

MINUTES OF THE MEETING
LEGISLATIVE APPROPRIATIONS COMMITTEE

April 19, 1979
Room 104
State Capitol Building
Subject: HJR 70
SJR 11
HB 926

The meeting was called to order at 3:55 P.M. by Chairman Francis Bardanouve. All members of the committee were present except Representatives Lund and Marks who were excused.

Representative Oscar Kvaalen explained that HJR 70 was requested by Andy VanTylinger. He wants to get something going in the University system to re-evaluate the old and existing buildings down there. Some of the buildings date back to 1898 and 1909. Mr. VanTylinger would like to have an interim committee to attempt to decide a method of determining what should be done with some of these buildings. The committee would have to examine the campuses in order to accomplish this.

There were no further proponents to the resolution and no opponents.

QUESTIONS FROM THE COMMITTEE:

Representative Hand asked if this will cost money. Representative Kvaalen stated that the funding will come from the Legislative Council budget.

At this time Representative Moore moved that HJR 70 Do Not Pass. With Representatives Lund and Marks absent, and with Representatives Hand, Kvaalen, Manning, Menahan, Waldron and Yardley voting No, the motion carried.

This closed the hearing on HJR 70.

Chairman Bardanouve then presented Senator Chet Blaylock, the sponsor of SJR 11. Senator Blaylock explained that his resolution will not take any money from the Long Range Building funds. It will take 4 million dollars from the Workmen's Compensation funds to construct an office building for the use of the Department of Labor and Industry. He said that at the end of 20 years, they figure the building will have saved the State over \$24,000 and it would then belong to the State. This would be a good use of these funds and the building would last at least another 20 years. Senator Blaylock said that there has been an amendment to the bill. He concluded saying that if they don't get the return on investment, the Board of Investments has the right to decide whether these funds shall be invested.

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Jim Murphy, from the Department of Labor and Industry, stated that they have gone through the Long Range Building Committee with this bill. He said that he is present to answer any questions the committee might have. Mr. Murphy also said that the Long Range Building Committee recommended a Do Pass for this resolution. He concluded saying that he thinks this would be a good investment.

Representative Ellis asked where they would put the building. Mr. Murphy responded that they don't know yet. He said that the Department of Architecture and Engineering would probably have to make this decision. He said that if we build any more buildings in the capitol complex area, the traffic problems will only become worse.

Chairman Bardanouve then asked if they will also purchase the land.

Mr. Murphy stated that if the State owns it, they will not have to buy it. If the State does not own it, then they will have to purchase the land.

Chairman Bardanouve stated that if it is from earmarked revenue they should buy the land.

Mr. Murphy stated that this appropriation includes money to purchase the land, if necessary.

Representative Manning asked how much they pay in rent for their present facilities. Senator Blaylock responded that they pay \$160,000 a year.

There being no further questions from the committee, Representative Hand made a motion that SJR 11 Be Concurred In. With Representatives Lund and Marks absent, the motion carried with all members voting favorably.

The hearing on SJR 11 was closed.

At this time Chairman Bardanouve stated that the Senate has said that they will not open up the subject on the medicaid and nursing home problem again. He explained to the visiting Representatives that they would extended the courtesy of presenting their problem to this committee.

Representative Dan Harrington spoke in favor of a motion to fund in some way the nursing homes. He said that this could be a big problem around the State in the next couple of years. He said that it will be a sad ending to this Legislature if we go away and turn our backs on the nursing homes. Representative Harrington also said that he feels if we don't fund these homes at a rate that will keep them open, there will be a problem. He closed saying that he hopes the committee will look favorably upon this problem. It is the responsibility of the State to take care of these people.

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Representative Daily from Butte also spoke in favor of the committee giving more money to the nursing homes. He said it is rather ironic that the problem came up at such a late date. It is hard to determine how serious a problem this is. He explained that as of April 20, 1979, one nursing home in Butte is going to start moving their patients out. He feels we should have the committee look into this problem and see just what is going on. He also feels that it is the responsibility of the State and legislature to take care of these people. He hopes that the committee will appropriate the money. He concluded saying that he has introduced a bill to appropriate the money if this committee does not see fit to take care of this problem on its own.

Representative Joe Quilici stated that he has talked to nursing home owners. They are going to have to let 55 patients out of their home by April 20, or at least give them notice. He can not understand why we cannot get a handle on this, why we have to wait until the end of the session to resolve these problems. Nursing homes are more than willing to be audited. If it costs \$30.00 per day per patient, how are they going to operate on \$26.83 or so?

Chairman Bardanoue stated that this problem has never come up at the end of the session before. He said that the appropriation to the Department of SRS was never made on the last day of the session. He feels it is up to this committee to see just what we can do for these people. He stated that he wished we had an interim committee to look into this problem and see if the situation could be resolved.

At this point Representative Daily stated that we have no guarantee that the nursing homes won't be throwing the people out into the streets. He said that one home is losing approximately \$25,000 a month. The owner of that home is either going to have to go out of business or go into some other kind of business.

Chairman Bardanoue asked Mr. Colbo if it were possible that a home could be losing \$25,000 a month and Mr. Colbo responded that it would be his guess, without looking at the records, that the loss is not so much in operating costs, but in property costs.

Chairman Bardanoue stated that there is not a business in Montana that can guarantee cost plus.

At this point Representative Howard Porter from Billings spoke to the problem. He stated that he had been the Executive Director of the Montana Nursing Homes Association prior to election to the House. He said that he knows the nursing home business and knows the facilities. He went on to say that when you look at the cost record of these facilities you will find that freestanding nursing homes are always operating at \$5, \$6 or \$7 a day less than tax supported homes.

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It doesn't make much difference if the price is competitive. The price is not exorbitant. He went on to suggest that we have 2.3 million dollars in the budget for prioritized items of care, such as optical, audio and dental needs, etc. He suggested that if this could be passed from one pocket to another, it could give a tremendous amount of relief. They might be able to solve the problem without bills and without going to a lot of extra work. He said that the nursing home industry does a job that no one else wants to do. He commented that these older people are in terrible trouble. Nursing homes have indicated that they do not want to go broke slowly. Dying gradually is no good. He said that there are 1,000 beds that have given notice to the Department of SRS that they will no longer be available. Therefore we have probably lost federal dollars. They have to be picked up by somebody. This is simply a matter of keeping the parents and grandparents of Montana treated like human beings.

Representative South questioned Mr. Porter about the free enterprise system. He said the 1974 rule is "cost plus". If 10% are medicaid patients, you are going to be paid cost plus. There is nothing free enterprise about that. SRS is talking about going to a return on equity. I can find nothing more fair than that. The nursing homes do not want that.

Representative Porter replied that this comes from the HEW. He said that the HEW sets the rules and the industry got in step with them. He continued saying that nothing has been done to change this except return on equity. There is so much that is disallowed. Taxes are not a deductible cost as far as operation is concerned. He thinks if we could get to private enterprise, the thing would level out.

Chairman Bardanouve stated that Representative Porter is proposing to move the money from optional services. He said that you are then depriving these same people of all those services.

Representative Porter stated that it is better to have these people be warm, well nourished and well cared for, rather than to have the optionals.

Chairman Bardanouve then asked Representative Porter if he honestly believes that all these nursing homes will shut themselves down.

Representative Porter said that he is sure that if nothing is done, it will be piece meal, one at a time. He honestly thinks that we are in terrible trouble.

Chairman Bardanouve asked if we are going to endorse the cost plus concept where will we be then?

Representative Moore stated that we had passed money from one pocket to another in 1974-75. He stated that you talk about threats -- we

have had threats before. He went on to say that we have worked out a 65.2 million dollar budget for the nursing homes. He thinks we should leave this problem up to Mr. Colbo to work out.

Representative Waldron suggested that we shouldn't get too emotional about this. We had to come in this session for a 6.5 million supplemental for SRS. If we do use a cost containment process, there is no way of projecting those costs for the next session. There are 50 nursing homes that are getting an increase, the rest will get a decrease. He said the SRS has offered to go from the 80 percentile to 90 percentile and hold everybody harmless.

Representative Harrington responded that if these nursing homes close, you will really see a lot of emotion.

Representative South then stated that we have two options. He said that the Conference Committee could put the money in or the only other option we have is the bill that Representative Daily has introduced.

Representative Bengston remarked about the reimbursement rate. She said that if we put the 2.3 million into the reimbursement rate, are we then on a cost plus again or does the committee feel with an appropriation we would be just all out of whack?

Mr. Colbo said that he does not think we could plug into the plan without having to control arbitrary factors. He feels that the basic premise of the rule would be destroyed.

Representative Hurwitz asked Mr. Colbo when the nursing homes got the information about the new rate schedules. Mr. Colbo said that they have had the information since about the middle of March. He said that the rule was heard by the Department of SRS on January 11. He said the responsibility really lies with nobody. What we are talking about is "dollars".

Representative Ellis stated that if we use Representative Porter's suggestion, this will put a lot of optional services back on the county. He said that the county will then come back to the State for reimbursement. He asked if we aren't really going to put the squeeze on the counties.

Mr. Colbo replied that the squeeze is on the people.

Representative Daily stated that if we put the 2.3 million dollars back, the SRS could adopt rules that the federal government could probably buy.

Chairman Bardonouve then stated that the committee would resume the discussion about this problem when the house adjourns. The meeting was recessed at 5:00 P.M.

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The meeting was reconvened at 5:55 P.M., with Vice Chairman South acting in Chairman Bardanouve's absence. Vice Chairman South presented Representative Fred Daily, the sponsor of House Bill 926.

Representative Daily explained that House Bill 926 is a bill to appropriate 2.3 million dollars to the Department of SRS to fund skilled nursing homes and intermediate care services. He stated that he strongly feels that these people think this is a serious problem. He closed his presentation saying that he hopes the committee can do something about this. He said that there are problems with the bill and that he has an amendment for it.

At this point Representative Joe Quillici rose in support of the bill. Representative Quillici apologized for coming in at this late time with this kind of a bill. He thinks we have drastic problems with the nursing homes. He thinks that it will take drastic measures.

Representatives Dan Harrington and Kathleen McBride rose in support of the bill. Representative Bob Pablovich stated that if we don't do something here we might as well go back and have a poor farm. He said that we have to do something. Representative Joe Kanduch concurred with the prior testimony. Representative Mike Cooney rose and stated that everything has already been said. He said this affects numerous nursing homes around the State. He hopes that the committee will do everything possible to appropriate the money that is necessary. Representative William Menahan stated that he would appreciate the support of the committee if they can see fit. He thinks we need this piece of legislation.

There were no further proponents and no opponents to the bill and Representative Daily closed saying that if the committee doesn't agree with the figure of 2.3 million dollars, they would settle for something less.

Representative Moore stated that he could see some technical problems with the bill. He said that we would have to amend it. He said that the money is tied into the 65.2 million dollars that are already in House Bill 483. We would have to amend it first to make it technically correct and then add on the money that is already in 483, which would be another problem. It would have to go to conference committee if this bill were to pass.

Representative South suggested that Representative Waldron propose his amendments to the bill. The committee could then take a vote on them. We could then take the bill to the floor without a recommendation and perhaps that would expedite it some.,

At this time Representative Hurwitz stated that he wondered if we really have enough information here to make a good judgment. He wondered how many empty beds there are in the state and where they are located.

Representative South stated that we could probably get that information from Mr. Colbo before the beginning of the session on April 20, 1979.

Representative Waldron stated that he owed an apology to Representative Daily. He stated that you don't have to include federal funds on this. He said that there are a number of programs in SRS that you have to appropriate the money for, some you don't. This particular program is one that you don't have to appropriate for. He said that he thinks this committee should make some sort of recommendation. He went on to say that he thinks that a majority of the homes will not close their doors. There are likely to be a few who will go broke under this reimbursement rule. This is probably because they are not operating efficiently or they have purchased their homes at highly inflated values and he doesn't think that it is the committee's problem to guarantee that inefficient business operations will stay in business. He said that this will probably happen to a minimal number of homes. Representative Waldron explained that the amendments would probably straighten out these problems. He went on to explain the amendment as follows:

1. Title, line 4.
Following: "APPROPRIATING"
Insert: "ADDITIONAL"

2. Title, lines 6 and 7.
Following: line 5
Strike: "ADEQUATELY FUND SKILLED NURSING AND INTERMEDIATE CARE SERVICES UNDER"

3. Line 10.
Following: "appropriated"
Strike: "\$2.3"
Insert: "\$1.5"

7. Lines 13 and 14.
Following: "purpose of"
Strike: "adequately"
Following: "funding"
Strike: "skilled nursing and intermediate care services"
Insert: "the state medicaid program"

Representative Waldron went on to say that if the nursing homes have been underfunded and if the bill passes, then we have provided a buffer for the Department of SRS and they can take into consideration special circumstances. Also, if the subcommittee and the full committee did make an error in the other medicaid programs, then this 2.3 million, or a portion of that, is there to pick them up.

At this point Representative Waldron made a motion that the amendments be accepted. With Representatives Lund, Marks and Bardonouge absent, the motion carried.

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Representative Hand then asked if we can find the 2.3 million dollars at this stage of the game. Representative Waldron said that it will come out of tax relief.

Representative Daily said that he thinks the ending fund balance would be reduced each year and that he has no problem with that.

After further discussion about the source of the 2.3 million dollars, Representative Ellis made a motion to cut the 2.3 million to 1.5 million dollars. Representative Waldron stated that he would include this as part of his amendment.

At this time Representative Menahan made a motion that House Bill 923, as amended Do Pass. With Representatives Ellis, Hurwitz, Kvaalen, Manuel, Moore, South, Waldron, Wood, Yardley and Bardanouve voting No and with Representatives Lund and Marks absent, the motion failed. Representative Moore then made a motion that House Bill 926, as amended, Do Not Pass. Representative Waldron spoke on this motion. He said that SRS had a hearing on the rule change according to law. He said that we are dealing with the administration of a program. He went on to say that SRS plugged a number of objectives into their reimbursement rate. They have included as part of the rule, certain extenuating circumstances. They raised it up to the 90 percentile for funding, and it also said it would hold harmless those who were about the 90 percentile. Everytime the Department proposed some sort of reimbursement rule, the same operators would show up and oppose it. He said that the nursing homes only want cost plus. They have fought cost containment for years. Representative Waldron said that it would be our responsibility to pass legislation to do away with any rule. He said we are not helping the elderly people by doing this.

At his time the roll call vote was taken on Representative Moore's substitute motion. With Representatives Kvaalen, Moore, South, Waldron, Wood and Yardley voting Yes, and with Representatives Lund, Marks and Bardanouve absent, the motion failed.

At this time Representative Gesek made a motion to put House Bill 926 up for second reading with no recommendation from the committee. Representative Menahan stated that he could go along with Representative Gesek's motion. Representative Moore said that he does not think we should send this bill out of committee with no recommendation. If we send it back with a Do Pass recommendation we are in deep trouble.

Lengthy discussion followed.

The roll call vote was then taken on Representative Gesek's motion. With Representatives Lund, Marks, Manuel and Bardanouve absent, and with Representatives Ellis, Hurwitz, Kvaalen, Moore, South, Waldron, Wood and Yardley voting No, the motion failed.

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At this time the committee voted to reconsider their action on the Do Not Pass as amended, motion. Motion carried. Representative Waldron then made a motion that House Bill 926, as amended, Do Not Pass. With Representatives Lund and Marks absent, and with Representatives Bengston, Gesek, Hand, Manning and Menahan voting No, the motion carried.

There was no further business before the committee, and the meeting adjourned at 6:45 P.M.

Chairman

L. A. ...

Secretary