

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **VICE-CHAIRMAN BOB HAWKS**, on March 3, 2005 at 3:15 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. John Esp (R)
Sen. Kelly Gebhardt (R)
Sen. Kim Gillan (D)
Sen. Bob Hawks (D)
Sen. Rick Laible (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Jim Shockley (R)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: Sen. Jeff Mangan, Chairman (D)

Members Absent: None.

Staff Present: Jennifer Kirby, Committee Secretary
Leanne Kurtz, Legislative Branch

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

Committee Business Summary:

Hearing & Date Posted: HB 70, 2/23/2005; HB 226, 2/23/2005;
HB 105, 2/23/2005
Executive Action: HB 70; HB 226

SEN. BOB HAWKS, SD 33, BOZEMAN asked the secretary to take a visual roll. He told the committee it was time to contribute for committee snacks again. The committee secretary collected money.

HEARING ON HB 70

{Tape: 1; Side: A; Approx. Time Counter: 2.1}

Opening Statement by Sponsor:

SEN. KELLY GEBHARDT, SD 23, ROUNDUP opened the hearing on **HB 70**, Provide nepotism exemption for certain counties, on behalf of **REP. WAYNE STAHL (R), HD 35**.

{Tape: 1; Side: A; Approx. Time Counter: 2.2 - 3.2}

SEN. GEBHARDT explained that the bill's purpose was to allow county commissioners to appoint relatives to their local boards, as long as they adhered to certain stipulations. **SEN. GEBHARDT** said that if an applicant was a relative, a county commissioner must stand aside and allow the other commissioners to make the decision and act.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 3.2 - 4.2}

Gordon Morris, Montana Association of Counties, pointed out that the bill was very simple. It allowed county commissioners that same leeway with the appointment of relatives as is already granted to sheriffs and school districts. He noted that in smaller counties, it was sometimes difficult to fill positions and the rule against relatives being appointed sometimes prevented the appointment of what was otherwise a qualified applicant.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 4.2 - 12.1}

SEN. JOHN ESP, SD 31, BIG TIMBER asked why the House chose to omit the smaller counties by amendment. **Mr. Morris** answered that his organization thought that the classifications of counties should be eliminated. He noted that **REP. STAHL** had thought that

the smaller counties should be designated. **Mr. Morris** believed that it was a small county issue. He said that they did not want to continue the misapplication of legislation based on county class.

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS questioned **Mr. Morris** as to what an emolument was. **Mr. Morris** defined it as a gift, a present, or money. **SEN. O'NEIL** wanted to know if they were discussing paying people for the positions. **Mr. Morris** said that some of the positions were paid and some were not.

SEN. CAROLYN SQUIRES, SD 48, MISSOULA wanted to know if the bill applied to just county commissioners or every elected official. **Mr. Morris** answered that they were adding county commissioners to a list that already existed in statute. **Mr. Morris** said that it was already illegal to appoint a relative to a position of trust, but there were certain exemptions and the bill would add to the exceptions. It would allow county commissioners to consider all applicants, irrelevant to their degree of consanguinity.

SEN. SQUIRES asked if she could accept a gift worth over fifty dollars. **Mr. Morris** responded that it was illegal for a senator to accept a "gift of substance" and that substance was defined as worth fifty dollars.

SEN. RICK LAIBLE, SD 44, VICTOR wanted to know how many classes of counties there are. **Mr. Morris** replied that there are seven, and they are determined by taxable value. He noted that the counties were moving away from the classification system. **SEN. LAIBLE** asked if class one counties had the biggest tax base. **Mr. Morris** affirmed that was true.

SEN. MICHAEL WHEAT, SD 32, BOZEMAN asked **Mr. Morris** to explain, in detail, consanguinity to the fourth degree and affinity in the second degree. **Mr. Morris** said that he could not. He noted that the same question had been asked of him in the House and wanted to know who had told **SEN. WHEAT** to ask that question. **SEN. WHEAT** admitted that he was just joking.

SEN. ESP questioned why they wanted to get rid of the county classification. **Mr. Morris** replied that to think of counties as a certain class was insignificant and irrelevant. He noted that they had eliminated the classification in several statutes, including levies. He said that the meanings of the classifications had decreased in significance.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 12.1 - 13.2}

SEN. GEBHARDT gave **SEN. WHEAT** a chart showing consanguinity to the fourth degree and affinity in the second degree. He said that they had a good hearing and covered the issues. He encouraged a do pass.

HEARING ON HB 226

{Tape: 1; Side: A; Approx. Time Counter: 13.3}

Opening Statement by Sponsor:

SEN. CAROLYN SQUIRES, SD 48, MISSOULA, opened the hearing on **HB 226**, Change name of sheriff's department to sheriff's office, on the behalf of **REP. DAVE MCALPIN (D), HD 94**.

{Tape: 1; Side: A; Approx. Time Counter: 13.4 - 14.5}

SEN. SQUIRES stated that the bill was simple and it changed the name of "Sheriff's Department" to "Sheriff's Office" in all legal statutes.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 14.5 - 16.6}

Jim Smith, Montana Sheriffs and Peace Officers Association, stated that they had realized that the words "office" and "department" were used interchangeably throughout Montana statute. **Mr. Smith** declared that "office" was a more appropriate term because sheriffs are elected.

David Castle, Sheriff of Cascade County, stood in support of the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 16.6 - 21.2}

SEN. LAIBLE asked **SEN. SQUIRES** why there was no fiscal note with the bill. **SEN. SQUIRES** explained that the sheriff's office could

change the name on logos and supplies when the items needed to normally be renewed.

SEN. JIM SHOCKLEY, SD 45, VICTOR noted that there was a word that they could no longer use (there is a fish by the same name) and that the legislature had written it into the statutes that the departments would wear out all the signs and supplies and than replace and renew them with the new logo. He wanted to know if a similar thing could be done in the case of **HB 226. Mr. Castle** said that would be how he would handle it and commented that he was still using the previous sheriff's logo pens.

SEN. O'NEIL questioned **Mr. Castle** what the cost would actually be. **Mr. Castle** responded that Cascade County already calls it the Sheriff's office so there would be no fiscal impact for them. He noted that they had some problems when it was referred to as "department" in statute.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 21.2 - 21.3}

SEN. SQUIRES closed on the bill and thanked the committee for their questions.

EXECUTIVE ACTION ON HB 70

{Tape: 1; Side: A; Approx. Time Counter: 21.4}

Motion: **SEN. SQUIRES** moved that HB 70 BE CONCURRED IN.

Discussion: **SEN. ESP** stated that the county classifications should have remained in the bill to better focus the bill on smaller counties. **SEN. LAIBLE** said that he understood that the related official had to abstain from the vote and that smaller counties would just have the commissioner abstain from the vote and go ahead with the appointment. **SEN. O'NEIL** expressed his concern that the bill covered paid and unpaid positions. **SEN. GEBHARDT** told the committee that when he was a county commissioner, they had a problem getting a janitorial position filled and the only applicant was the daughter of one of the commissioners so it was a big problem in small counties. He stated that in large counties, they had more people to fill the jobs and it would not be worth the political suicide to appoint a relative. **SEN. SQUIRES** asked **REP. WAYNE STAHL, HD 35, SACO** why they chose to strike the classifications 4 through 7. **REP. STAHL** answered that it was struck in committee because one of the representatives had objected to it. **REP. STAHL** noted that he had

no problem with the committee adding the section back in. He agreed with **SEN. GEBHARDT** that in a large county, the press would crucify a commissioner that appointed a relative over other qualified applicants. **REP. STAHL** said that he would have to trust the press to do their job in relation to the bill. **SEN. ESP** commented that if politicians were astute, they could get away with things.

Motion: **SEN. WHEAT CALLED THE QUESTION ON HB 70.**

Vote: Motion that HB 70 BE CONCURRED IN carried 9-1 by voice vote with **SEN. ESP** voting no.

SEN. GEBHARDT will carry HB 70.

EXECUTIVE ACTION ON HB 226

{Tape: 1; Side: A; Approx. Time Counter: 28.7}

Motion/Vote: **SEN. LAIBLE** moved that HB 226 BE CONCURRED IN. Motion carried unanimously by voice vote.

SEN. SQUIRES will carry HB 226.

{Tape: 1; Side: A; Approx. Time Counter: 29.9}

HEARING ON HB 105

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, opened the hearing on **HB 105**, Providing partial payment of salary and reassignment of injured deputy sheriff.

{Tape: 1; Side: A; Approx. Time Counter: 29.9 - end of tape}

{Tape: 1; Side: B; Approx. Time Counter: 2.3 - 4}

REP. PARKER said that whenever a police officer or highway patrolman is injured in the line of duty, his or her employment entity is required to cover the gap between worker's compensation and their full salary for a period of one year. **HB 105** would extend that coverage to deputy sheriffs. **REP. PARKER** noted that current law did not extend the same protections afforded to other members of law enforcement, to deputy sheriffs. He submitted that the job of a deputy sheriff is as dangerous and difficult as other jobs in law enforcement.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 4 - 14.5}

David Castle, Sheriff of Cascade County, supported the bill. **Mr. Castle** highlighted the problem with current law by telling the committee that if a highway patrolman, a fish and game employee, and a deputy sheriff all responded to a incident and all three were shot in the line of duty; the deputy sheriff would have thirty percent pay cut until he could return to work while the other two would continue to receive full benefits.

Jim Smith, Montana Sheriffs and Peace Officers Association, supported the bill.

Don Judge, Teamsters Local 190, stated that other officers that are injured in the line of duty are eligible to receive compensation and continuation of benefits and that it was only fair that deputies receive the same benefits. He mentioned that the bill also allows a sheriff to find light duties for an injured deputy to perform.

David Phillips, Cascade County Sheriff's Office, expressed his hope that the committee pass **HB 105**. **Mr. Phillips** said that there was more chance of a deputy being injured on the job than being killed. **Mr. Phillips** told the committee that currently, sheriffs will allow injured deputies to perform light duty and still receive their full paycheck; however, **Mr. Phillips** felt that if the deputies were able to stay home on worker's comp, they may have recovered quicker and easier. **Mr. Phillips** noted that if a deputy was at home, the sheriff could have used funds to pay for another deputy to take the injured deputy's place at full duty.

Jed Fitch, Montana Trial Lawyer's Association, expressed his respect for the work that the deputies do. He noted that deputies that are injured in the line of duty receive less money. He said that **HB 105** would help injured deputies to keep their families financially stable and allow them to return to work more quickly.

Melanie Symons, Montana Public Employees' Retirement Board, gave the board's support for **HB 105**. She expressed a concern that the new statute may effect retirement system and needed to be addressed in **HB 105**. She maintained their support but asked for an amendment.

Doug Nulle supported **HB 105**. He told the committee that he had handled some suspicious workers' compensation claims and suspected that at least a few were fraudulent. **Mr. Nulle** said

that he rarely supported legislation that would increase workers' compensation claims but that law enforcement personnel filed extremely few claims but they are often injured. **Mr. Nulle** felt that the key was equity and that there should not be a difference between deputies and other peace officers.

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 14.5 - 21}

Gordon Morris, Montana Association of Counties, informed the committee that the House of Representatives had made the bill permissive but it was later amended and as such, he would have to oppose the bill. **Mr. Morris** declared that the issue was not worker's compensation, the issue was a bad policy that constituted a major disincentive to early return to work. **Mr. Morris** submitted that early return to work was good for both the employer and the employee. **Mr. Morris** maintained that the issue was a local government issue and could be dealt with through collective bargaining. He stated that there would be a major fiscal impact. **Mr. Morris** said that the sheriff's office did not have the funding in its budget and the money would be taken away from another department. He pointed out that injured deputies get 66 ¹/₃ percent of their normal salary but there are no deductions. **Mr. Morris** predicted that this bill would create a morale problem and a slippery slope. He stated that everyone would want the same benefits as a deputy sheriff if **HB 105** passed.

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 21 - end of tape}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 7.3}

SEN. LAIBLE asked **Mr. Morris** if deputies could use sick leave to make up for compensation time. **Mr. Morris** said that they can but it is not recommended.

SEN. LAIBLE wanted to know if early return to work was mandated in statute. **Mr. Morris** answered that workers' compensation allowance was in law but early return to work is not mandated. **SEN. LAIBLE** questioned if statute requires other agencies to pay the difference between workers' compensation and salary. **Mr. Morris** said that **HB 105** was attempting to parallel a municipal statute that was bad.

SEN. WHEAT questioned **Mr. Morris** if under similar statutes, there had been abuse of the system. **Mr. Morris** did not know.

SEN. WHEAT asked **Mr. Smith** if there had been any reported abuse of the system. **Mr. Smith** replied that he was not aware of any.

SEN. WHEAT wanted to know if **REP. PARKER** had a response to **Mr. Morris's** concerns. **REP. PARKER** said that he would address the issues in his closing.

SEN. LAIBLE asked **Mr. Smith** if what he was trying to accomplish in **HB 105** could be accomplished through the collective bargaining process. **Mr. Smith** confessed he did not know but there were not collective bargaining systems in all of the sheriff's offices in all fifty-six counties. **SEN. LAIBLE** queried what would happen if the offices were all organized. **Mr. Smith** thought that it could possibly be accomplished through collective bargaining.

SEN. ESP questioned **REP. PARKER** if the reason not to vote for **HB 105** was the cost. **REP. PARKER** declared that Montana Code requires counties to be fiscally responsible for their sheriff's offices. He stated that money to provide for injured officers should be planned for.

SEN. ESP wanted to know if the argument could be made for medical professionals receiving the same protection and **HB 105** was leading to a slippery slope. **REP. PARKER** agreed that it could lead to that if the counties move down a chain of jobs of diminishing risk. However, he felt that in the case of **HB 105**, the move was not incrementally moving down a line of jobs of diminishing risk but laterally moving to incorporate people at the same risk.

SEN. O'NEIL questioned **Mr. Morris** if he would agree to an amendment to strike "consistent with the type of duties assigned to a deputy sheriff" from the section discussing light work. **Mr. Morris** stated that the whole section should be struck. He clarified that where light duty was concerned an injured deputy had to work in the sheriff's office.

SEN. SHOCKLEY asked the sponsor if he would be amicable to amending the bill to state that the Sheriff did not need a deputy's consent to transfer that deputy to another department. **REP. PARKER** said that he would probably not have a problem with it and that there were many light duty tasks that an injured deputy could perform.

SEN. SHOCKLEY referred the same question to **Mr. Castle**. **Mr. Castle** said that he would not be offended by the hypothetical amendment. He noted that light duty was already used extensively and that funding was budgeted for anyway. **Mr. Castle** commented that the committee could not fathom what it was like to lose a deputy permanently. He shared that it happened in his office that a deputy was so seriously injured that he could not come back to work and the deputy and his family were forced to take out a second mortgage. **Mr. Castle** said that his goal was to do whatever he could to keep his deputies active in the office.

Closing by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 7.3 - 12.4}

REP. PARKER handed out copies of the statutes that were in effect for the other agencies.

EXHIBIT (los47a01)

REP. PARKER noted that the Montana Highway Patrol had a return to work clause in their provisions. He directed the committee to line 14, and stated that was the crux of the bill. **REP. PARKER** noted that the House Local Government Committee had taken out the word "must" and replaced it with "may" but that it was fixed on the House floor. He asked that the committee not re-amend the bill. He commented that the counties had the opportunity to provide the same protection to their deputies but had chosen not to and were unwilling to. **REP. PARKER** described what a deputy did and the kind of risks he assumed. He addressed **SEN. ESP's** concerns about medical personnel but maintained that the risk was not the same. **REP. PARKER** stated that a person wearing a brown uniform was equal to a person wearing a blue uniform and deserved the same protections.

ADJOURNMENT

Adjournment: 4:27 P.M.

SEN. JEFF MANGAN, Chairman

JENNIFER KIRBY, Secretary

JM/jk

Additional Exhibits:

EXHIBIT ([los47aad0.PDF](#))