

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
February 7, 1979

The regular meeting was called to order by Chairman John Scully at 8:00 a.m. in room 436 of the Capitol Building on Wednesday, February 7. All members were present with the exception of Representative Eudaily, excused and Representatives Seifert and Uhde, absent.

Scheduled for hearing were House Bills 517, 518, 519 and 530, and 505.

HOUSE BILL NO. 518: Representative Cooney. This bill was introduced at the request of the Department of Justice. On page 2, line 11, is the new language. He outlined it briefly.

LARRY MAJARIS: In this bill is an exemption for the allowance of special mobile equipment. This is just a convenience to solve a problem we had in the past. He mentioned that on line 24 it explained the identification plate.

There was no discussion and the hearing closed on House Bill 518.

HOUSE BILL NO. 517: Representative Keedy. This bill is essentially to reduce the sentencing discretion of a judge by removing authority to defer imposition of sentence. It would deal with the repeal. It does require that an individual be treated with individual circumstances. We limit a judges right to may an exception. I believe that a felon who is convicted should have a sentence imposed, if a conviction has been rendered in court.

KAREN MIKOTA: League of Women Voters. We oppose the bill. Copy of written testimony attached.
We feel it is not humane.

REPRESENTATIVE DAILY: He asked about homicide and a general discussion followed. The comment was made that a judge would not be given the authority to impose disposition of a sentence. Discussion about imposing sentence and deferring sentence.

There was no other discussion and the hearing closed on House Bill No. 517.

HOUSE BILL NO. 505: Representative Lund. The bill was introduced at the request of the Department of SRS. It would prohibit exclusions from insurance policies to persons eligible to receive public medical assistance.

JIM CATES: Department of Social and Rehabilitation Services. The purpose is to prevent private insurance companies and health service corporations from not giving coverage of medicaid services that would normally be included in private insurance plans. He gave a copy of written testimony, #2.

JO DRISCOLL: Insurance Commissioner office. The HEW has discussed this with the insurance companies. The federal law states that Medicare is a last payor. We do not have the authority for prior approval of forms for Blue Shield and Blue Cross. I support the bill.

NO OPPONENTS:

REPRESENTATIVE LUND: I think it is self-explanatory. If they have other insurance companies they will pay first.

There was discussion about whether there would be a time lapse, and the hearing closed on House Bill No. 505.

HOUSE BILL NO. 530: Representative Bardanouve. This bill would grant immunity from suit for injury to persons or property arising from state-owned water projects. He talked about the Teton Dam disaster and other dam failures. This bill will give immunity for the failure of a dam. It could place Montana in a serious financial situation, if someone sued the state for the failure. It could destroy our credit rating of double A.

DON MCINTYRE: Attorney, Department of Natural Resources. There are approximately 25 state-owned projects in the state and they are in various states of disrepair. They were built to the standards of that day and the standards have changed. We are trying to bring these up to par. He talked about the possibility of failure of the Tongue River Project and Cooney Reservoir. We are not suggesting that there is not a remedy.

MIKE MELOY: Trial Lawyer Association. I think you are being cold-hearted. The person ought to recover. This bill would completely immunize the state even if they knew there was a crack in a dam. He went on to talk of the Water Users Association. What we are saying is that if a dam is turned over to the users association and something happens the state is not liable. This bill goes a lot further. It would excuse the state of Montana from negligently maintaining a dam. There is no incentive for the state to be accountable because they are immune from suit.

Representative Seifert came in.

J. D. WEINGARTNER:

State Bar of Montana. The bar association is also opposed. We are responsible for the things we do and the state should also be responsible. It gives the state complete immunity. I suggest you do not pass.

MR. BARDANOUVE:

The opponents have brought out some points that I have considered. He gave a parable in comparison. There was discussion about the potential for damages, the state could be bankrupt. Possibly, I share Mr. Meloy's concern. We could give a period of years and we would be immune for 20 years. To put our house in order would be a financial disaster. I would hope that you could give this bill serious consideration.

Representative Seifert read the codes as they pertained to this bill.

REPRESENTATIVE KEYSER:

Why not have a clause so that if the dam was maintained they would then be immune. Then followed discussion about the state's liability.

REPRESENTATIVE KEMMIS:

Why wasn't the bill drafted to grant punitive damages?

MR. MCINTYRE:

There are a possible 500 cases, such as the Tongue River, for example.

MR. KEMMIS:

What are the provisions in the law that would consolidate all of those suits. Is there any provision in a normal negligence suit that would pay attorneys fees.

MR. SCULLY:

Who would bring the case before the legislature, and Mr. McIntyre answered, it would be established somewhere. A facetious remark about wiping out all lawyers was followed by hilarity.

REPRESENTATIVE CURTISS:

Does the state have any liability now? The answer, yes, but not in the amount necessary.

REPRESENTATIVE ROTH:

Would there be no way of recovery and Mr. Bardanouve said, it could be through the legislature. There is another alternative to this bill.

There followed discussion about Cooney Dam.

REPRESENTATIVE SEIFERT:

Is it up to the department to inspect all water projects. Mr. McIntyre said, only a certain size, and Mr. Scully asked, would you define what a state-owned water project is.

MR. McINTYRE:
code that pertained.

Number 6 and then would include all of the listed items. He read the

There was lengthy discussion about the definition of state-owned projects.

MR. BARDANOUVE:

I would suggest the amendment to allow Montana to get their years in order.

There was no other discussion and the hearing closed on House Bill 530.

HOUSE BILL NO. 519:
sent this bill.

Vice-chairman Teague took over the meeting so that Mr. Scully could pre-

REPRESENTATIVE SCULLY:

This was amended last session. This would put back the ability on a contingency fee basis. I think the contingency fee is necessary. It would be based on the idea that if he wins the attorney would get a percentage contingent on the amount of the award.

There was discussion about the fees and that an individual should not be exempted from the contingency fee.

MIKE MELOY:

Montana Trial Lawyers. This section is taken from the section in the statutes that provide when a persons property is taken he has a remedy. He explained contingency fees. The average fee is 25%, in court its 1/3 and the Supreme Court 40%.

J. D. WEINGARTNER:

The Bar Association supports the bill.

JIM BECK:

Highway Department. He read the condemnation section from the new constitution. Then followed discussion about how the condemnation cases work. He gave examples of cases and the amounts. I can see no justification for changing the law.

MR. SCULLY:

The statute still says that it be reasonable attorneys fees. He gave an example of the state condemning land. The real merit of this bill is to allow them to go to court. Think in your own mind when you would like to take that risk. We have given the Highway Department a good tool because they can go with ahead and force them to go to court. It was the State of Montana and the Highway Department condemnation that caused the problem in the first place.

REPRESENTATIVE KEEDY:

He asked how the contingency fee is figured. Mr. Beck answered and explained how it worked. Discussion followed.

MR. SCULLY:

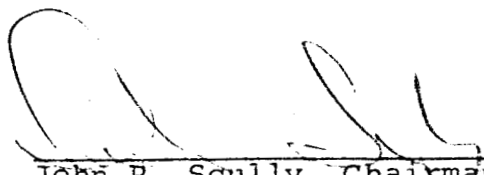
The basic premise is that the person having his land condemned should not have to pay attorneys fees. The judge can reduce the contingency fee to what he thinks is reasonable and necessary.

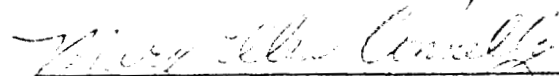
REPRESENTATIVE ROTH:

Discussion about what led to the original amendment in 1977, because of abuse. Another discussion followed about contingency fees.

The comment was made that this is the section of the law that deals only with condemnation. There was no other discussion and no further questions and the hearing closed on House Bill No. 519.

The meeting adjourned at 9:45 a.m. and after a short recess went into executive session to take action on bills still pending.



John P. Scully, Chairman

Mary Ellen Connelly, Secretary