

JUDICIARY COMMITTEE

March 10, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 7:30 a.m. in room 436 of the Capitol Building, Helena, Montana on Thursday. Members not present were Representatives Colburn, Kennerly, Dussault and Keyser.

Scheduled for hearing were Senate Bills 101, 115, 149, and 262.

SENATE BILL #149:

SENATOR HAZELBAKER, DISTRICT #41:

This bill would provide for the death penalty in certain cases. And also to provide for a separate sentencing hearing and to determine the existence or nonexistence of aggravating or mitigating circumstances. He went on to explain what evidence may be presented, such as circumstances of the crime, the defendants character, background, history, mental and physical condition, and any other facts that might be admissible.

CHUCK O'REILLY, MONTANA JUSTICE PROJECT:

This came about primarily at the request of county attorneys across the state. They determine that one or two portions of current law might be constitutional but that in most cases it wasn't. You will notice in this bill it sets forth specific rules. They must be enumerated.

TOM DOWLING, COUNTY ATTORNEY ASSOCIATION AND PEACE OFFICERS:

If you are going to hang somebody this seems to be the constitutional way to do it. Both organizations will support the bill.

After some general discussion the hearing closed on Senate Bill #149.

SENATE BILL #101:

SENATOR JERGESON, DISTRICT #3:

This bill requires legislative approval of administrative rules before such rules, to which an objection has been filed by a legislator take permanent effect. If any five legislators during the first 7 legislative days object to a rule by filing a statement setting forth reasons for their objection, then the rule can be repealed effective the last day of that session. If a rule which is the subject of an objection is not approved by a joint resolution the secretary of state shall delete the rule from the administrative code. He went on to further explain the bill. As amended in the Senate, the rules promulgated during the interim might be challenged and would have to go through the legislative process to reinstate the rule. It requires legislative input and legislative reliability. It would be a great step forward.

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ROD VADULA, MONTANA NURSING HOME ASSOCIATION:
We have had our difficulties with the regulations being put forth. We feel there are already some cases in which the common citizen may be affected by the rules. There are just a couple of things I want to point out.

He discussed the possibility of amending on pages 1 and 2. On page 1, line 22 change the number of legislators from 5 to a larger number, on line 1, change agencies to agency, on page 2.

ROBERT LOHN, GOVERNORS OFFICE AND OTHER EXECUTIVE BRANCH AGENCIES:
Our position is that we strongly oppose this bill. About the administrative rule, I have become aware of the genuiness of their concern with rule making and with the general concern of the legislature. I don't think this is the handle that we need. Sometimes the rule is not bad, its just the friction point. The rule may very well not be at fault. However, when you must delegate, give specific authority. The guidelines should be specific. He went on to explain how rules came about. I think you should look at the rules and see if they need to be addressed, and look at this particular bill before us. I don't think a further procedure is necessary but if you must give us one, I would ask that you not give us this one. This bill does not require that the legislature request a rule be repealed just because they don't like it. I don't think that dislike is a strong enough reason to abolish the rule.

SENATOR JERGESON:

The purpose of this bill is to shift the burden of proof to the proper agency, from the people. Where do we think the burden of proof has to lie.

REPRESENTATIVE HOLMES:

We might look at a larger number of legislators.

SENATOR JERGESON:

We think 5 might be some check on it, 5 was what we arrived at in our committee.

REPRESENTATIVE RAMIREZ:

I wonder whether the limitation is really necessary. Shouldn't they be able to replace it with a new rule.

Discussion followed about whether a public hearing will still be allowed, and procedure for review of the rules.

The hearing closed on Senate Bill 101.

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SENATE BILL #115:

SENATOR TOWE, DISTRICT #34:

This bill is only attempting to cut out a little paperwork. Any person holding money or other property, tangible or intangible, presumed abandoned under this act shall report to the state department of revenue. The report must be verified. Except with respect to travelers' checks and money orders, the name, and last known address, of each person appearing from the records of the holder to be the owner of any property of value of \$10 or more. After seven years that property must be sent to the state. He went through the list of kinds of property that would be included, such as bank accounts and dividend checks. The problem that was raised to me is that if there is a property in excess of three dollars the name and address has to be very carefully listed, and if there is an audit the list has to be sent to the state. We have suggested that it be changed to 10 dollars. The last paragraph says that if you have a property of less than 10 dollars and haven't made a claim on it for seven years and if less than 10 dollars then we will keep track of it.

MR. STOHL presented figures for 1976 - total refunds made were in the amount of \$8900 for 86 separate items and for less than 10 dollars there were 44 separate items in varying amounts that totaled \$76.

There were no other proponents, no opponents and no discussion, the hearing closed on Senate Bill #115.

SENATE BILL #262:

SENATOR DEVINE, DISTRICT #19:

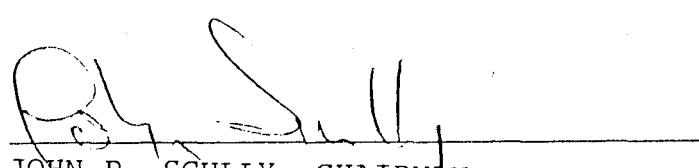
This bill deals with trust funds in the state of Montana. It will authorize the board of investments to execute deeds to transfer title of real property obtained through foreclosure of any investments. He mentioned the kinds of investments involved and explained the duty of the state treasurer to keep an account of the total of each investment, etc.

LARRY NOXHEIM:

He explained what the bill would do. The landed investments were divided. He commented that the board of investments can now buy property, but now have no way to dispose of it. He made the comment that with this bill, the foreclosure procedure is still with the board of investments. The only thing we are changing is that the chairman must sign.

After some general discussion the hearing closed on SEnate Bill 262.

The meeting adjourned at 8:25 a.m.


JOHN P. SCULLY, CHAIRMAN