

JUDICIARY COMMITTEE

March 14, 1977

The meeting of the House Judiciary Committee was held at 8:00 a.m. on Monday in room 436 of the Capitol Building, Helena, Montana. Chairman Scully presided. All members were present with the exception of Representatives Colburn, Conroy and Roth.

Scheduled for hearing were SJR 16 and Senate Bills 393, 187, 311, and 402.

SENATE BILL #311:

SENATOR TURNAGE, DISTRICT #13:

This is a bill to clarify the procedures for the termination of the parental rights of children proposed to be released for adoption. It would formally execute a release of parental rights to the child if voluntarily relinquished for adoption.

JOHN FRANKINO, Montana Catholic Conference:

We wanted to monitor the adoption act. We are very concerned about the welfare of these children and their protection under the law. We very much support this bill.

JOSEPH P. MAZUREK:

This bill represents a year-long effort. We feel that SB 311 solves the problems. He mentioned the types of problems that might come up and how they are handled now, if at all. The major problem is dealing with the unknown or hard to find father. I think this bill solves a lot of these problems. He discussed the automatic termination of the parental rights of both the mother and the father if they voluntarily relinquish the child. In 70% of the cases that is all that will be required. In other cases there may be no way to locate the father. His rights will be terminated if he does not come forward and does not file a notice of intention. We urge passage of this bill.

PROPONENT, ALAN CAIN, MONTANA CHILDREN'S HOME & HOSPITAL:

This bill is a joint effort by all of these agencies and they have had a lot of input into this bill. Some of our include the location of the child's father or the identification of the father. This bill has good machinery for helping us solve these problems, and it will protect the child as well.

PROPONENT, RICHARD WEBER, SRS:

We supported the bill in the Senate and will support it in the House. I am concerned about the amendment on page 1, lines 20 and 21, and again on page 2 containing the words "or a person". We feel this will remove current standards. This may not be the effect but I would like to see it changed.

PROPONENT, TERYE HAGGERTY, LUTHERAN SOCIAL SERVICES:

We are in favor of this bill.

March 14, 1977  
Page 2

PROPONENT, TOM HONZEL, L&C DEPUTY COUNTY ATTORNEY:  
I support this bill for reasons that have already been outlined.  
In addition, we represent at the district court level the SRS.

THERE WERE NO OPPONENTS.

REPRESENTATIVE KEYSER AND MR. WEBER:  
They discussed the licensing procedure and the possibility that  
a private person may not have to be licensed.

REPRESENTATIVE HOLMES:  
Could the language be changed to make this more clear.

MR. WEBER:  
It could say, "or is licensed to place".

SENATOR TURNAGE:  
I think this should be left as it is and I feel so strongly about  
it, that if it is taken out there will have to be a conference  
committee.

MR. MAZUREK:  
We have no problem with the language.

SENATOR TURNAGE:  
There is also the requirement that you must notify SRS.

REPRESENTATIVE RAMIREZ:  
Did you investigate the constitutionality of the notice.

MR. MAZUREK:  
Our interpretation of that decision is that they would have to  
adopt a reasonable standard. We think we are going to a reasonable  
length. The courts have said that the rights of the child have to  
be taken care of regardless of the rights of the father and if  
reasonable means is taken to locate the father, then his rights  
are subject to being cut off. Discussion about the Michigan statute.

REPRESENTATIVE RAMIREZ:  
Does the Michigan statute have the same provision.

MR. MAZUREK:  
No, that was retained from present Montana law, and that is the  
right of the mother to privacy.

A general discussion followed about this right of privacy, the  
rights of the child and of the father, etc.

The hearing closed on Senate Bill #311.

March 14, 1977

Page 3

SENATE JOINT RESOLUTION #16:

SENATOR BROWN, DISTRICT #10:

I introduced this as a courtesy to Representative Mular. The idea of this resolution was to back up the amendment of Representative Huennekens.

GREG MORGAN, STATE BAR OF MONTANA:

This is a question of trying to do something for the level of competency in the bar. The supreme court ought to be in the best position to determine who is eligible for the bar. I would like to urge you to vote against it.

THE HEARING CLOSED ON SJR #16.

THE HEARING OPENED ON SENATE BILL #393:

SENATOR BROWN, DISTRICT #10:

This bill will provide for enforcement of the state air and water pollution laws by the Department of Health and Environmental Sciences against Canadian residents. It also is concerned with air and water pollution in the provinces of Canada, and the open-pit mining of coal right adjacent to Glacier Park. This could have an adverse effect on Cabin Creek. Cabin Creek drains into the North Fork of the Flathead River, which in turn drains into Flathead Lake. Flathead Lake is only 70 miles and would make an ideal settling pond which is a rather gruesome situation. The Canadian laws against pollution are not very strict, so what we propose to do is get them into court for creating a nuisance. He went on to discuss in more detail some aspects of how this might work. He introduced James Cummings, from Columbia Falls, the attorney for the Flathead Coalition, which is a citizens group who are very concerned with the adverse effect of coal development in the Cabin Creek area.

Because Representatives Nathe and Halvorson intended to testify on the bill but had to leave to attend other committee meetings Chairman Scully asked them to testify before Mr. Cumming.

REPRESENTATIVE NATHE, DISTRICT #1:

I am in support of the bill. He mentioned the International Joint Commission, which is a possibility, but may be available only after the damage has been done. They were set up to apportion water. I think this bill is a fantastic measure to help with this. In 1922 in Trail B.C. a lead plant was putting noxious fumes into Washington and they tried to get an agreement. It took 16 years to try to get an arbitrary agreement. They then called in the IJC and that took three more years.

REPRESENTATIVE HALVORSON, DISTRICT #16:

She gave the background on the Cabin Creek development, and mentioned they had become concerned about the activity there.

March 14, 1977  
Page 4

Last session I introduced a Joint Resolution and it just flew through. We are worried that it might take too long to get some protection. The Canadians are concerned also but they do not have the strick anti-pollution laws that we have. The Flathead Coalition was formed to fight that.

JAMES CUMMING, ATTORNEY, FLATHEAD COALITION:

I am here mostly to answer questions but I would like to read a text from the British Columbia Wildlife Federation, with 20,000 members. He read the paper and presented a copy to the committee to be included in the testimony. He then mentioned, all this bill does is change the definition of the word person to include, and persons resident in Canada. He gave an example of long arm jurisdiction which is working out very successfully. This has been used and used effectively. He gave examples of this in cases in other countries. In each of these cases these people who were agreed, went into court and brought action in their own local court. If you can go directly into court then you have a much happier citizen. He talked about the mercury pollution in Ohio. He mentioned that Rio Algan & Pan Ocean Oil Company. The Rio Algon is the major portion but is a subsidiary of Rio Tink Zinum, Inc. This is the largest mining operation in the world. This is a real whopper of a corporation and we have a great deal of anxiety about it. They will be the company involved with this operation, it appears from all indications to date.

There followed discussion about the including of persons in Canada. Mr. Cumming mentioned that the BC government has a reciprocal enforcement of judgment act. This might be an interesting test of that act. Discussion about Rio Algan Limited.

REPRESENTATIVE RAMIREZ:  
Is there a treaty now.

MR. CUMMING:  
No, there is only the 1909 Boundary Water Treaty. This is concerned only with the diversion of water and has never been used.

MR. RAMIREZ:  
Was there any opinion in the Dow Chemical Case.

MR. CUMMING:  
Yes. He gave a copy of the decision to the committee.

REPRESENTATIVE ROTH:  
Is there a problem now or is it only anticipatory.

REPRESENTATIVE HALVORSON and SENATOR BROWN explained to her the actual conditions as they are now. Senator Brown went on to

March 14, 1977

Page 5

explain. This is the kind of coal that is used for coking coal. He explained the type of coal, the sulphur content, etc. and that it is very good coal and not very deep, thus ideal for mining at minimum cost. They haven't made the final decision yet, but we are concerned about the strong potential. He went on to explain the operation and how the coal is laid out and what might happen.

REPRESENTATIVE RAMIREZ:

Is the reciprocal act to enforce judgment.

MR. CUMMING:

They have enforced some judgments. The IJ Commission has taken the position that they can do nothing until the two countries can agree.

REPRESENTATIVE COURTNEY:

Asked of Mr. Nathe, is there a problem in your area.

MR. NATHE:

Yes, the Poplar River Basin. We have put enough pressure that they have now taken a look at the water quality.

REPRESENTATIVE HAND:

Are the Canadians really more lenient about pollution.

REPRESENTATIVE HALVORSON:

Yes, and she went on to explain how she had talked with Canadian representatives and their feeling about the problem. They are equally as concerned.

REPRESENTATIVE BAETH made the comment that Congressman Baucus was interested and trying to do something on the federal level.

After some other general discussion the hearing closed on SB 393.

THE HEARING OPENED ON SENATE BILL #402:

SENATOR MURRAY, DISTRICT #50:

This bill creates a preview panel for medical malpractice. We worked up some amendments. The purpose is to prevent the filing of malpractice actions against doctors where the facts do not seem to be an actual well-founded claim.

GREG MORGAN, STATE BAR OF MONTANA:

We support the bill. Here we are back on medical malpractice. We spent about 3 hours with Mr. Neely about amendments. I recommend that you "do pass".

GARY NEELY, MONTANA MEDICAL ASSOCIATION:

We do support the bill but we do have some amendments. This type of legislation would be a great help to the health care providers.

March 14, 1977  
Page 6

CHAD SMITH, MONTANA HOSPITAL ASSOCIATION:

We feel this is a necessary bit of legislation. We feel this does limit the immediate filing of a case into court. The cost of malpractice right now will run up to \$2.00 a room per day in a hospital. This bill does not keep a person from using the courts because you can still go into court if you feel it was not properly handled before the panel.

GLEN DRAKE, AMERICAN INSURANCE ASSOCIATION:

I am not sure I would be categorized as an opponent. This panel should be made aware of Aetna's position on these bills. The insurance association taked no position but Aetna is opposed. They believe that any review panel should be binding upon the participants.

There were no other proponents and no other opponents.

SENATOR MURRAY:

The amendments are accepted as far as I am concerned. We feel this bill will chop away at the cost.

CHAIRMAN SCULLY:

I have no doubt that the premiums will rise. He gave a message to Mr. Drake to relay to Aetna about their failure to attend any of the hearings and the one time they did attend a meeting they did not say a thing.

REPRESENTATIVE RAMIREZ:

The two bills, HB 647 and SB 402, which are both concerned with the same concept, will you tell me what are the differences between the two bills.

MR. NEELY:

In major substance, noe. There are some small differences. We have discussed in committee the substituting of the terms that are in the house bill into the senate bill.

REPRESENTATIVE ROTH:

On the fiscal note, is 20 cases the arbitrary figure.

MR. NEELY:

My feeling is that the number is too low, maybe 39 to 50.

REPRESENTATIVE RAMIREZ:

Don't the dentists want to be included.

MR. NEELY:

We received no response from the dentists so we decided to eliminate them.

March 14, 1977

Page 7

REPRESENTATIVE EUDAILY:

Why was the appointing of the director changed in this bill from the supreme court to the medical association.

MR. NEELY:

There is an obvious cost problem that will have to be borne by the medical association in the amount of from 100,000 to 150,000 dollars. He went on to explain the open-end cost factor.

The followed a discussion about the surcharge and annual cost.

REPRESENTATIVE DUSSAULT:

Will the cost of the insurance go down.

MR. NEELY:

No, but the cost would not go up as fast and there would be a saving in other ways.

REPRESENTATIVE ROTH:

Could not the two bills be combined.

MR. NEELY:

No, we would ask that the Senate Judiciary substitute the house bill for the senate bill. They don't differ in substance.

No further discussion, the hearing closed on Senate Bill 402.

THE HEARING OPENED ON SENATE BILL 187:

SENATOR LEE had another meeting and could not be at the Judiciary Committee to present the bill.

HAROLD RAZIER, EMPLOYMENT SECURITY DIVISION:

This deals with the penalty for willful misrepresentation. It changes the wording.

CHAD SMITH, UNEMPLOYMENT COMPENSATION ADVISOR:

We have worked with the Senate Committee and the language is now acceptable. The reason for the amendments was to make clear that the state would have the opportunity to get the money back.

REPRESENTATIVE BAETH asked about the penalty.

REPRESENTATIVE RAMIREZ talked about double jeopardy and explained it to the committee.

There followed general discussion about why the bill is needed. The federal government felt there was something about the wording of the Montana law in connection with double jeopardy. The language is not acceptable to the Department of Labor.

March 14, 1977

Page 8

There was general discussion about the penalty and prosecution. There is no penalty and no prosecution if the department made the error, the recipient would have to pay back the money.

CHAIRMAN SCULLY reminded the members to be thinking about the interim studies being set up and if they were interested in any particular area to let him know because they are beginning to appoint various representatives to them.

The meeting adjourned at 10:30 a.m.



JOHN P. SCULLY, CHAIRMAN



Mary Ellen Connelly, Secretary