

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN DIANE RICE**, on April 11, 2005 at 9:00 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Diane Rice, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Ron Stoker, Vice Chairman (R)  
Rep. Arlene Becker (D)  
Rep. Robyn Driscoll (D)  
Rep. George Everett (R)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Roger Koopman (R)  
Rep. Michael Lange (R)  
Rep. Tom McGillvray (R)  
Rep. Mark E. Noennig (R)  
Rep. Art Noonan (D)  
Rep. John Parker (D)  
Rep. John Ward (R)  
Rep. Bill Wilson (D)  
Rep. Jeanne Windham (D)

**Members Excused:** Rep. Jon Sonju (R)

**Members Absent:** Rep. Bill Wilson (D)  
Rep. Michael Lange (R)

**Staff Present:** John MacMaster, Legislative Branch  
Pam Schindler, Committee Secretary

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

**Committee Business Summary:**

Hearing & Date Posted: HB 805, 806, 4/8/2005  
Executive Action: SJR 6-Do Concur As Amended

**HEARING ON HBs 805,806**

**CHAIRMAN RICE** ruled that REP. CLARK could present both bills together as they addressed the same issues.

**Sponsor:** REP. PAUL CLARK, HD 13, TROUT CREEK

**Opening Statement by Sponsor:**

REP. PAUL CLARK (D), HD 13, opened the hearing on **HB 805**, Revise requirements for statutory initiative. **REP. CLARK** proceeded to explain to the committee each of the statutes that are addressed in HB 805, 806.

**EXHIBIT**(juh77a01)

**EXHIBIT**(juh77a02)

**EXHIBIT**(juh77a03)

**EXHIBIT**(juh77a04)

**EXHIBIT**(juh77a05)

**EXHIBIT**(juh77a06)

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 351}*

**Proponents' Testimony:** None

**Opponents' Testimony:**

**John Youngberg, Montana Farm Bureau**, spoke in opposition to HBs 805 and 806 and stated, "Rural folks are not being represented."

*{Tape: 1; Side: A; Approx. Time Counter: 351 - 383}*

**John Bloomquist, Montana Stockgrowers Association**, spoke in opposition to HBs 805, 806. He stated that these bills would broaden the parameters for qualifying a petition on the ballot.

*{Tape: 1; Side: A; Approx. Time Counter: 383 - 457}*

**Informational Testimony:**

**Pam Bucy, Assistant Attorney General**, informed the committee that HB 805 and HB 806 will make the initiative language more in line with the constitution and spoke that there is no urgency in resolving this matter.

*{Tape: 1; Side: A; Approx. Time Counter: 457 - 500}*

**Mark Simonich, Deputy Secretary of State**, stated that with Judge Molloy's ruling, the language of the constitution has been restored. If HB 805 and HB 806 go forward, the bills would put

back on the books, "legislative districts" versus "representative districts."

**Mr. Simonich** continued to state that there is no hurry in resolving this situation and that would be time for this to be entered on the 2006 ballot; the elections are always a couple of years behind.

**{Tape: 1; Side: B; Approx. Time Counter: 0 - 37}**

**Questions from Committee Members and Responses:**

**REP. BECKER** asked **REP. CLARK** to explain the 5% to 10% and 1/3 of the districts to 2/5 of the districts. **REP. CLARK** explained the differences and stated that a constitutional amendment has a "higher bar" than a statutory amendment.

**REP. RICE** asked if any research has been completed regarding a Representative district versus a Senate district.

**REP. STOKER** spoke with Ms. Bucy regarding the percentages needed for the constitutional amendments and statutory amendments. **REP. MCGILLVRAY** also spoke with Ms. Bucy about similar issues.

**REP. WARD** continued with questions for **REP. CLARK** regarding Line 16 and the percentages in the language therein. **REP. CLARK** stated, "...these initiatives should represent the broadest spectrum of all people in Montana and remain constitutionally acceptable at the same time...."

**REP. NOENNIG** spoke with Ms. Bucy about a recommendation for Judge Molloy to expand his decision to either support or not support the Attorney General's opinion. The REPRESENTATIVE was also interested if Judge Molloy's decision would be appealed. **Ms. Bucy** did not know the answers to the REPRESENTATIVE'S questions.

**REP. EVERETT** asked Mr. Bloomquist if what prompted the initiative process to be put on the ballot was game farms. **Mr. Bloomquist** said, "...that is what started it and together with the [initiative] process usually being located in the larger cities in Montana."

**REP. KOOPMAN** spoke with Mr. Bloomquist and Ms. Bucy about the chance of Molloy's decision being appealed. **Ms. Bucy** stated that this is the first look at the decision and there is no final judgement from Judge Molloy yet.

**REP. STOKER** introduced **Chris Tweeten, Chief Civil Prosecutor, Office of the Attorney Generals**, to the committee. They spoke of

the "one person, one vote" theory and the Senate versus the Representative differentiation.

**Mr. Tweeten** made three significant comments:

- 1) Mr. Tweeten doubts that Judge Molloy would expand his decision.
- 2) The Federal Courts are courts of limited jurisdiction; this is an issue of State law--not Federal law. The Attorney General has given an opinion of what the law now states as to the Montana Constitution.
- 3) There is precedent in how to deal with the initiative process regarding the Constitutionality.

**REP. NOENNIG** also spoke to Mr. Tweeten about the Code Commissioner and the "operation of the law."

**REP. RICE** asked Mr. Tweeten if CI-75 was invalidated and if there was any legislation to rewrite that. **Mr. Tweeten** replied, "No, there hasn't been."

**REP. GUTSCHE** addressed Mr. Tweeten as to the "legal redress" regarding tort cases.

**{Tape: 1; Side: B; Approx. Time Counter: 37 - 500}**

**{Tape: 2; Side: A; Approx. Time Counter: 0 - 162}**

**Closing by Sponsor:**

**REP. CLARK** closed the hearing on HB 805 and HB 806 and stated to the committee, "Just because something is declared unconstitutional, does not mean the language is changed."

He continued with his closing and stated that representation of rural people of Montana should be incorporated within the representation of urban people.

The committee decided that an informal discussion would be beneficial for everyone's understanding of what the two bills would accomplish. **REP. CLARK** spoke with Ms. Bucy about the 9th Circuit Court. **Ms. Bucy** stated that the 9th Circuit Court has not been and is going to be appealed regarding the Idaho case that was mentioned in earlier testimony.

**REP. NOENNIG** stated that the 9th Circuit Court is the 1st Court of Appeals and is binding on any Federal Courts and is binding on Judge Molloy.

**REP. RICE** and **REP. CLARK** discussed the straight percentage of voters versus the geographic location of voters.

**Mr. MacMaster** spoke of the 9th Circuit Court regarding the Moore case and continued to explain the amendment to the committee members.

The committee members continued to discuss the ramifications of using a Representative District, the Attorney General's opinion, and whether the whole initiative process needs to be rewritten.

**REP. CLARK** continued to state to the committee that there are two issues to these bills, one is to go back to the original initiative language, and the other is to open the ballot initiative process.

*{Tape: 2; Side: A; Approx. Time Counter: 162 - 500}*

*{Tape: 2; Side: B; Approx. Time Counter: 0 - 175}*

#### EXECUTIVE ACTION ON SJR 6

**Motion:** **REP. NOONAN** moved that SJR 6 BE CONCURRED IN AS AMENDED. (from a previous tie-vote.)

**Discussion:**

(Please Note: REPS. KOOPMAN, LANGE, WILSON and WINDHAM absent from the room.)

The committee discussed the Joint Resolution and the possibility of another amendment for a review of youth courts as to recidivism.

**Vote:** Motion that SJR 6 BE CONCURRED IN AS AMENDED carried 12-6 by roll call vote with **REP. EVERETT**, **REP. KOOPMAN**, **REP. LANGE**, **REP. MCGILLVRAY**, **REP. RICE**, and **REP. SONJU** voting no. (REPS. KOOPMAN, LANGE, SONJU, WILSON, and WINDHAM voted by proxy vote.)

**ADJOURNMENT**

Adjournment: 10:45 A.M.

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REP. DIANE RICE, Chairman

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PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

**EXHIBIT ([juh77aad0.PDF](#))**