Committee send a letter to **Judge Loble** stating the bill is on the table awaiting an order from the court stating that rules will be developed.

**SEN. BARTLETT** remarked that this bill would not leave the Committee unamended and the date for transmittal of amended bills is next week. She added that the Committee has heard from experienced attorneys working in the area of water rights who are frustrated with the situation. She questioned whether a letter would provide the mechanism for the necessary follow through with the problem.

**SEN. HALLIGAN** related that many water law experts have told him that this bill is not needed. The case which prompted this bill involves the situation that the judge brought in an expert who disagreed with one party's experts. They had the right to go to a hearing and address the issues. This is standard practice. The judge states in his letter that he will be diligently working on rules that address the issues contained in the bill.

**SEN. DOHERTY** maintained that the letter needed to state that based upon the Committee's understanding of **Judge Loble's**

obligation, as he outlined in the March 17<sup>th</sup> letter, he will develop rules in consultation with all of the parties.

**Motion:** SEN. HOLDEN moved that HB 407 BE TABLED. HE FURTHER MOVED THAT CHAIRMAN GROSFIELD SEND A LETTER TO THE WATER COURT IN RESPONSE TO THE LETTER FROM JUDGE LOBLE.

CHAIRMAN GROSFIELD explained that Committee members would need to sign off on the letter after it was drafted.

SEN. GRIMES questioned whether the Water Court proceeded under administrative rules. CHAIRMAN GROSFIELD stated that they used internal rules for dealing with issues. This would add a few more rules.

Additional handout - Forest Service Comments Regarding HB 407, EXHIBIT (jus67b03).

**Vote:** Motion carried unanimously - 8-0.

#### EXECUTIVE ACTION ON HB 339

SEN. BARTLETT requested adding a conceptual amendment to HB 339. This would specify that the committee may accept grants, gifts, donations, etc., to fund their work. The State Bar Association may be interested in contributing toward this project.

**Motion/Vote:** SEN. BARTLETT moved to RECONSIDER ACTION ON HB 339. Motion carried unanimously -8-0.

**Motion/Vote:** SEN. BARTLETT moved HB 339 BE AMENDED BY ADDING STANDARD LANGUAGE RELATED TO THE COUNCIL BEING AUTHORIZED TO ACCEPT GIFTS, GRANTS, DONATIONS AND OTHER FUNDING TO HELP WITH THIS STUDY. Motion carried unanimously -8-0.

**Motion/Vote:** SEN. BARTLETT moved HB 339 BE CONCURRED IN AS AMENDED. Motion carried unanimously -8-0.

#### EXECUTIVE ACTION ON HB 109

CHAIRMAN GROSFIELD explained that the conceptual amendment added to HB 109 had the intent of raising \$300,000. The amendment would raise approximately \$970,000.

**Motion/Vote:** SEN. DOHERTY moved to RECONSIDER ACTION ON HB 109. Motion carried unanimously - 8-0.

**CHAIRMAN GROSFIELD** explained that in the amendments, HB0010903.av1, **EXHIBIT (jus67b04)**, Amendment no. 11 was the amendment being addressed.

**SEN. GRIMES** stated that his intent was to increase this by half the amount. The intent was to raise the tax in the amount that would offset the \$300,000 amount.

**CHAIRMAN GROSFIELD** stated that by taking this money out of the anticipated growth in revenue, the counties would be unaffected.

**SEN. DOHERTY** questioned whether the change to 14.925% would hold everyone harmless. The overall tax will still be 15%. He questioned who would be impacted by allocating the .075% to pathological gambling treatment.

**Jim Opedahl, Gambling Control Division**, explained that for the first two quarters of FY 1999, the revenues are about \$350,000 above the two quarters in FY 1998. This is \$750,000 to \$800,000 more than the year before for the current fiscal year. The calculation separating this between (a) and (b) with 14.925% and .075% would take the amount out of the growth. Under current law, all of the revenue is divided 1/3rd, 2/3rds. The Department of Justice's Budget includes machine fees and would not be reflected here.

**SEN. DOHERTY** asked what happened to the additional funds brought in due to growth. **Mr. Opedahl** explained that any growth is distributed 1/3rd to the General Fund and 2/3rds to local government. He believed that any additional revenue would be cash carried forward into the next budget year. Historically, more revenue has been collected and distributed at both the state and local level.

**SEN. GRIMES** stated that the only place local government sees any growth in funds is in this area. He suggested that this amount be taken out of the state's share instead of the local government's share. He would like to substitute .075% for 0.2%.

**CHAIRMAN GROSFIELD** maintained that since the amount of growth is so much more than the amount of money being addressed, the practical net effect is the same.

**Motion:** **SEN. DOHERTY** moved to **AMEND HB 109 BY CHANGING (a) TO 14.925% AND (b) TO .075%.**

The amendments were segregated.

*{Tape : 1; Side : B; Approx. Time Counter : 5.22}*

**Ellen Engstedt, Don't Gamble with the Future**, claimed that local governments are the ones taking the hit for pathological treatment and the industry is skating with keeping their 15% tax. The taxpayers are the ones that will be paying for treatment.

**Mark Staples, Montana Tavern Association**, contended that the amount of money that has been raised and distributed both to state and local governments should have had some component of social responsibility and treatment. This has amounted to \$240 million, not counting the fees. Local government was in support of the appropriation bill. If this legislature wants to create a tax increase, it should be done in a straight forward manner. The treatment bill should not be played against the dial-up bill to enact a tax increase. They would prefer this amendment to the amendment which was adopted yesterday by this Committee.

**Mr. Opedahl** remarked that if the intent of the allocation is to hold local government harmless, another way of presenting the amendment involved the distribution. Currently the distribution is 1/3rd to the state and 2/3rds to local government. If local government received the same distribution, 66 2/3rds percent of the tax, another section could state that 33% would go to state government and 1/3rd of a percent could go to this program. This would take the funds from the state share.

**Mr. Staples** added that since these funds were not budgeted, this would come out of the windfall beyond that which has been budgeted.

**SEN. HOLDEN** insisted that that is why the state agreed to gambling. It is a mistake to reduce the 15% tax rate. We clearly want to provide additional funds to fund the pathological treatment program. Property values are frozen and local governments are surviving from gambling revenues whether we like it or not. It will be hard for him to go home and explain that this has been reduced from 15% but a pathological program has also been funded.

**CHAIRMAN GROSFIELD** explained that the suggestion is to leave the 15% intact.

**SEN. DOHERTY** withdrew his motion.

**Motion:** **SEN. DOHERTY** moved that **HB 109 BE AMENDED BY 1/3 OF A PERCENT FROM THE STATE'S PORTION OF THE TAX DISTRIBUTION GOING TO THE PATHOLOGICAL TREATMENT PROGRAM.**

**Discussion:**

**SEN. HOLDEN** remarked that the Committee is betting on a gambling expansion.

**SEN. MCNUTT** maintained that since the reduction was coming from the state's share, it would not depend on expansion of gambling. If gambling expands, both local government and the state will benefit.

**CHAIRMAN GROSFIELD** summarized that it would be necessary to strip the amendments that were added yesterday. The suggested new amendment should include amendments nos. 12-15, which are technical in nature.

**SEN. DOHERTY** withdrew his motion.

**Motion/Vote:** **SEN. DOHERTY** moved that **THE AMENDMENTS TO HB 109 BE STRIPPED**. The motion carried with **SEN. GRIMES** and **SEN. BARTLETT** voting no.

**Motion:** **SEN. DOHERTY** moved that **HB 109 BE AMENDED BY 1/3 OF A PERCENT FROM THE STATE'S PORTION OF THE TAX DISTRIBUTION GOING TO THE PATHOLOGICAL TREATMENT PROGRAM. THIS INCLUDES AMENDMENTS NOS. 12-15**.

**Discussion:**

**SEN. GRIMES** asked if this would work with the title of the bill.

**Ms. Lane** explained that the title would need to be amended. For this amendment, the title should include "allocating a portion of the gambling machine gross income tax to fund pathological gambling prevention and treatment".

**SEN. GRIMES** remarked that since the increase for the state is probably not budgeted, he did not see a problem taking the pathological treatment program out of those funds. He is embarrassed that so much ado is necessary over a mere pittance compared to the big picture. He feels that the gambling industry has always been given a free ride on taxes and it is time for them to pay their part. The amendment is a political compromise. However, it is getting this issue off of dead zero.

**SEN. BARTLETT** reiterated that even though this may be out of the state's share, it means that taxpayers are subsidizing the pathological gambling treatment program. We are taking existing revenues from the existing uses and averting them to this program.

**CHAIRMAN GROSFIELD** viewed the funds as being taken out of the growth in gambling. It will not negatively affect the funding of any program.

**Vote:** Motion carried 7-1 with Bartlett voting no.

**Motion/Vote:** SEN. HALLIGAN moved that HB 109 BE CONCURRED IN AS AMENDED. Motion carried 7-1. SEN. BISHOP was excused from the meeting.

*{Tape : 1; Side : B; Approx. Time Counter : 5.35}*

**EXECUTIVE ACTION ON HB 482**

**Motion:** SEN. DOHERTY moved that HB 482 BE CONCURRED IN.

**Discussion:**

**SEN. BARTLETT** stated that the bill did not directly state that the detention centers will be handling the training in the next two year period. She believed this needed to be made implicit.

**CHAIRMAN GROSFIELD** questioned whether the purpose of the bill was to do the training or to develop a pilot training program.

**REP. MANGAN** agreed that the bill does implicitly state that training and development will occur but he knows that it will be done. This is currently going on and the legislation will develop it in an official fashion. He would not object to an amendment to that effect.

**SEN. BARTLETT** did not think that anyone would take advantage of the situation but other Senators may be concerned with the language in the bill when asked to vote on same.

**SEN. HALLIGAN** explained that the Missoula facility believed that the uniform training everyone would receive at the Law Enforcement Academy was the best way to go. Training which occurred in individual settings would not reach the level of expertise of the Academy. **REP. MANGAN** claimed that other people feel differently. The Youth Justice Council and other members of the Board of Crime Control feel differently than members of the post council. An alternative juvenile specific detention center officer training course can and will be made that meets the current level of excellence of the Academy. It will address the more specific needs of juveniles. Missoula would not need to participate in this program.

**SEN. MCNUTT** commented that the opponents included both Cascade County and Yellowstone County. He questioned how many programs would be in effect. **REP. MANGAN** stated that there are only three long term facilities and this includes Kalispell, Great Falls, and Billings. Great Falls and Billings will be working cooperatively in developing this program. There will be two programs at the end of two years which will be the current program, the basic course at the Montana Law Enforcement Academy, and a second course as an alternative course for juvenile correctional training. He added that **Greg Noose, Administrator of the Law Enforcement Academy**, will be involved with the program and was the person who proposed the pilot program.

**CHAIRMAN GROSFIELD** asked the sponsor if he would object to language in the bill that stated that they will work together and arrive at a single training curriculum or program. **REP. MANGAN** agreed with the suggestion.

#### EXECUTIVE ACTION ON HB 54

**Motion:** **SEN. HALLIGAN** moved that **HB 54 BE AMENDED, HB005404.av1, EXHIBIT (jus67b05)**.

#### Discussion:

**Ms. Lane** explained that this is a substitute bill. The first four amendments change the title to reflect the substitute bill and amendment no. 5 is the entire bill. House Bill 203 contained amendments that separated assault and aggravated felony assault. This resulted in separating two statutes and made this into four statutes. This would continue with the concept of a free standing assault and would become assault with bodily fluid. She noted that there were different penalties for spitting on someone in a jail versus spitting on someone in prison.

**SEN. HALLIGAN** pointed out that arrest was not covered. Once the person was in jail, this applied.

**SEN. DOHERTY** suggested that the penalties be misdemeanors, not to exceed one year and not to exceed \$1,000.

**Ms. Lane** explained that a person who is already in prison for 30 years would be given a jail term for six months.

**SEN. DOHERTY** stated that currently a person in prison who assaulted someone and ,for example broke that person's arm, would be charged with the offense.

**Diana Leibinger-Koch, Department of Corrections,** stated that currently someone in prison would be deterred by another felony crime penalty of extra time in the state prison.

**SEN. DOHERTY** asked if the person in prison would serve the additional time in the Montana State Prison. **Ms. Leibinger-Koch** explained that it can be worded as a penalty in the state prison. One year in the state prison is allowed under the statutes.

**SEN. HALLIGAN** remarked that if someone was a week from discharge and committed the offense while in the facility, they could be charged with the crime but would need to be discharged on the discharge date. This person would not receive a sentence of a year in prison. It would be one year in the county jail or one year suspended sentence. **Ms. Leibinger-Koch** stated that the statutes allow for the judge to give a sentence of a year in the state prison, even if he is out of prison at the time he is sentenced for the offense.

**Substitute Motion:** **SEN. HALLIGAN** moved that **HB 54 BE AMENDED, HB005404.av1, NOT TO EXCEED ONE YEAR AND NOT TO EXCEED \$1,000.**

**Discussion:**

**Ms. Lane** commented that Title 45 penalties, if they are up to one year or less, specify county jail time versus time in the state prison.

**{Tape : 2; Side : A; Approx. Time Counter : 5.57}**

**Ms. Lane** continued that the definition of a misdemeanor means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine or both or for which the sentence imposed is imprisonment in a state prison for any term of one year or less.

**SEN. BARTLETT** claimed that the sentence should not be in prison if the offense occurred in jail.

**Substitute Motion/Vote:** **SEN. HALLIGAN** moved that **HB 54 BE AMENDED, HB005404.av1, NOT TO EXCEED \$1,000 OR INCARCERATED IN A COUNTY JAIL OR A STATE PRISON FOR A TERM NOT TO EXCEED ONE YEAR OR BOTH. The motion carried unanimously - 8-0.**

**Motion/Vote:** **SEN. HOLDEN** moved that **HB 54 BE CONCURRED IN AS AMENDED. Motion carried unanimously - 8-0.**

**EXECUTIVE ACTION ON HB 59**

**Motion:** SEN. HALLIGAN moved that HB 59 BE AMENDED, HB005901.av1, EXHIBIT (jus67b06) .

**Discussion:**

Ms. Lane commented that there was some concern that on page 6 of the bill, subsection (5) was not clear on when it would be applicable in terms of persons who had or had not been designated sex offenders. This has been rewritten. Amendment no. 5 strikes the existing (5) and replaces it with new language which clarifies that it only applies to persons who are already required by law to register but were not given a level designation at the time of sentencing. It would require the Department of Corrections to give them a designation when released from confinement.

There was also concern regarding the wording of new Section 1 on plea bargain agreements. Her understanding is that the term "plea bargain" does not appear in the code and the term "plea agreements" is used.

SEN. GRIMES asked that the amendments be segregated between the two sections.

Ms. Lane explained that amendments no. 2 and 5 would group together and amendments nos. 1, 3, and 4 would group together.

**Substitute Motion/Vote:** SEN. HALLIGAN moved that HB 59 BE AMENDED, HB005901.av1, AMENDMENTS NOS. 1, 3, AND 4. The motion carried unanimously - 8-0.

**Substitute Motion:** SEN. HALLIGAN moved that HB 59 BE AMENDED, HB005901.av1, AMENDMENTS NOS. 2 AND 5.

**Discussion:**

SEN. GRIMES claimed that it wouldn't matter who the offender was or what designation had been assigned and this would now be public information. The information may not be disseminated like it is in level two or level three, but it is still a matter of public record.

**Vote:** Motion carried unanimously - 8-0.

**Motion/Vote:** SEN. MCNUTT moved that HB 59 BE CONCURRED IN AS AMENDED. Motion carried unanimously - 8-0.

**EXECUTIVE ACTION ON HB 255**

**Motion:** SEN. BARTLETT moved that HB 255 BE AMENDED, HB0025501.alk, EXHIBIT (jus67b07) .

**Discussion:**

SEN. BARTLETT remarked that she has spoken to a person who owns a store in East Helena and uses the civil approach in every case. If there is a criminal charge of shoplifting, they would also go after the civil remedy.

**Vote:** Motion carried 7-1 with Grosfield voting no.

**Motion/Vote:** SEN. HOLDEN moved that HB 255 BE CONCURRED IN AS AMENDED. Motion carried unanimously - 8-0.

**ADJOURNMENT**

Adjournment: 6:15 P.M.

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SEN. LORENTS GROSFIELD, Chairman

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JUDY KEINTZ, Secretary

LG/JK

**EXHIBIT (jus67bad)**