MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON HOUSE AMENDMENTS TO SENATE BILL 260

Call to Order: By **CHAIRMAN MIKE WHEAT**, on April 20, 2005 at 8:06 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, Chairman (D)
Rep. John Parker, Chairman (D)
Rep. Christopher Harris (D)
Rep. Tom McGillvray (R)
Sen. Gary L. Perry (R)
Rep. Ron Stoker (R)

Members Excused: None.

Members Absent: Sen. Jon Ellingson (D)

Staff Present: Jenn Kirby, Committee Secretary
John MacMaster, Legislative Branch

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

Committee Business Summary:
Hearing & Date Posted: SB 260, 4/19/2005
Executive Action:

CHAIRMAN WHEAT opened the hearing on SB 260 with a general introduction of the intent of this Conference Committee.

SEN. PERRY spoke about the time frame issue of this bill. He explained the agreement with the three agencies. The attested that the wording is agreeable to them. He stated that there was no objection to Part B. He added that the only objections were to the issue of the time frames. That was fixed and now there is no objection.

SEN. PERRY discussed Part B in detail. He spoke about the written opinions versus the oral pronouncement and the process of those being revised.

SEN. PERRY also commented on the Governor's amendments. He explained what the amendments would do, and how they affect the bill.

CHAIRMAN WHEAT clarified that as he reads the bill, the written opinions must conform to the oral pronouncement.

Ann Brodsky, Legal Counsel, Governor's Office, asserted that she prepared the amendatory veto for the Governor. She explained the thought and intent involved with this action. She described that the oral pronouncement was erroneous and the written opinion was more of a reflective process. She stated that if there is a conflict, the respective party can address the agency for a re-hearing. If the opinion is not legally correct, they don't want to be tied to it.

CHAIRMAN WHEAT inquired into a possible amendment that would protect both SEN. PERRY and the other agencies involved in this process. He worried about changing the compromise due to conflict.

Ms. Brodsky claimed that should work to cover all the bases.

SEN. PERRY asserted that is very similar to what happened previously.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 11.6}

Chris Tweeten, Chief Civil Counsel, Office of the Attorney General, declared that the first amendment by the Governor deals with the issue of the time frame. He commented that the second provision that the Governor's amendments deals with is very rarely seen. He said that importing criminal code into MAPA is not a very good idea. He spoke about the State versus Lane. This decision stated that a criminal defendant has the

constitutional right to be present at all critical stages in the proceedings, including sentencing. He discussed the issue of oral pronouncements and written opinions in regard to this situation. He added that under MAPA there is no oral pronouncement or right to be present.

Mr. Tweeten declared that the better provision would be the one dealing with civil proceedings in which the Court can modify the jury's decisions. These are Rules 59-60. There is an opportunity for particular parties to testify.

{Tape: 1; Side: A; Approx. Time Counter: 11.6 - 17}

SEN. PERRY cited that Mr. Tweeten's comments are good suggestions.

SEN. PERRY asked a question of Ms. Brodsky. He inquired if she had spoken with John Conner in relation to his question about criminal code and proceedings. **Ms. Brodsky** stated that she relayed to him that the criminal code was being used as a model in this bill. She described how it was being utilized in the criminal context.

REP. HARRIS asked Mr. Tweeten if it would make sense to eliminate the oral pronouncements all together. **Mr. Tweeten** asserted that he has never provided an oral pronouncement and added that they do not occur all that often. He believes that oral pronouncements by hearing examiners should be discouraged by agencies. He added that practice of these is most likely different in all agencies. It is difficult to enforce members to refrain from vocalizing how they feel on an issue. He added that he believes the bill is somewhat vague at the moment on what an oral pronouncement actually is.

REP. HARRIS stated that he agrees with Mr. Tweeten. He also believes that the vote needs to conform to the final decision. The oral form should not be held as the final word on the decision.

SEN. PERRY wished to address a few personal concerns. He spoke about the issue of the time frame. He also spoke about the issue of an appeal. He discussed this process and some potential problems. He touched on the issue of mailing the decision. He would like to see that portion remain in the bill.

CHAIRMAN WHEAT called for a five-minute recess. REP. HARRIS left the hearing.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 0.1}

CHAIRMAN WHEAT called the meeting back to order.

SEN. PERRY proposed that they change the language in regard to the bill and the Governor's amendments.

Ms. Brodsky attested that part of this language is already in current law.

SEN. PERRY talked about the Governor's amendment #3. The Conference Committee touched on the language. He stated that the Governor also amended the bill from 90 days to 30 days. He did not have a problem with that.

John MacMaster, Legislative Services Division, read the amended language on Governor Schweitzer's suggestions.

{Tape: 1; Side: B; Approx. Time Counter: 0.1 - 7}

MOTION: SEN. PERRY MOVED TO ADOPT AMENDMENTS TO THE GOVERNOR'S AMENDMENTS.

Mr. MacMaster explained these amendments to the Committee and clarified what their intent is.

VOTE: Motion passed unanimously by voice vote. SEN. ELLINGSON and REP. HARRIS voted by proxy.

{Tape: 1; Side: B; Approx. Time Counter: 7 - 15.2}

ADJOURNMENT

Adjournment: 9:09 A.M.

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SEN. MIKE WHEAT, Chairman

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JENN KIRBY, Secretary

MW/JP/jk

Additional Exhibits:

EXHIBIT(ccs85sb0260aad0.TIF)