

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
February 16, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman John Scully at 8:00 a.m. in room 436 of the Capitol Building on Friday, the 16th day of February. All members were present except Representatives Curtiss, Day, Pavlovich, Seifert and Teague, who came in later. HB's 621, 670, 682, 659, 341, 712, 713, 719, 726, 737, 732.

HOUSE BILL NO. 719: Representative Burnett. This bill would prohibit the owner of a motor vehicle whose registration has been suspended from transferring the registration until the judgment has been satisfied. It would be subject to the exceptions stated in the statute.

There were no questions, and no discussion and the hearing closed on House Bill 719.

HOUSE BILL NO. 726: Representative Burnett. This bill was a request from the Soil Conservation Board, the County Commissioners and Incorporated Towns. It would provide immunity from suit in certain cases.

DAN MIZNER: We have a note that the original intent of this bill was to have it as a constitutional amendment but it turned out in the form of a bill rather than the amendment. Could you make the bill a referendum or a constitutional amendment. Is it within the power of the committee under the conditions of the drafting of the bill. Most of you are aware of the increase in the number of suits that have been brought. He talked about the high costs of defense and the responsibility.

MIKE STERN: Cities and Counties. We support this bill because we are subject to the high costs of court and we would like to remind you they are not liable in most cases.

MIKE MELOY: A similar bill was introduced in 1977 and some of the reasons it did not pass I will go over today. Local government should be liable for their negligence, and there are provisions that do this. He gave examples of cases where the county would be immune from suit. Some sections of this bill are extremely broad. It excuses them even if they are negligent. I don't think we want to do that. I don't think you want to put all this stuff in the constitution. By a 2/3 majority of each house we can restrict sovereign immunity. I oppose the bill.

REPRESENTATIVE BURNETT: He talked of sovereign immunity and the effect of the new constitution. Cities and towns are limited by the amount of money they can spend. It is not only a case of lawsuits, it is a threat to the community.

There was no discussion and no questions and the hearing closed on House Bill 726.

HOUSE BILL NO. 621:

Representative Waldron, This bill was the result of a study that was done through the Department of Community Affairs. There has been a good deal of publicity about spouse abuse. Getting the statistics was virtually impossible. He passed out copies of the study. There are three reasons for the gathering of these statistics, 1. battered spouses, 2. the Police Department will have it on file, 3. would give easy access to the information. We are talking about a study that will be completed by 1984.

CARYL BORCHERS:

Mercy Home, Great Falls. In the folder that will be passed around there will be a copy of the Great Falls statistics of the people served in the shelter. We see people in the shelter that the police don't see and that is one of the reasons for gathering the statistics. She talked about the homes being set up for shelter for battered women and children.

JOY BAKER:

Missoula. We have been open a year and 1/2 in Missoula. We have many women that are battered and abused in our shelter, and the average short term stay is about 3 days. Most of the statistics are for Missoula County. We have room for 10 people.

PAM LARSON:

Billings. I have gathered support letters from places in Billings. Because of the lack of statistics we have to gather information from all kinds of places. Of those figures we gathered, 12% involved child abuse. We would appreciate your help in gathering the evidence.

REVEREND WILLIAM BURCHARDT: Chaplain of the House of Representatives.

I served last year as the President of the Council of Churches. There is abundant evidence to indicate that the problem of battered spouses is a severe one in Montana. We urge efforts to promote public awareness of the problem in light of the Christian worth of every human being.

LARRY PETERSON:

Montana Board of Crime Control. I have been asked to address the data gathering areas. At the current time we have no way to do this. He went on to discuss the study and the time it would take and what would be involved.

BARBARA GARRETT:

Helena researcher. I completed a research project over the last year. There was a group that wanted to develop a home and didn't know whether there was a real problem in the community but they needed statistics to say "these are the facts". She went on to explain how she gathered the facts and figures.

CAROL BRASS: Helena Political Womens Caucus. We very much support this bill. There is a problem that must be solved and this is a good beginning.

Because there were so many people in support of the bill Chairman Scully asked each person to give his or her name and have it added to the record. This was done and the list is attached.

PATTY CALLAHAN: I support this bill.

DAVE MANN: I support the bill.

SHARON McVICKERS: I support the bill.

Representative Scully commented, I gather you will not want to adopt any rules with the bill, and they said they would not.

Representative Conroy asked about the study and the five year plan to do it.

Representative Keyser asked if there was some reason they set a five year time on this. Mr. Waldron said they were concerned that they might start something that might not be of value and then if it does prove to be of value they can extend it. Also the statute of limitations on felonies is 5 years.

Representative Keyser asked how many staff would it take or do you have enough staff now, and the SRS representative said they did not have enough right now.

Then followed discussion about the SRS spouse abuse staff force.

Representative Day asked how they planned to protect privacy. The answer was, this is just to ask for numbers. We simply want to present necessary statistics.

Representative Kemmis asked if for the purposes of defense wouldn't you have to have individual information, and the answer was that this is just a measure to encourage more accurate reporting.

Representative Roth asked about the study and questioned the need for a five year plan. Discussion followed about this and they followed a discussion about the clarification of confidentiality.

Representative Eudaily asked about the terminology on Page 2, line 19.

REPRESENTATIVE WALDRON: It wasn't the intention to demand monthly reports but only upon request for the department. The intent is only to be submitted upon request.

Representative Curtiss asked for an explanation of (j) on line 8, page 2. The answer was the local service agencies.

There was no further discussion and no further questions the hearing closed on House Bill Number 621.

HOUSE BILL NO. 670: Representative O'Connell. This means a great deal in the flood district where I live. I realize that we have an election bill in. This bill would allow the polls to be open from 12 to 8 rather than from 8 to 5. I would ask that you give a do pass. It is a very simple bill but it means a great deal to the people it is concerned with.

There was no discussion and the hearing closed on House Bill 670.

HOUSE BILL NO. 341: Representative Gerke. This bill was introduced at the request of the Legislative Audit Committee. It would delete the requirement that claims against the county be certified.

ELLEN FEAVER: Legislative Auditors office. In the mental health center in Great Falls we found that each vendor bill that they paid had to be certified and this seemed like a pretty archaic requirement. As far as the mental health center goes we talked with the County Commissioners and they have no problems with deleting the requirement. Most other agencies no longer require that claims be certified.

There was no discussion and no questions, the hearing closed on House Bill 341.

HOUSE BILL NO. 732: This bill would require local governments to adopt noise and lane-use regulations for airport influence areas. There is a change on line 19 of the first page. The reason for this is that most airports don't have approved runways so there is an ambiguity. On line 20, page 4 is the most important part of the bill. By leaving out the word "shall" it could destroy the whole intent of the bill. The change to "may" is a vital part in this bill. On page 5 at the very end of the bill you see a new subsection that states that no state or federal fund will be granted until these rules and regulations have been adopted.

It is going to be unpopular in some areas. On page 4, lines 11 and 12 this act was originally passed in 1977 talking about subdivisions. He elaborated on this further.

FRANK WOLCOTT: Gallatin Field, Bozeman. On page 4, line 25, we have changed that. Also, subsection (2), if a variance is going to create a hazard we don't want to give them a variance. We view the law and its usefulness to us as vital. We strongly urge your support.

HUGH KELLEHER: The Montana Airport Management Association is for this bill.

Representative Eudaily asked about page 1, line 15. Why the difference in the dates, is there a year overlap. The answer was that the original law was ambiguous. The original intent was to address only 3 issues. It was felt that we should preserve the original deadline and height consideration and then take up the other 3 issues.

There was no further discussion and the hearing closed on House Bill 732.

HOUSE BILL NO. 712: Representative Cooney. This is to clarify the laws relating to the filing of liens on motor vehicles. It would limit the number, and would increase the lien filing fee. I would like to note that in some states they would allow the filing of a second lien.

LARRY MAJARIS: The main changes in this bill are on page 2, line 21. Currently there is no limit. The law requires that it must be recorded on the face of the title. We can be sued if we do not record the lien because we are liable for that. When a title is transferred it is money ahead for them to not record the lien. On page 5, line 10 we increased the amount. He commented about the ways they used to issue title. We have an amendment we would like to see put in the bill, on page 5, line 16, follow cost of, strike "endorsing" and insert "entering". The \$2 fee was established in 1965 and the title was just initialed. We did not issue a new title. He went on to explain the changes they have made. This bill would permit only two liens as far as the office is concerned.

There was no discussion and the hearing closed on House Bill No. 712.

HOUSE BILL NO. 713: Representative Kessler. This bill deals with an individuals traffic record. If you are involved in an accident, even if you are not at fault, it could go on your record. I can't understand why it should go on your record.

it could affect your insurance.

DWAYNE TOOLEY: Montana Highway Patrol. We are neutral on this bill. We take no stand upon this bill but I would direct your attention to the new section on page 2 which seems to be excess language. It may cause some confusion.

BOYCE CLARK: Independent Insurance Agents. I think I am opposing this bill. He gave a copy of his testimony to the committee. (attached)

RITA TYSON: We would like to point out that there might be serious concerns about getting necessary information.

REPRESENTATIVE KESSLER: Following discussion he said he had no objection to striking the new section.

Mr. Clark commented that if you are involved in an accident that is not your fault your insurance rates will not go up.

Representative Day asked, if you say that a person is not at fault that it has no effect on the rates, why did you object to the bill. Mr Clark explained his thinking on the bill, including driving while intoxicated.

Mr. Scully asked, where does it say that DWI or traffic fines will not be included. What information are you talking about.

RITA TYSON: After some discussion she said, what I want to point out is that in some cases it might be relevant.

Then followed discussion about private parking lots.

Mr. Tooley commented that as he read the bill it was involving only accidents.

There was no further discussion and the hearing closed on House Bill 713.

HOUSE BILL NO. 737: Representative Keedy. The only thing the bill would do is change the definition of serious bodily injury. He described the difference between types of injury, serious bodily injury or assault. He gave facts about a case. In this particular case a 1976 supreme court decision raised the question of changing the definition in the criminal code. He gave

another example of a case with the result that was not intended by the criminal code. This is an attempt to clarify the ambiguities in serious bodily injury.

TOM HONZEL: County Attorneys. The change in the definition was drafted in the law school by Professor Crowley, after the Supreme Court decision. I do have a memo that was prepared by Professor Crowley.

There was no discussion and the hearing closed on House Bill No. 737.

HOUSE BILL NO. 659: Representative Lory. This was at the request of the cities and counties. It would require fiscal notes on bills having an effect on revenues, expenditures, or fiscal liability of units of local government.

MIKE STEPHENS: Montana Association of Counties. We are just asking for equal treatment. We know that you are looking certain types of information and we feel that information like this could help determine what impact it has on local government. We think this would allow particular legislative decisions.

GEORGE BOUSLIMAN: We support this bill.

Representative Scully asked how they were going to put this information together. How do you do the local government game.

Mr. Bousliman; the budget office has a fiscal note annual and as a fiscal note is requested we send it. The information is limited.

DON DOOLEY: Department of Community Affairs. It is difficult. We have to file the annual reports. We encountered many of the same problems that you have, we have to make assumptions. You try to make your report valid.

There followed discussion about how they were going to get the information, and the hearing then closed on House Bill No. 659.

HOUSE BILL NO. 682: Representative Hand. This bill would allow county commissioners in certain counties to establish the office of county attorney as a full-time position and increase the salary of certain county attorneys and provide for legal services by persons other than the county attorney.

W. G. 'DUKE' GILBERT: President, Montana County Attorneys Association. This is a result of a committee effort between county attorneys and interested persons. There are some changes

that need to be made. This is the ultimate option bill. I want to explain why these changes are needed.

Section 1, various sizes of counties
Section 2, allows a county to contract out
Section 3, exactly the same as the section now in the school law
Section 4, salary provision

There is one more change that could be made, paragraphs b and c of the last section. It should be raised to \$2,000 a year. You can't hire personnel of any kind for 90% of \$10,000. It is becoming more and more difficult to be a county attorney. They are very burdened.

TOM HONZEL: County Attorney Association. We want to try to upgrade the office. This bill would give the option to the counties to work this matter out on their own. Most of the counties are full-time.

There was discussion on the salary provision.


Representative Keedy, discussion about inter-local cooperative agreements.

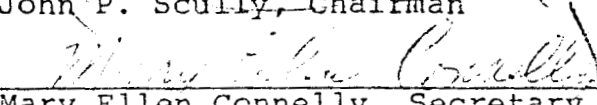
Mr. Gilbert, we don't know if it was legal or permitted to have this criminal work in various counties. This would give us extreme flexibility. We believe the prosecution of cases should be by an elected official. We feel this would be very limited. It would be the same provision that is in the school law now.

Representative Kemmis remarked that he was concerned with the salary, and Mr. Gilbert said if you want professional people you have to pay for it.

There was no further discussion and the hearing closed on House Bill 682.

The meeting adjourned at 9:50 a.m. to go into executive session and take action on bills still pending in the committee.



John P. Scully, Chairman


Mary Ellen Connelly, Secretary