

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 7th, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman John Scully in room 436 of the Capitol Building at 8:00 a.m. on Wednesday March 7th. All members were present with the exception of Representative Keedy, Holmes and Seifert, all coming in later. Bills scheduled for hearing were Senate Bills 288, 364, 250, 256, 322, 346, 355, 394, 454 and 432.

SENATE BILL NO. 322: Senator Healy. This bill is to protect employers from claims for contribution or indemnity asserted by a third person. He read through the bill, and commented on worthless compensation benefits.

BILL KIRKPATRICK: Champion International. He said that the bill was approved unanimously by the Judiciary Committee in the Senate and on both second and third reading. He submitted written testimony to the committee, copy attached.

TIM REARDON: Division of Workers Compensation. We support the program.

WES BENNETT: Self-Insurers. Mr. Bowles of the Montana Chamber says that small business supports the bill.

SEANTOR HEALY: Many small workers might be put out of business. They would be protected by a bill like this.

There was no discussion and the hearing closed on Senate Bill No. 322.

SENATE BILL NO. 346: Senator Towe. This bill would allow more equal access to the courts by allowing the court to award costs and attorneys fees to people who are successful in a law suit against a governmental entity if the claim is judged to be frivolous or pursued in bad faith. If the state agencies or the political subdivisions, that brought or defended the action, is found by the court to be frivolous or in bad faith then they would be entitled to the costs enumerated. It might be called the equal access to the courts act. He read through the bill, and suggested an amendment on page 4, line 13, following frivolous to insert "or pursued in bad faith". He commented that this would not apply to traffic situations or accidents. He mentioned the reason for the amendment which would be in keeping with the administrative code committee. Discussion about this.

BARRY STEVENSON: National Federation of Independent Businessmen. 79% of our members favor this bill. He presented a copy of written testimony, copy attached.

REPRESENTATIVE SCULLY: You mentioned an administrative code committee bill, what is the status of that bill. He asked this of Senator Towe.

SENATOR TOWE: That line was amended out in order to be put in this bill.

REPRESENTATIVE KEEDY: Discussion about the bill being limited to small business. On line 6, page 4, can you imagine a situation where both sides could be equally at fault. He went into detail on this. Then followed discussion about legitimate arguments, frivolous lawsuits, and gave an example of losing in one part and winning in another part.

There was no other discussion and the hearing closed on Senate Bill No. 346.

SENATE BILL NO. 256: Senator Lensink. This bill would revise the laws relating to state-wide ballot issues. He went through the bill and explained, misleading titles and statements of implication. He mentioned one of the initiatives that had been misleading in that if you wanted to vote a certain way you had to vote opposite of what you wanted. This was on a gambling issue in which you were to vote for lower taxes or against lower taxes when actually it was a gambling issue. He went over the judicial review and what the Attorney General would do under this bill. This is one of the few places that might save some money. This would change it so that only each mailing address would get one of the explanations and it would thus save some money.

MIKE McGRATH: Attorney Generals office. Under the present system the petitions have to go to the Secretary of State, and what we propose to do is at the time of the petition the Secretary of State would prepare the statement of implication. He talked about the initiatives we had last time and that most were self-serving and misleading. We have some amendments. The proposed amendment would require that a person opposing would have to file a petition within 10 days. It would help some of the problems. It says that you cannot turn in a petition more than one year in advance and the reason for that is clear. He gave examples of several issues that had been on the last ballot.

MARGARET DAVIS: League of Women Voters. We support this bill and we also support the provision that makes the voter pamphlet widely available.

LES LOBEL: Montana, Dakota Utilities. I am asking about the 10 day limit. Should it not be a little more flexible. There was discussion about HB 768, Representative Hands bill, and that it would conflict with this bill, and that Mr. Hand said he would withdraw his bill if this one should pass.

Representative Kemmis asked for clarification of the provision as to how the pamphlets would be distributed. Then followed discussion about the new election law.

Representative Eudaily asked Mr. McGrath if subsection 5 on page 14 is existing law and Mr. McGrath, said, yes, it is existing law.

Representative Kemmis again wanted to have the pamphlet situation clarified, as to how they planned to send the pamphlets. After lengthy discussion about this aspect of the bill the hearing closed on Senate Bill No. 256.

SENATE BILL NO. 432: Senator Hafferman. This bill revises the law relating to attendance of trial juries in district court. He went through the bill and discussed the jury lists, the term of service of jurors, and the orders directing them. He talked about people not wanting to register to vote because they did not want to serve on the jury.

MARGARET DAVIS: League of Women Voters. We have noted this problem also, and we support this bill. It is an especial problem in Great Falls, and she went on to elaborate.

JOHN BELL: Montana Sheriffs and Peace Officers. We support this bill. He went on and talked of the cost of mailing by certified mail.

There was no discussion and no questions and the hearing closed on Senate Bill 432.

SJR NO. 27: Senator S. Brown. This is an alternate for Senate Bill 211. I discussed this with Chief Justice Haswell. It would be ok with the Supreme Court. Senate Bill 211 would have set up a 9 member committee. He elaborated on how the requirements would work, as to the report to the Legislature each year and identification of each complaint received, the date of each complaint, and so on.

J. C. WEINGARTNER: State Bar of Montana. There is a problem with the commission on practice, which we are trying to correct. He continued at some length.

REPRESENTATIVE LORY: I notice that you require a report to the Legislature, and Mr. Brown said that subsection 1 makes it clear. It in no way reveals the identity of the lawyer. Mr. Lory commented that he was concerned with the confidentiality. Mr. Brown agreed that he was also. With no further discussion the hearing closed on SJR 27.

SENATE BILL NO. 250:

Senator Turnage. This bill deals with constitutional notice in our statutes.

He explained constructive notice. He went on to talk about documents that might be delayed because of the health and platting requirements. The Clerk and Recorders worked this bill over very thoroughly and they support the bill.

JOHN BELL:

County Clerks and Recorders. There were some mechanical problems initially but

we sat down with staff counsel and its now quite workable. We do support the bill as amended.

REPRESENTATIVE SCULLY:

Questioned line 10, the statement of intent. Then followed discussion about

the new amendment on page 11.

SENATOR TURNAGE:

They can file the interim statement of intent to give constructive notice.

Mr. Scully asked what happens if they don't get the health approval. Discussion about the possible consequences.

Mr. Scully made the comment that you would stick another file in the Clerk and Recorders office of those grantors that just have constructive notice. Mr. Turnage explained some of the problems that had come up in Lake County, and commented that somebody might lose the farm someday.

Representative Keyser asked how much it would cost the counties. No one seemed to know if this would cost more or not.

Representative Scully asked, why not record the buyers intent or interest.

WARD SHANAHAN:

Attorney in Lewis and Clark County. The recording language states "instrument to record buyers interest". Considerable discussion about this and why it had never been used in Lake County.

Senator Turnage stated, I would like to use that idea, and he went on to discuss the existing law as he understood it.

There was no other discussion and the hearing closed on Senate Bill 250.

SENATE BILL NO. 288:

Senator Steve Brown. This bill deals with the merger and corporation law. He read through the bill.

WARD SHANAHAN:

Chairman of the Business Section of the State Bar of Montana. The bill allows the exchange of stock and property to other corporations. We adopted the model business act in 1967. The act itself originally resulted as a research project of the American Bar Foundation in the Committee on Corporate Laws of the Corporation Banking and Business Law Section of the American Bar Association. Continual revision of the Model Business Corporation Act is an ongoing project of the American Bar Foundation. However, when the act was revised in 1969, to take advantage of changes in the Internal Revenue Code the Montana law was not changed. Therefore, the change proposed by this Act would bring the Montana law into line with the model business corporation act as it was revised in 1969. He read a paper on mergers, corporations, partnerships and associations. He then presented a copy of his written testimony to the committee, copy attached.

There was no discussion and the hearing closed on Senate Bill No. 288.

SENATE BILL NO. 364:

Senator Steve Brown. This bill provides for fines and assessments of costs in felony criminal cases allowing community service as a condition of deferred or suspended sentences. Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty could be imposed, the court may impose a fine in lieu of a sentence of imprisonment. The fine shall be in an amount fixed by the court not to exceed \$50,000. Section 5 states that the money will go to the county general fund and that is a good idea because it would guarantee that the money would go back to the county. The rest of the bill amends the current law.

TOM HONZEL:

County Attorneys. The bill does allow the judge to order a defendant who is convicted to require him to pay normal court costs. He discussed what happened prior to the criminal code in 1973. It think it is appropriate in some cases that the court be allowed to impose a fine. He gave an example of an embezzling case. The Supreme Court said they need specific statutory authority.

MIKE McGRATH:

Attorney Generals Office. We support the bill.

REPRESENTATIVE LORY:

Asked about the fine and how it would be imposed.

Mr. HONZEL:

I guess a person could opt to work off a fine.

REPRESENTATIVE LORY:

Could he be put on a payment deferral that is longer than the sentence. Then followed discussion about this.

REPRESENTATIVE DAILY: This sounds like a prisoner relief bill, where the rich get off and the poor don't. Discussion followed among the members about whether this was so.

MR. HONZEL: I guess that is a possibility that this could be used as a plea bargaining tool but the judge has the discretion to not accept it.

There was no other discussion and the hearing closed on Senate Bill 364.

SENATE BILL NO. 355: Senator Stimatz. This bill provides for a minimum compensation for personal representatives of estates. The bill does two things. On page 1, lines 19 to 21, a personal representative is entitled to compensation. On page 3, it will make it consistent with existing law.

MIKE McGRATH: Attorney Generals office. The purpose of the bill is to insure that small estates will not be probated so that the state gets the amount of money it is entitled to.

After a short discussion the hearing closed on Senate Bill No. 355.

SENATE BILL NO. 394: Senator Stimatz. Basically all this bill does is protect the rights of a youth who is detained for investigation or questioning. This is a companion bill to 454. All 394 does is change its language to be compatible with a change in 454. In 454, on page 1, lines 12 to 22, it was not clear. It makes it necessary so that the rights of a youthful offender are clearly understood. 394 only changes the language on page one. It takes out the existing language and adds language on lines 12 through 16.

TOM HONZEL: County Attorneys. Representative Keyser had a similar bill, House Bill 464. It died in Senate Judiciary. This does the same thing but not as well as 464.

KAREN MIKOTA: Opponent, League of Women Voters. We are not opposed to 394 but we are opposed to 454.

Representative Scully asked, should we be aware of something that caused the killing of House Bill 464. Senator Stimatz answered, I was not aware of the other bill.

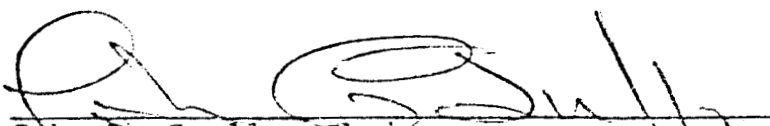
REPRESENTATIVE KEEDY: You may have a bill that changes the language.

REPRESENTATIVE CONROY: I move that we withhold all action on Senate Bills until something is clarified.
The motion carried with the vote unanimous.

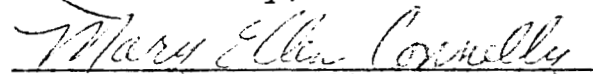
SENATOR STIMATZ: Senate Bill 454 clarifies that a youth may waive the right to counsel unless a petition has been filed under the Montana Youth Court Act. A defendant may waive his right to counsel, except that in all felony cases where the defendant is under 18 years of age, the defendant shall be represented by counsel at every stage of the proceedings following the filing of a petition.

Some discussion followed about the two bills and the waiver of rights.

There was no further business and the meeting adjourned at 11:05 a.m.



John P. Scully, Chairman



Mary Ellen Connelly, Secretary