

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE ON SB 229 AND SB 458

Call to Order: By **SENATOR FRED THOMAS**, on April 13, 1999 at 8:04 A.M., in Room 402 Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas (SB 229 and SB 458)
Sen. Walter McNutt (SB 229)
Sen. Vicki Cocchiarella (SB 229)
Rep. Daniel Fuchs (SB 229)
Rep. Cliff Trexler (SB 229)
Rep. George Golie (SB 229)
Sen. Ken Mesaros (SB 458)
Sen. Steve Doherty (SB 458)
Rep. William Rehbein (SB 458)
Rep. Jim Shockley (SB 458)
Rep. Gary Beck (SB 458)

Members Excused: None.

Members Absent: None.

Staff Present:

Phoebe Olson Secretary
Eddy McClure, Legislative Services Division (SB 229)
Leanne Kurtz, Legislative Services Division (SB 458)

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

Committee Business Summary:

Free Conference Committee on SB 229 and SB 458.

SB 229

SENATOR THOMAS, called the meeting to order, and presented a letter to the committee. **EXHIBIT(frs80sb0229a01)**

Eddy McClure, explained the amendments. **EXHIBIT(frs80sb0229a02)**

Vote: **SENATOR MCNUTT** made a motion that **AMENDMENT SB022905.AEM** BE ADOPTED. Motion carried unanimously.

Vote: **REPRESENTATIVE FUCHS** made a motion that **SB 229 DO PASS AS AMENDED**. Motion carried unanimously.

{Tape : 1; Side : A; Approx. Time Counter : 807; Comments : stopped the tape till 8:18am.}

SB 458

SENATOR THOMAS, said the amendments were put on the House Floor. He asked Bob Lane from the Department of Fish, Wildlife and Parks to address an amendment.

Bob Lane, MT Fish Wildlife and Parks, explained the Departments concerns. **EXHIBIT(frs80sb0229a03)**. He also gave options for amendments. **EXHIBIT(frs80sb0229a04)**.

SENATOR THOMAS, wanted to discuss inserting "knowingly" or "negligently", back into Section 2.

SENATOR MESAROS, said normally "negligently" was standard in the penalty provisions.

Bob Lane, replied that was correct.

REPRESENTATIVE SHOCKLEY, asked someone to show him anywhere in title 45, where it ever says purposefully, knowingly and negligently. He said that was customary in Fish and Game codes but no where else in statute.

Bob Lane, pointed to Section 45-2-103.

REPRESENTATIVE SHOCKLEY, maintained that negligently was usually a separate section.

Bob Lane, said unless it was stated differently, this general requirement fit all crimes under the criminal code.

REPRESENTATIVE SHOCKLEY, said the problem he perceived was in that they didn't put purposely or knowingly in the knew section.

Bob Lane, said that was covered in the bill as introduced, it was just hidden.

SENATOR THOMAS, handed out the definitions.

EXHIBIT(frs80sb0229a05)

REPRESENTATIVE SHOCKLEY, maintained his earlier position.

SENATOR DOHERTY, asked if this was current law, what sort of experiences they had with it.

Bob Lane, said there has been disputes whether these statutes where stick liability statutes or had a mental state. He thought it was fairer to put those mental states in there and make sure all prosecutions had a mental state.

Motion: **SENATOR DOHERTY** moved **AMENDMENT 2** of **EXHIBIT**(frs80sb0229a06) .

REPRESENTATIVE BECK, said that they threw it out because of the fines being so great, not because of the definitions.

REPRESENTATIVE REHBEIN, said he agreed with Rep. Beck. He said until all the fines were raised people were not concerned with the problems brought up by Rep. Shockley.

SENATOR MESAROS, said before this bill was introduced he was concerned with this vary issue. He thought honest mistakes could be made.

SENATOR DOHERTY, pointed out that the fine was only if you were convicted. He said you would have to trust the judges and prosecutors at some point.

SENATOR THOMAS, asked if the definition of negligent wouldn't lead to the higher standard that **SEN. DOHERTY** discussed.

SENATOR DOHERTY, replied absolutely.

REPRESENTATIVE SHOCKLY, said it was the word negligent that worried the House.

REPRESENTATIVE REHBEIN, said he agreed, because negligent raised the fines considerably.

SENATOR DOHERTY said he was in full support of making the fines stiff as long as they knew what they were doing.

REPRESENTATIVE REHBEIN, said as long as they didn't include negligently in Section one, he thought they would be o.k..

REPRESENTATIVE BECK, said if negligently was explained correctly on the House Floor it could probably pass.

SENATOR THOMAS, said that in addition to this, he thought it might be good to make it apply after a first offense. He said this bill was targeted at poachers not hunters who make honest mistakes.

SENATOR DOHERTY, said the problem was the poacher might be getting caught for the first time.

SENATOR MESAROS, said that was not considered in any of the hearings on the bill and he would be reluctant to support that.

REPRESENTATIVE BECK, didn't support the idea.

SENATOR THOMAS, suggested adding a new section stating for purposes of Section 2 through 9 negligently has the same meaning as knowingly or negligently as defined in section 45.

REPRESENTATIVE REHBEIN, said that would exclude someone getting hit with a \$30,000 dollar fine if they were found negligent.

SENATOR DOHERTY, withdrew his previous motion.

Motion: **SEN. DOHERTY** moved **AMENDMENTS ONE, TWO, and THREE of EXHIBIT**(frs80sb0229a07) and to add a new section to explain the definitions.

REPRESENTATIVE SHOCKLEY, thought they would still need to clean up Section 1 to say perfectly or knowingly or they wouldn't ever get to impose the new section.

SENATOR DOHERTY, asked if the prosecutor wouldn't be deciding between purposefully, knowingly or negligently. He didn't think they could have all three.

{Tape : 1; Side : B; Approx. Time Counter : 855; Comments : turn tape over}

REPRESENTATIVE REHBEIN, just wanted to make sure it was clear that all three couldn't be used. He thought with the comma and the word "or", it probably was.

SENATOR THOMAS, called for the question.

Vote: Motion **carried unanimously.**

SENATOR DOHERTY, asked Bob to explain amendment three on option number one of (Exhibit 7)

Bob Lane, said that needed to be addressed to be consistent.

Motion/Vote: **SENATOR DOHERTY** moved that **AMENDMENT 3 OF OPTION 2** in (Exhibit 7) BE ADOPTED. Motion carried unanimously.

Motion: **SEN. DOHERTY** moved that **SB 458 DO PASS AS AMENDED.**

REPRESENTATIVE REHBEIN, said he would like to consider making this a second offense rather than a first offense.

SENATOR THOMAS asked, if the states that the bill was drafted after, had it as a first offense or second offense.

Bob Lane, replied it was a first offense.

SENATOR DOHERTY, said he didn't think it was the time to adopt that amendment.

SENATOR THOMAS, said it could be done in another session.

REPRESENTATIVE SHOCKLEY, said he didn't think this would have problems in the House as they had amended it. But said it would be a sure thing if the word negligently was taken out.

Vote: Motion **carried unanimously.**

SENATE FREE CONFERENCE

April 13, 1999

PAGE 6 of 7

ADJOURNMENT

Adjournment: 9:07 A.M.

SEN. FRED THOMAS, Chairman

PHOEBE OLSON, Secretary

BC/

EXHIBIT (frs80sb0229aad)