

JUDICIARY COMMITTEE

February 4, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana on Friday. All members were present.

Scheduled for hearing were House Bills 462 and 585.

Mr. Hank Burgess of the Board of Pardons asked if he could present testimony because of the shortage of time when the hearing was held on House Bill 464. The committee collectively agreed that he could do so.

HOUSE BILL 464:

HANK BURGESS, BOARD OF PARDONS:

I have been on the board for 5 1/2 years. We did a 2 year study of the Montana corrections system. We should'nt have a full-time parole board. We should leave the board as it is. Our recommendation still stands. One of the reasons is the heavy cost, they would need a car, secretary, office, at present, a year costs a little over 60,000 and it could go up to 160,000 dollars. There is not enough work for a full-time board. We spend a good deal of time preparing for the board. We meet twice a month and handle an average of 30 parolees a month. Out of 50 cases only 30 are parole cases. He mentioned also the professional staff, an executive secretary and a parole officer, and a hearing officer. Then there are 3 appointed members. The members can be very objective. I think it is much easier to get rid of a part-time appointed member rather than a full-time state employee.

During 1976, 371 inmates were interviewed for parole and 274 were granted parole. 27% were sent back for more time. 83% were first time offenders and for the most part they were young and did some stupid thing, 13.8 months is the average length of stay. The rate of return is 28.8 on a parole revocation and 60% elsewhere. This is not a recitivism figure. We should not confuse what is going on nationally with Montana. Our system is working pretty darn well. I might say that I am a little concerned about some of the legislation. 72% of the people we parole are either clean or they are not getting caught. A majority had been young 1st time offenders. This 70% success rate is rather marvelous, in spite of the lack of education. Of these, 70% are alcohol related, 20% drug related, 25% mental health, 7% mentally deficient and 15% at a given time are hard-core offenders. Why not put this 100,000 into drug and alcohol programs, or mental health programs need help.

There was general discussion about the figures he had given and Representative Holmes mentioned the employment or lack of it.

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REPRESENTATIVE COURTNEY:
How many days do you actually spend?

MR. BURGESS:
About 1 week out of a month, actually.

The discussion ended on House Bill 464.

HOUSE BILL 585:

REPRESENTATIVE VINCENT, DISTRICT #78:
Mr. Vincent introduced Steve Brown, chief counsel of the DNR.

STEVE BROWN:
In the definition of pollution on page 2, on line 18 I request that you insert the word "introduction". The question came up that without the word someone may challenge. On page 5, what constitutes an illegal act. On page 6, Colstrip 3 and 4, Armella Creek was given the same stream classification as the Yellowstone River. Most of the data relates to the main channels and they were given the same classification, if a smaller intersecting stream. In Colstrip, the stream presented a real legal dilemma. If the stream had been properly classified it would not have been polluted. I would suggest amendments on page 7 and 10, advisory and consultation duties, and on page 11, rules of civil procedure. (copy attached)

DON WILLIAMS, WATER QUALITY:
I am concerned with amendments, page 6. We have picked up added water quality information, primarily in the Yellowstone. In 1967 on water - revision of classification of streams on water quality standards. In 1976 there were major revisions. There are other streams that may exceed the water quality standards, Pumpkin Creek and Powder River. (position paper attached)

There were no opponents.

REPRESENTATIVE VINCENT:
I think it would clarify current law and it would help the legislature serve the public health.

REPRESENTATIVE KEYSER asked about page 2.

MR. BROWN:
We are not concerned with non-point source regulation.

REPRESENTATIVE BAETH asked about Libby Dam.

MR. WILLIAMS:
That is covered by federal law, anything after 1971, an existing dam is exempt.

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REPRESENTATIVE ROTH:

On page 6, what is state water.

MR. BROWN referred her to page 3, line 10 of the definition.
These streams will be done as they get into an area.

It was asked about the potential impact on Cabin Creek in the North Fork area, and Mr. Brown said, in some cases it may mean lowering and in some raising the classification. They will do all of the streams in an area. We are getting additional federal money for the statewide 208 program. There are 4 designated areas doing their own water quality management planning, and the area in the Flathead is one of them.

2.2 million; 60,000 EPA ; state match with 25% to federal 75%.

REPRESENTATIVE SCULLY:

Does the department now have the ability to levy a fine.

MR. BROWN:

No, we have to file a court action.

REPRESENTATIVE CONROY:

Apparently this is designed to take care of industrial sitings.
Have you done any work on farms, such as for saline seep?

MR. WILLIAMS:

Only on state lands, I question that we have any regulatory control.

No further questions, the hearing closed on HB 585.

THE HEARING OPENED ON HOUSE BILL #462.

REPRESENTATIVE MELOY, DISTRICT #29:

This is the identical bill with the amendments that went through the House and was killed in the Senate. The constitution requires the legislature to provide a code of ethics. It establishes a set of standards that all public officials must conform to.

He went through the bill, step by step, and explained it. He commented that there are separate standards for separate types of individuals.

REPRESENTATIVE VINCENT, DISTRICT #78:

The holding of public office or employment is a public trust, and I think the passage of this legislation would do a lot to preserve that confidence. Article 2, section 4 of the constitution states we have an obligation to do this.

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MIKE PICHETTE, EXECUTIVE SECRETARY-DEMOCRATIC PARTY:

We are on record in favor of HB 462. He read two parts of the platform. He commented on the fact a legislator is not to accept a fee for a favor and that on page 5, campaign contributions are exempt.

REPRESENTATIVE MELOY:

Do you have a statute which prohibits conflicts of intent.

It was mentioned that the only statute pertaining was so broad that we don't have anything.

REPRESENTATIVE MELOY:

I think this bill is too weak but it is a bare minimum that must be adopted.

REPRESENTATIVE CONROY:

What about section 3, page 3, asking about job recommendations.

The question was asked, on page 5, line 6, are we taking away the role of the lobbyist. Discussion about this.

REPRESENTATIVE MELOY:

Discussion about private firms, getting contracts, the reason for the bill, and the fact that there is a code of ethics adopted in Hawaii.

Discussion about the meaning of judiciary and the meaning of fiduciary.

REPRESENTATIVE TEAGUE:

We have already taken an oath. I don't really see that we need this code.

REPRESENTATIVE RAMIREZ:

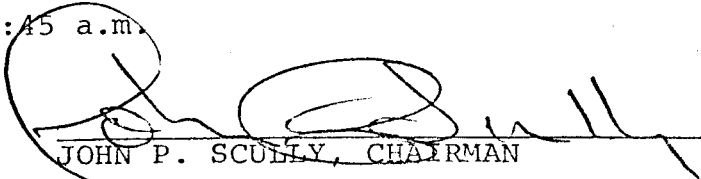
It seems to me that you are making a real constitutional problem by making it so general and then making a criminal penalty. There is an ambiguity.

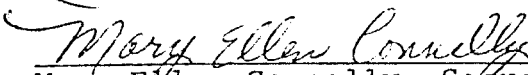
CHARLIE BELL, COMMON CAUSE:

We are the citizens lobby to make government more open. We fully support House Bill 462. (statement attached)

The hearing closed on House Bill 462.

The meeting adjourned at 11:45 a.m.


JOHN P. SCULLY, CHAIRMAN


Mary Ellen Connelly, Secretary

The primary purpose of the Department's request for amending the state's Water Pollution Control Act is to correct an existing inadequacy in the law. The law was first enacted in 1955. Substantial changes were made in the law in 1971, primarily to strengthen the act from the enforcement standpoint. Additional amendments were made in 1973, mainly to allow the Department to comply with PL 92-500 (Federal Water Pollution Control Act Amendments of 1972), so they could administer a federal waste discharge permit program. The present inadequacy relates to the 1971 amendments and a paragraph which was added to the law which prevents the Board of Health and Environmental Sciences from lowering Water Quality Standards or ~~changing~~ stream classifications. The Department has found several examples of streams that were initially misclassified and that, therefore, should be properly classified. The Department representatives will give examples of specific streams where reclassifications are needed. I would like to point out that any changes made to classifications and standards must follow Montana Administrative procedures and any changes will provide for adequate public participation.

Other changes are proposed. These are considered minor and attempt to clarify present language in the law, improve administrative procedures, and transfer some duties which are presently shown as given to the Board to the Department where these can be more appropriately handled by the Department. These, too, will be discussed by Department personnel.

COMMENTS TO PROPOSED WATER POLLUTION
CONTROL ACT AMENDMENTS

Amendments to the Montana Water Pollution Control Act are being proposed for the following reasons:

Section 69-4802(5) -

The purpose of the proposed addition to the "pollution" definition is to assure that the Department and Board of Health and Environmental Sciences have the authority to control pollution originating not only from point sources but also from nonpoint sources.

Section 69-4806(3) -

This amendment is proposed to assure that any provision of a permit or stipulation, and not just a limitation imposed by a permit, is enforceable.

Section 69-4806(4) and (5) -

These additional sections assist in clarifying the scope of the Department's enforcement powers.

Section 69-4808.2(1)(c)(i) -

This section is no longer needed since revised standards have since been adopted by the Board of Health and Environmental Sciences.

Section 69-4808.2(1)(c)(ii) -

This proposed amendment corrects the existing law since it is now recognized that some of the initial water-use classifications were incorrect. As an example, many of the small streams in the eastern part of the State were incorrectly given a beneficial use classification indicating suitability for drinking purposes while "natural" conditions make the water unfit for domestic use.

Section 69-4808.2(1)(d) -

The duties enumerated in this section should be duties of the Department of Health and Environmental Sciences and not the Board.

Section 69-4808.2(2)(a) -

The discretionary duties conferred upon the Board in this section should also be duties of the Department.

Section 69-4809.1(1)(h) and Section 69-4809.1(2) -

The duties which were conferred upon the Board under Section 69-4808.2(1)(d) and Section 69-4808.2(2)(a) are transferred to the Department in these sections.

Section 69-4820.1(2) -

As the law presently stands, only Department personnel are permitted to serve compliance orders. This statutory requirement has forced the Department to utilize personnel in ways that do not always maximize a wise utilization of Department time and expense. The proposed amendment provides for service by certified mail and also enables any person qualified to perform service under the Montana Rules of Civil Procedure to serve compliance orders for the Department. The adoption of this amendment would substantially assist the Department in saving time and expense.

common cause of MONTANA

February 4, 1977

I am Charley Dell representing Common Cause of Montana.

Common Cause is a citizen's lobby that works at the national and state levels to try to make government more open, accountable, & responsive to the people.

Common Cause fully supports HB462 just as we supported
¹³
Article Xlll, sec. 4 of the Montana Constitution which five years ago mandated the legislature to provide a code of ethics. It has not yet been done.

Corrupt and unethical behavior by relatively few public officials has undermined the faith and trust of the governed.

Public office is a public trust -- any effort to realize personal gain through public office is a violation of that trust. Because of the part-time nature of most elected and appointed positions in state and local government, it is inevitable that officials will have private interests and sources of income that conflict with their public duties. Making these potential conflicts known to the public gives citizens information on which to judge whether their representatives act in the public interest rather than for private gain.

We would like to see the Montana code of ethics even stronger with mandatory financial disclosure ^{for elected officials and top} ~~by category of value~~ ^{appointed officials.}

We would also like to see citizen standing to sue to ~~xxx~~ enforce the law if the enforcement agency, the commissioner, does not. We urge a "do pass" on BB462