

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 12, 1979

The seventh meeting of the Judiciary Committee was called to order by Everett R. Lensink, Chairman, on January 12, in room 331 at 10:02 a.m.

ROLL CALL:

All members of the committee were present with the exception of Senator Thomas E. Towe, who was excused.

DISPOSITION OF SENATE BILL 51:

Senator Turnage moved that this bill do not pass. The motion carried unanimously.

RECONSIDERATION OF
SENATE BILL 56:

Senator Van Valkenburg questioned page 4, section 2 of the bill, wherein the proposed amendment stated that the final report should be made in less than 30 days prior to trial. He introduced into the meeting a letter from Dexter L. Delaney, attorney at law from Missoula. (See letter attached.)

Senator Brown requested that we defer action on this bill until tomorrow or Monday so that Jim Beck from the Highway Department could get together with Attorney Delaney and maybe they could come to terms on this question. Senator Lensink requested Senator Brown to get in touch with Jim Beck and we would take this bill under consideration again on Monday. (See later on in these minutes - Senate Bill 56 was reconsidered.)

DISPOSITION OF SENATE BILL 33:

Senator Turnage moved that we reconsider action on Senate Bill 33. The motion passed unanimously.

Joan Mayer from the Legislative Council proposed an additional amendment on page 36, line 2 and line 5 by striking "secretary of state and". Senator Brown moved that we adopt the amendment and the motion passed unanimously.

Senator Val Valkenburg moved that this bill do pass as so amended. The motion carried unanimously.

RECONSIDERATION OF SENATE BILL 37:

Senator Anderson asked if we could have copies of the repealers photostated so the committee could have them in front of them. Joan Mayer stated that it would require an awful lot of copies. Senator Turnage said that they probably need a couple hours to go over this bill and recommended that

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we pass consideration on this bill today and reconsider it next week. Senator Brown wondered if the Legislative Council consulted with the Supreme Court at all in regard to this bill and Joan Mayer from the Legislative Council stated that she did not believe it ever reached that point. Senator Turnage wondered if this was an appropriate place to have the researcher, Valencia Lane, take this matter up with the Supreme Court and Senator Lensink so requested the researcher to do.

Senator Lensink announced that SB 65 would be heard on Monday, January 22, and gave a handout to each of the senators to study before this meeting.

DISPOSITION OF SENATE BILL 56:

Mr. Jim Beck, chief R/W attorney for the Highway Department came in late for this meeting and Senator Van Valkenburg requested that we reconsider this bill again. The bill was discussed and Senator Turnage moved that on page 4, lines 4 and 5, the bill be amended following "report" by striking the words, ", or not less than 30 days prior to trial" and inserting "or not more than 60 days after waiver of appointment of condemnation commissioners.". The motion carried unanimously.

Senator Van Valkenburg moved that the bill do pass as amended. The motion carried unanimously.

There being no further business, the meeting adjourned at 10:38 a.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
of Judiciary Committee

STANDING COMMITTEE REPORT

January 12, 19 79

President:

MR.

Judiciary

We, your committee on

Senate

Bill No. 33

having had under consideration

Senate

Bill No. 33

Respectfully report as follows: That.....
introduced bill, be amended as follows:

1. Page 1, lines 17 and 18.
Following: "Title-20"
Strike: "only when specifically provided for by statute"
Insert: "only in those cases specified by statute"
2. Page 2, line 15.
Following: "is"
Strike: "specifically permitted"
Insert: "specified"
3. Page 13, line 17 through 12 on page 14.
Strike: section 24 in its entirety
Renumber: all subsequent sections
4. Page 36, line 2.
Strike: "secretary of state and"

XXXXX
DO PASS

(Continued)

Chairman.

- 5. Page 36, line 5.
Strike: "secretary of state and the"
- 6. Page 36, line 12.
Strike: "64-210,"
- 7. Page 36, line 13.
Following: "93-6517"
Strike: ", "

And, as so amended,
DO PASS

G.A.

.....
EVERETT R. LENSINK, Chairman.

STANDING COMMITTEE REPORT

January 12, 19 79

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 51

Respectfully report as follows: That SENATE Bill No. 51

DO NOT PASS
~~DO PASS~~

STANDING COMMITTEE REPORT

January 12, 19 79

MR. **President:**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **56**

Respectfully report as follows: That **Senate** Bill No. **56**
introduced bill, be amended as follows:

1. Page 1, line 20.
Following: **"by"**
Insert: **"written"**
2. Page 1, line 21.
Following: **"parties"**
Insert: **","**
3. Page 4, lines 4 and 5.
Following: **"report"**
Strike: **"," or not less than 30 days prior to trial"**
Insert: **"or not more than 60 days after waiver of appointment of condemnation commissioners"**

And, as so amended,

DO PASS

PA.

Date 1/15/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)			
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Please sign & return to secretary!

SENATE Judiciary COMMITTEE

BILL Jan 12 1959

VISITORS' REGISTER

DATE 1/12/59

Please note bill no.

(check one)

NAME

REPRESENTING

BILL #

SUPPORT

OPPOS

Scott SCACAT

LEGISLATIVE Audit

27

Robert LaDow

" "

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MULRONEY, DELANEY, DALBY & MUDD

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EDWARD C. MULRONEY (1877-1970)
THOMAS E. MULRONEY (1914-1964)
DEXTER L. DELANEY
STEPHEN H. DALBY
JOHN O. MUDD

January 10, 1979

Senator Fred Van Valkenberg
Box 153 Capitol Station
Helena, Montana 59601

Dear Senator Van Valkenberg:

This is to confirm our telephone conversation of today's date in which I suggested as a practitioner of eminent domain law that the legislative proposal to allow the parties to stipulate to waive "a commissioners hearing" would seem to me to be entirely appropriate and an efficient device to expedite the trial of condemnation cases.

You mentioned, however, that it was proposed that the Montana Department of Highways be dispensed from their present statutory duty of making their final offer within thirty days of the date on which a commissioners award is appealed and to amend that requirement to the effect that they should be required to make a final offer within thirty days of a trial date. I would disagree that this would be appropriate legislation for a number of reasons. Initially it is often very difficult to ascertain an exact trial date inasmuch as condemnation cases are almost uniformly tried before juries and a specific jury trial date is usually impossible to predict with any degree of accuracy. Secondly, while there is nothing to prevent the Highway Department's volunteering any offer they may wish to make, it would be my feeling in fairness to the land owner condemnee that the Highway Department should at as early a date as possible be required consistent with the present statutory provision to advance their best offer of compromise so that the land owner will have adequate time within which to evaluate that offer, and if unsatisfactory, prepare his case for trial. You indicated that someone advanced the thought that the proposed legislation would be of some benefit because attorneys for condemnees did not evaluate their case until shortly before trial. This is entirely inaccurate. In my experience there are a relatively few attorneys in Montana who consistently tried this type of case among whom I know of no one who waits until the eleventh hour to evaluate the case. To the contrary, it is typical that

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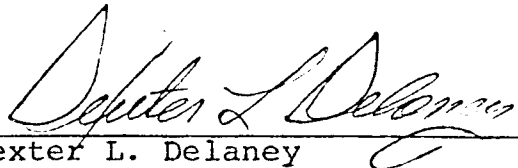
Senator Fred Van Valkenberg
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very early in the proceedings the attorney for the condemnee is fully aware of the value of his condemnation case, usually far in advance of the time of any trial. The proposed legislation has a further deficiency in failing to recognize that there are a number of situations in which the actual trial of a condemnation case may be delayed as long as two to three years from the date of the filing of the complaint. If the legislation were passed, this would mean a corresponding delay in the State's obligation to come forth with its best good faith offer. Accordingly, it would be my view that existing legislation is entirely adequate and that the proposal above referred to would not be in the best interest of the condemnee land owners in this state.

Thanking you for your consideration, I am

Yours truly,

MULRONEY, DELANEY, DALBY & MUDD


Dexter L. Delaney

DLD/el