MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 27, 2005 at 9:00 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. Jeff Mangan (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: None.

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: SB 200, SB 260, SB 268, SB 207, 1/24/2005
Executive Action: SB 268

SEN. CROMLEY chaired the Committee while **CHAIRMAN WHEAT** presented SB 200.

HEARING ON SB 200

Opening Statement by Sponsor:

SEN. MICHAEL WHEAT, SD 32, BOZEMAN, opened the hearing on **SB 200,** Revise appointment and term of chief water judge and water court location. **SEN. WHEAT** explained that the bill was designed to do two things. First, it would provide that the person selected as the Water Judge would have to go through the judicial nominating process and be selected by the Governor. Second, SB 200 would move the Water Court to Helena. **SEN. WHEAT** further explained that because of the cost of moving the Water Court to Helena he had an amendment to take that proposal out of the bill. **SEN. WHEAT** informed the Committee that SB 200 had come about as a result of his work on the EQC Interim Committee. He went on to say that SB 200 was simply designed to provide that the water judge would be appointed in the same manner as any other judge, rather than by the Chief Justice of the Supreme Court as is presently being done.

Proponents' Testimony:

REP. DEBBIE BARRETT, HD 72, expressed her strong support for SB 200. **REP. BARRETT** referred to the work done by the EQC Interim Committee on the water adjudication process and the need to speed the process along and get it done. She concluded by saying that passage of SB 200 would help to expedite the process.

Bob Lane, Chief Counsel, Department of Fish, Wildlife and Parks, stated that it was appropriate for them to stand as proponents. He went on to say that passage of SB 200 would provide the same checks and balances for the Water Court as provided throughout State Government.

Opponents' Testimony:

John Bloomquist, Attorney from Helena, on behalf of the Montana Stock Growers Association, spoke in opposition to SB 200. **Mr. Bloomquist** provided the Committee with information regarding his past involvement with the Water Court. He went on to express his support for **SEN. WHEAT** removing that portion of SB 200 related to moving the Water Court to Helena. He further remarked on his opinion that since there had never been any problems associated with the Chief Justice of the Supreme Court appointing the Water Judge, there was no justification for changing the procedure at

this point. He went on to say that he felt it was a bad time to even be attempting to change procedures. **Mr. Bloomquist** advised the Committee that he was also speaking for the **Montana Farm Bureau Federation** on behalf of **John Youngberg** who was unable to attend this hearing.

Mike Murphy representing the Montana Water Resources Association, remarked that for many of the reasons stated by **Mr. Bloomquist** his Association stood in opposition to SB 200. He went on to say they were concerned that the appointment of the Water Judge by the Governor could become a political appointment. **Mr. Murphy** stated they felt that the process would be subject to more change, less continuity, and with attempting to expedite the selection of the Water Judge, it was crucial to maintain consistency and expertise within the office of the Water Judge.

David Schmidt, private businessman with a consulting business in water rights, stated that his initial concern had been with moving the water court to Helena and the loss of expertise with water masters and potentially with the loss of Judge Loble. He further remarked that for all of the reasons stated by the previous two opponents, he stood in opposition to SB 200.

Peter Marchi, Court Appointed Water Commissioner for the Musselshell River Enforcement Project, spoke in opposition to SB 200. He indicated that his concerns were the same as those expressed by **Mr. Bloomquist** and others with regard to the way the Water Judge is appointed. He went on to say that he felt if it was not broke don't fix it. He also indicated that he had concerns with the Judge's term going from a short term to a longer term.

Informational Testimony:

Bruce Loble, Chief Water Judge, Montana Water Court, indicated he would be happy to answer any questions that the Committee might have.

Questions from Committee Members and Responses:

SEN. LASLOVICH asked **SEN. WHEAT** if there was a problem now with the Chief Justice appointing the Chief Water Judge. **SEN. WHEAT** explained that the Workers' Compensation Court Judge was like the Water Court Judge, in that it is an appointed position. However, the Workers' Compensation Court Judge is appointed by the Governor, not the Chief Justice of the Supreme Court. He went on to say that he did not feel that anyone would be able to point to that position and say that it was a politicized position. **SEN. WHEAT** explained that the nominees for the position would submit

their applications to the Judicial Nominating Commission. The Judicial Nominating Commission, through interviews and investigation, would then select those individuals that are qualified for the position, and present the names of those individuals to the Governor for final determination. **SEN. WHEAT** stated that his reason for having the Governor select the Chief Water Judge was to make the process consistent with all of the other courts.

SEN. LASLOVICH then asked **SEN. WHEAT** if presently there was a commission the nominees went through before they went to the Chief Justice, or if the names were simply submitted to the Chief Justice for nomination. **SEN. WHEAT** indicated that the process was the same. He continued stating that all he was trying to do was to make the manner in which judges are selected consistent.

SEN. SHOCKLEY asked **Judge Loble** when the need for having a Water Judge was going to end. **Judge Loble** responded that if HB 22 did not pass it was projected to take 40 to 50 years to end. He went on to say that it was his personal belief that in that event people would get tired of the issue, it would never end, it would just come to a halt. **Judge Loble** further stated that the Legislature needed to put more money into the project or it would eventually die.

SEN. SHOCKLEY asked **Judge Loble** if what he was saying, was that if the funding bill were to pass it would take 40 to 50 years to complete the project. **Judge Loble** replied that if HB 22 were to pass the bill would require the Department of Natural Resources to exam a fixed amount of claims each year and finish those claims examination within a specified time. **Judge Loble** explained the process of examining claims to the Committee.

SEN. SHOCKLEY then asked **Judge Loble** if he was going to apply for the position of Chief Water Judge if it were to be appointed by the Governor. **Judge Loble** stated that he would.

SEN. O'NEIL asked **SEN. WHEAT**, if they passed this bill and the Water Judge was slow at making decisions, would the Governor have the power to fire the Judge and appoint another Judge. **SEN. WHEAT** responded that he would not.

SEN. MANGAN asked **SEN. WHEAT** if the Workers' Compensation Judge was currently confirmed by the Legislature. **SEN. WHEAT** replied that he believed so, but was not absolutely certain.

Closing by Sponsor:

SEN. WHEAT stated that he did not believe that passage of the bill would politicize the process. He went on to say that it would simply bring the Water Court in line and consistent with the way other judges are selected. **SEN. WHEAT** then referred to the statement by **Judge Loble** that the adjudication process could take a very long time to complete. He then stated that he personally felt that there would be a need for a Water Judge even after all the claims were processed, therefore, this bill would simply make the selection of the Chief Water Judge consistent with all of the other Courts in the State.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 28}

CHAIRMAN WHEAT resumes chairing the hearings.

HEARING ON SB 260

Opening Statement by Sponsor:

SEN. GARY PERRY, SD 35, MANHATTAN, opened the hearing on **SB 260**, Confirmation of written decision to oral pronouncement -- contested cases. **SEN. PERRY** provided the Committee with a copy of 46-18-116 of the Montana Code Annotated for their reference. This handout is attached as Exhibit 1. **SEN. PERRY** explained that SB 260 would make the law similar to the criminal code for commissions and agencies when handing down decisions. He went on to say that SB 260 would provide that all final decisions in contested cases be issued, in writing, within 90 days of the close of the case. **SEN. PERRY** then referred to New Section 1(b) and explained the process by which an individual could contest the written decision, if that decision conflicted with the oral decision announced at the conclusion of the hearing. He concluded by saying that he felt the least, they as Legislators, could do was extend the same amount of justice to every citizen who could be exposed to a hearing before an agency as was extended to criminals.

EXHIBIT(jus21a01)

Proponents' Testimony: None.

Opponents' Testimony:

Martin Jacobson, Staff Attorney for the Montana Public Service Commission, spoke in opposition to SB 260. **Mr. Jacobson's** written testimony is attached as Exhibit 2.

EXHIBIT(jus21a02)

Informational Testimony:

Terri McLaughlin, Chief, Water Rights Bureau, Department of Natural Resources and Conservation, explained that their water rights hearings were scheduled twice per month. She went on to say that they were roughly 150 cases behind. **Ms. McLaughlin** encouraged the Committee to amend SB 260 to have the 90 days begin after the submission for final decision.

Kelly Jenkins, General Counsel, Public Employees Retirement Board, stated that the Public Employees Retirement Board utilized the procedure already allowed in the Montana Administrative Procedures Act. He went on to explain that procedure to the Committee.

Bobbi Conrady, Bureau Chief, Office of Fair Hearings, Department of Public Health and Human Services, stated that the Agency's only concern was with the 90-day time frame. She went on to say that her Department was prohibited from making oral decisions. **Ms. Conrady** provided the Committee with events that could prohibit them from making their decisions within 90 days.

Questions from Committee Members and Responses:

SEN. CROMLEY asked **SEN. PERRY** if he felt the bill would address his concerns. **SEN. PERRY** referred to criminal code wherein it says that the written judgment and the oral pronouncement must conform. He went on to say that if it did not, the defendant, under criminal code, could petition the court and the court would have to modify the written judgment to conform to the oral judgment at a hearing.

SEN. CROMLEY then asked **SEN. PERRY** if the hearings were recorded in some manner. **SEN. PERRY** responded that they were tape recorded in most cases, therefore, there would be a written transcript that could be obtained.

SEN. CROMLEY asked **SEN. PERRY** what would happen if there was no decision in 90 days. **SEN. PERRY** responded that as there was no

direction of the consequences referenced in criminal code, he had not put such direction in this bill.

SEN. O'NEIL asked **SEN. PERRY** if an individual could appeal the oral pronouncement rather than wait for the written decision. **SEN. PERRY** replied that the proper procedure was to appeal the written decision. He went on to say that part of the problem he was addressing was that the law was unclear as to when the written decision had to be filed.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 24.2}

SEN. O'NEIL then asked **SEN. PERRY** if the reference to the parties meant the party or the party's attorney. **SEN. PERRY** responded that he was not an attorney, however, he felt it meant the party or the representative of the party.

SEN. O'NEIL asked **SEN. PERRY**, if the party did not show up for the hearing, if it was a waiver of his right to be at the hearing. **SEN. PERRY** responded that he thought that was correct.

SEN. MANGAN asked **Bobbi Conrady** if there would be staffing implications to meet the requirements of the bill. **Ms. Conrady** responded that there would be a need for more staff to meet the 90-day time frame.

SEN. MANGAN asked **SEN. PERRY** if he had requested a fiscal note. **SEN. PERRY** stated that none had been requested and that he did not anticipate a need for one.

SEN. MANGAN further inquired of **SEN. PERRY** if he felt, based on the testimony, that they should request a fiscal note. **SEN. PERRY** replied that he did not have an objection, however, he felt that the fiscal note would come back with a zero impact.

Closing by Sponsor:

SEN. PERRY pointed out to the Committee that in code Title 2, Chapter 15, Section 104, there is a definition of a quasi judicial function, which means, "adjudicatory function exercised by an agency involving the exercise of judgment and discretion in making determinations in controversies." **SEN. PERRY** then referred to Title 2, Chapter 15, Section 124, Quasi Judicial Boards, and stated, "If an agency is designated by law as a Quasi Judicial Board for the purposes of this section the following requirements apply...". He went on to say that they were talking about agencies that in effect were acting as courts. He further stated that when they were doing so they should be expected to act as any other court, as the citizens deserved no less. **SEN.**

PERRY concluded by referring to criminal code and stated, "The written judgment must be signed and must be entered on the record within 30 days after the oral pronouncement of the disposition of the case." He then stated that if the criminal courts could get decisions out in 30 days, what was the problem with agencies getting their decisions out in 120 days.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 8.2}

HEARING ON SB 268

Opening Statement by Sponsor:

SEN. JIM SHOCKLEY (R), SD 45, opened the hearing on **SB 268,** Revise penalty for driving without insurance conviction. **SEN. SHOCKLEY** requested that SB 268 be tabled by the Committee.

Motion/Vote: SEN. CROMLEY moved that SB 268 BE TABLED. Motion carried 12-0 by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 8.2 - 10.2}

HEARING ON SB 207

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 207,** Electronic monitoring of sexual offenders. **SEN. PERRY** stated that SB 207 would provide continuous satellite monitoring of sexual offenders as a condition of their parole and life long monitoring of offenders designated as sexually violent predators. He then explained how the satellite monitoring would work and the safety net it would provide for communities. **SEN. PERRY** then provided the Committee with a couple of examples where satellite monitoring would have been very useful. He further stated that with satellite monitoring life sentences would truly be life sentences. **SEN. PERRY** provided the Committee with a copy of 46-23-509, which is attached as Exhibit 3. He then discussed 46-23-509 and the three levels of designation for sex offenders. He concluded by urging the Committee to pass SB 207 as it was a matter of public safety.

EXHIBIT(jus21a03)

Proponents' Testimony:

Bill Slaughter, Department of Corrections, stated that SB 207 was a leading-edge-type of bill. He went on to say that they stood in support of the SB 207 as it was one of the toughest public safety issues that they had to deal with every day. He then expressed some of the concerns that the Department of Corrections did have with the bill, especially with the cost of lifelong GPS monitoring. **Mr. Slaughter** went on to discuss the struggles that they had to deal with in regard to sex offenders.

Ron Alsbury, Probation and Parole Bureau Chief, Department of Corrections, expressed his support of SB 207. He explained how they might be able to use satellite monitoring as a good tool. He went on to discuss the protocols developed for sex offenders and their treatment requirements. **Mr. Alsbury** stated that satellite monitoring would be valuable in helping victims to feel more comfortable.

Dallas Erickson, Montana Citizens for Decency Through Law, discussed the number of sex offender prisoners incarcerated in the Montana State Prison. He went on to talk about the cost of SB 207 and the cost of handling sex offense crimes. He concluded saying that he felt SB 207 was worth it and asked the Committee to please support it.

{Tape: 2; Side: A; Approx. Time Counter: 10.2 - 27.6}

Megan Dumas representing the Associated Students of Montana State University, discussed the number of sex offenders in and around the University and the fear that this caused her and her fellow students. **Ms. Dumas** urged a do pass on SB 207.

Opponents' Testimony: None.

Informational Testimony:

Mary Phippen representing the Montana Association of Clerk of District Court, stated that the Clerks were pursuing legislation under HB 288 to transfer the administration of the supervisory fees, referenced in Section 3 of **SEN. PERRY'S** bill, therefore, they were concerned about coordination language between the two bills. She went on to say that this concern had been addressed by a proposed amendment.

Questions from Committee Members and Responses:

SEN. LASLOVICH asked **Mr. Alsbury** what the present Department policy was regarding the use of GPS monitoring. **Mr. Alsbury** replied that it was a requirement that would have to come from the Court or from the Parole Board that would direct the policy. He went on to say that they did not have a specific policy for the use of satellite monitoring.

SEN. LASLOVICH asked **Mr. Alsbury** if he had any idea how many people the Department was currently using monitoring on. **Mr. Alsbury** responded that he did not. However, he felt that the process had been relatively limited to date. He further stated that there were currently 18 level-three offenders under State supervision.

SEN. SHOCKLEY asked **Mr. Slaughter** if he saw a jurisdiction problem with regard to the level 1 offenders. **Mr. Slaughter** replied that he did, especially if they were to be monitored for life. He went on to say that he thought that they were referring to the life of the sentence, not the life of the offender.

SEN. SHOCKLEY further asked **Mr. Slaughter** how the monitoring would be paid for as in most cases the offenders would not have the money to do so. **Mr. Slaughter** stated that it would cost approximately $3,102 per year to get started. He went on to discuss the financial difficulties that the inmates encounter when it is time to be released. He added that the cost of the program was the unknown factor. **Mr. Slaughter** concluded, saying that 99 percent of the inmates would not be able to afford the monitoring.

SEN. SHOCKLEY asked **Mr. Slaughter** if the fiscal note would reflect the fact that the State was going to have to pay for the program. **Mr. Slaughter** replied that it would.

SEN. CROMLEY asked **Mr. Slaughter** if he was correct that a level two offender could petition to have his status changed, however, a level three offender would not be able to. **Mr. Slaughter** replied that he was correct that a level two could change, but a level three offender was a level three for life.

SEN. CROMLEY asked **Mr. Slaughter** about the 18 level three offenders in the State. **Mr. Slaughter** stated that there were currently 18 level three offenders in the community corrections environment. However, there were probably more than that in the system.

SEN. CROMLEY then asked **Mr. Slaughter** how many level-three offenders were in the State outside of the prison. **Mr. Slaughter** indicated that he would have to get back to the Committee with that information.

SEN. CROMLEY asked **Mr. Slaughter**, if the bill had already been in effect, if all of the level-three offenders would have been subject to lifetime monitoring. **Mr. Slaughter** indicated that as the bill is written that would be the case. He went on to say that SB 207 would not be retroactive.

SEN. CROMLEY asked **Mr. Slaughter** what type of mechanical device would be on the individual. **Mr. Slaughter** responded that it would usually be a wrist or ankle bracelet. He then talked about new technology that would be easier for the offender and would be harder to defeat.

Closing by Sponsor:

SEN. PERRY addressed the fiscal note and the fact that, at the time the fiscal note was put together, the Fiscal Analysis Division did not know that the program would not be retroactive. He went on to explain the assumptions listed on the fiscal note and how they would impact the State. **SEN. PERRY** went on to say that the program was not intended to replace Parole and Probation Officers. It was intended to enhance and assist them in their work. **SEN. PERRY** asked the Committee for their favorable consideration for SB 207 to protect the community from offenders who have a high level of repetitive behavior.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 19.1}

ADJOURNMENT

Adjournment: 10:42 A.M.

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SEN. MIKE WHEAT, Chairman

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MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT(jus21aad0.PDF)