

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
EXECUTIVE SESSION
January 20, 1981

The meeting of the Executive Session of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser, presiding. Representatives Conn, Eudaily, Iverson, Abrams, and Yardley were excused. (Representatives Eudaily, Abrams and Yardley later joined the committee after presenting bills in other committees). Representative Teague was absent. Jim Lear, Legislative Council, was present.

HOUSE BILL 154 CHAIRMAN KEYSER told committee members he contacted the Department of Lands concerning the repealing of sections 77-2-108 and 77-2-316. The Department apologized for not giving a more current testimony but they were not given adequate notice of the hearing. The federal government keeps easements such as canals, ditches, and water pipelines over patented lands. The federal government keeps all those rights because of the individual patents.

REP. DAILY moved do pass. REP. HANNAH questioned if the committee has any say over what the government does. CHAIRMAN KEYSER stated it does not make a difference what the committee does but the rest of the bill does matter to the state.

REP. HANNAH stated the federal government should go through the same process as anyone else. JIM LEAR read to the committee the sections the bill would repeal. REP. SHELDON asked if state land, that at one time was federal land, if the feds are reserving that right according to the sections that would be repealed. It was stated probably so.

REP. BROWN stated the federal government should have to comply with state law like everyone else. REP. BROWN noted this will be a real battle in western Montana.

REP. CURTISS noted the repeal of the two sections could have an impact on the issuance that was made on a homestead. If this is repealed the federal government will have the say over state land. CHAIRMAN KEYSER noted just the opposite would happen. This would put the level back to the state. Currently Bonneville can come into state land and place power lines wherever they want. They will still have eminent domain.

REP. MATSKO asked if by repealing this section would the federal government hold all land they currently now have. JIM LEAR stated it would be a possibility.

It was decided to wait on executive action on House Bill 154 until Mr. Woodgerd from the Department of Lands appear before the committee to answer questions later during this meeting.

HOUSE BILL 162 REP. MATSKO moved do pass. REP. HANNAH inquired if it was appropriate for him to vote since he was not at the hearing. CHAIRMAN KEYSER stated it was up to HANNAH; he could vote if he wanted to. Being no further discussion, House Bill 162 passed unanimously.

HOUSE BILL 164 REP. SHELDON inquired how well marked should a parking space be for the handicapped. Sometimes the marking is painted on the pavement, sometimes there is a sign. If there is only marking of the pavement and there happens to be snow, a person might not be aware he or she is parking in a handicapped spot. REP. MATSKO remarked all the spaces he has seen are marked well with both the sign and the paint on the pavement. REP. MCLANE stated the spots are not all clearly marked, especially in parking lots. REP. ANDERSON inquired if it would be the cities' responsibility to mark the handicapped parking spots.

REP. HANNAH inquired if the handicapped parking is required by law that so many spaces are designated for handicapped. REP. SEIFERT said it is necessary under all building codes to have a certain space for handicapped parking.

REP. HANNAH questioned whether the legislature should really discuss this topic. REP. BROWN stated chief sponsor GOULD was the only one who testified for this. One or two sessions ago it was left up to the people to be honest about whether they should park in handicapped spots when they were not handicapped.

REP. ANDERSON noted there are parking spots for certain periods of time such as loading zones or certain parking meters. REP. ANDERSON moved do pass.

REP. MATSKO asked if violation of this would be a misdemeanor. Intent of the sponsor was to have a \$5.00 or so fine for parking in handicapped spots. REP. BENNETT noted violation would be treated like a regular parking violation. The person would have to display a card or permit in his window stating he was handicapped. If it was not displayed the person is at fault.

REP. HANNAH noted if he wanted to use a delivery zone he would have the right to get the special permits, and the same with loading zones. He questioned whether government should get involved with this. REP. HANNAH stated government has a history of jumping into things too soon.

REP. HUENNEKENS asked if this bill would be handled in municipal ordinances. REP. MATSKO replied it should be handled in each location. It would become a function through the city manager's office. REP. MATSKO noted this was the first time he had even seen one of the handicapped decals.

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CHAIRMAN KEYSER stated the bill is currently on the statutes as 49-4-301 through 49-4-305. The only addition is the fine.

REP. HUENNEKENS stated the visibility of marking the parking spots could be handled through an amendment such as "adequately marked." CHAIRMAN KEYSER noted that might be good. The signs he has seen were the wheelchair with the circle around it in blue and white. Cities could already have that in their ordinances.

JIM LEAR, Legislative Council, stated by making this a misdemeanor, the cities would have to give notice for a person to appear before court. Just sending a dollar in for a fine would not be the case. REP. MATSKO inquired about amending line 12 to not exceed \$5.00. JIM LEAR stated that could be the policy if the committee wished to do that.

REP. SEIFERT moved to amend line 10, special parking space and insert adequately marked in reserve for handicapped persons.

REP. ANDERSON removed his do pass motion.

REP. MCLANE stated uniformity of the permits is a problem.

REP. HUENNEKENS noted the distinction between a violation and a misdemeanor was a problem. He stated would it be possible for the legislature to direct cities to do this.

REP. HANNAH moved do not pass, stating he has difficulty understanding why the legislature would want to amend the bill and force procedural things on local government since they already have the right to do this.

REP. SEIFERT removed his motion for an amendment.

REP. ANDERSON stated if this bill were killed in committee, there would not be any chance to amend it unless it is blasted out on the floor. REP. ANDERSON made a substitute motion to table the bill.

The motion of tabling House Bill 164 passed 8 to 6. The following representatives voted yes: BENNETT, CURTISS, MATSKO, ANDERSON, DAILY, ABRAMS, HUENNEKENS, and SHELDEN. The following representatives voted no: KEYSER, SEIFERT, HANNAH, BROWN, KEEDY and MCLANE.

HOUSE BILL 154 Mr. Woodgerd was available for questioning by committee members. REP. KEEDY asked if it was necessary to repeal both sections 77-2-108 and 77-2-316. WOODGERD replied 77-2-108 is easements and 77-2-316 is sale of state land. It is felt if 77-2-108 is repealed and 77-2-316 is not the federal government can

force the state to sell the land.

REP. MATSKO stated in 77-2-108 the last sentence is version; what is the effect of repealing that language. WOODGERD replied any grants or easements made under this is version and there would be no effect on it. REP. HANNAH asked if that meant in the future version language would be in the contracts. WOODGERD replied they currently insert that language in easements to private individuals as well as the federal government.

CHAIRMAN KEYSER inquired if this bill was introduced to get a hold on the proposed power lines they are building. WOODGERD replied Bonneville informed the state they were going to use this section to get easements. The federal government would still have eminent domain.

REP. HUENNEKENS moved do pass. The vote was unanimous in favor of the motion.

HOUSE BILL 171 REP. BROWN moved do not pass. There was no discussion on the bill. A roll call vote resulted with 7 to 6 do not pass. Those representatives voting yes for do not pass were: SEIFERT, MATSKO, ANDERSON, DAILY, ABRAMS, SHELDEN and BROWN. Those voting no were: KEYSER, BENNETT, CURTISS, HUENNEKENS, KEEDY and MCLANE. REP. HANNAH abstained.

HOUSE BILL 173 REP. DAILY moved do pass. REP. HUENNEKENS asked if this legislation was really necessary, feeling the authority already exists.

REP. CURTISS asked what some of the examples of the bill were. CHAIRMAN KEYSER noted a drowning was one example given. The people were interfering with the rescuer's attempts.

REP. ANDERSON felt the penalty was too severe. REP. SHELDEN felt the committee was cluttering up the books with this type of legislation. REP. BENNETT felt there was a problem with the statement concerning anyone who has taken a first aid course. REP. KEEDY stated line 7, page 2 might be too broad.

REP. BROWN offered a substitute motion of do not pass. The substitute motion passed with REP. CURTISS and REP. KEEDY voting against it.

HOUSE BILL 171 REP. MATSKO moved the committee reconsider their decision on House Bill 171. REP. HUENNEKENS stated he was in favor of this motion. The motion to reconsider House Bill 171 passed.

REP. SEIFERT moved do pass. REP. SEIFERT moved to amend on lines 18 and 19 the stricken language on page 2 to reinstate the language.

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REP. KEEDY was opposed to the motion stating it would kill the bill. REP. BROWN supported the amendment. REP. SEIFERT noted it was necessary for the protection of youth in some cases. If this bill were passed everything would be wide open.

REP. HUENNEKENS noted if the language is sticken it would mean in all juvenile cases it would be public knowledge who did these things. CHAIRMAN KEYSER noted it would seem that way. REP. ABRAMS was in favor of the amendment.

REP. BROWN did not feel there was a need for the bill. As written there are a substantial number of cases where by publishing the person's name you would be pushing them past the point of recovery.

REP. DAILY noted that practically all kids get into some sort of trouble. It is not necessary to publish their names in the paper. The media would be picking on certain people.

REP. SEIFERT's motion of reinserting the language on lines 18 and 19 on page 2 passed with REP. BENNETT and REP. KEEDY voting against the amendment.

REP. ANDERSON stated as it is amended it is essentially the same as it is currently in the books.

REP. BROWN offered a substitute motion of do not pass. The motion passed 9 to 6. The following representatives voted yes: KEYSER, EUDAILY, HANNAH, MATSKO, ANDERSON, DAILY, ABRAMS, SHELDEN and BROWN. The following representatives voted no: SEIFERT, BENNETT, EUDAILY, HUENNEKENS, KEEDY and MCLANE.

HOUSE BILL 10 REP. SEIFERT moved do pass as amended.

REP. BROWN asked if the changes that have been made allow more flexibility for first time offenders. REP. KEEDY said some of the changes do. Full language has not been restored. If the offense is the first felony the judge could suspend the sentence or defer it. Under other circumstances the judge could not do that. Most of the proposed changes were offered or endorsed by REP. KEEDY.

REP. EUDAILY was in favor of the motion, stating the subcommittee did alot of work on the bill. Although there were a few problems in the bill, it is good enough to get it out on the floor for discussion.

REP. HUENNEKENS appreciated the work the subcommitte did. He stated he has a problem with deferred sentences and distinguishing between violent felonics and nonviolent. A person might be guilty of a bad check 6-8 years ago and pull the same trick again. At the cost of putting that person in jail, that is not the logical way of

handling that situation. The matter of no time limit is hard to accept.

REP. YARDLEY stated this is basically a mandatory sentencing bill taking away the judge's discretion. It changes the whole philosophy of what sentencing is on page 1 and 2. It is not going to be done on an individual basis. REP. YARDLEY thinks it is important to note on page 9 most of the five provisions are the only five you can have a judge look at. When it comes to mitigating circumstances, for each there is a 10% decrease in what the sentence would be. REP. YARDLEY expressed committee members should talk to their local authorities to find out their opinions on this bill. YARDLEY stated the committee is making decisions thinking they will know all the circumstances of every trial. That is why he is against the bill.

REP. BROWN stated he intends to vote for the bill in committee but reserves the right to change his mind on the floor. REP. KEEDY stated if you are opposed to the concept of the bill he would encourage committee members to vote against the bill now. KEEDY hopes the vote of the committee shows the merits of the bill.

CHAIRMAN KEYSER stated so much of page 9 refers back to this section. He wondered if the five provisions were enough, and nothing that should be there was left out. REP. YARDLEY stated this was now part of the law as it is what judges use as part of their judgment.

REP. HUENNEKENS stated we are trying to eliminate discrepancies. On page 9 the person's mental capacity can vary from time to time from the mood of the judge or jury. REP. HUENNEKENS feels sentencing should be the same in identical crimes.

REP. EUDAILY noted this bill was by request of the interim committee but they will not recommend it. REP. YARDLEY replied the interim committee felt this bill should be considered by the legislature but they were not willing to endorse it.

REP. ANDERSON noted the fact that REP. KEEDY has been accused of not having experience in this type of law, yet the judges did not come to testify. REP. ANDERSON stated he finds this distasteful the judges and lawyers did not come. CHAIRMAN KEYSER noted he too was disappointed that there was not even one judge for the hearing. He was surprised and upset because the committee probably had many questions to ask them. REP. YARDLEY informed the committee some judges felt it is inappropriate for them to respond since they are a distinct branch of government.

REP. BROWN moved to amend page 9, following line 5, inserting new subsection 1 to read: "It is a first felony or a period of five years has passed since the imposition of sentence for a prior felony." REP. BROWN is concerned with the fact that the bill does not allow across the board latitude on first offenders. There is an inability to distinguish between bad checks and shooting someone. This does not completely take care of that but it helps.

REP. MATSKO stated line 16, page 2 should be amended to deferral to not exceed 10 years. If someone is under sentence now he should not be able to have a deferred sentence. The change should read if the person has had more than five or ten years since deferral or sentencing has lapsed.

REP. HUENNEKENS noted if a person is currently on probation with a deferred sentence and commits another crime it is not possible to revoke the original deferral. REP. MATSKO said probably not, if it was a bad check and homicide. REP. HUENNEKENS stated he assumes the committee could insert language that would eliminate the case if a person were up for a deferred sentence. Language could be inserted to provide if the person is currently under a deferred sentence then this five years would not apply. REP. KEEDY stated that is possible but is not currently in the bill.

REP. MATSKO offered a substitute motion of new subsection 1 be included on page 9, section 7 stating the defendant has not been under the supervision of the Board of Correctional Institutions or any court during the preceding five years.

REP. BROWN stated his main concern on first offenders was mandatory sentencing portions would make it difficult for the five years provision to apply.

REP. MATSKO's substitute motion passed.

REP. EUDAILY moved page 6, line 23 add "as amended." The motion passed.

REP. SEIFERT moved the bill do pass as amended. The motion passed 13 to 3. Those representatives voting yes were: KEYSER, SEIFERT, BENNETT, CURTISS, EUDAILY, HANNAH, MATSKO, ANDERSON, DAILY, ABRAMS, HUENNEKENS, KEEDY and MCLANE. Those representatives voting no were: BROWN, YARDLEY and SHELDEN.

The meeting adjourned at 11:00 a.m.