

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 5, 1979

The fifty-first meeting of the Senate Judiciary Committee was called to order by Chairman Everett R. Lensink, in room 331 of the capitol building on the above date at 9:32 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 514:

This is an act affirming the validity of deeds of trust not intended to constitute trust indentures under the small tract financing act; providing that such instruments are subject to the laws concerning mortgages and when recorded provide subsequent purchasers and encumbrancers with constructive notice, etc. Representative Rameriz stated that he introduced this bill at the request of a former senator, Jim Hoy. He gave a brief explanation of this bill.

There were no further proponents and no opponents.

Senator Van Valkenburg asked what was the case and Representative Ramirez said that it was R. Amsterdam Lumber versus Dystra House. He stated that in this decision what was attempted was a trust indenture and the trust indenture did not meet requirements of the small tract financing act. He stated that a trust indenture does not have to be foreclosed like a mortgage so there are very strict requirements under the small finance act .

Senator Towe stated that he was a little confused on one point. He asked if you have a trust indenture that was to conform but for some reason fails to comply then then would that decision apply. Representative Rameriz gave an explanation of what this would do. Senator Towe stated that he was concerned about the loose language and felt that this statute might cause some confusion. He wondered if "such instruments" might not include any instruments. Representative Rameriz stated that this will not hurt anybody.

There was some further discussion between Representative Ramirez and Senator Towe on this bill and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 519:

This is an act to modify the manner in which necessary expenses of litigation are computed under section 7030-305, MCA, etc. Representative Scully gave an explanation of this bill and he stated that this would put the language back in from last session. He stated that arguments go back and forth and probably will for years and he said that this concerns the ability to deal with legal counsel that should be left available for the state of Montana and should not be foreclosed. He stated that he was sure there were large contingency fees and he was sure there were large hourly rate fees.

Mike Meloy, representing the Montana Trial Lawyers Association, stated that there are two methods of paying fees when hiring a lawyer - you pay the lawyer the amount of money he charges for every hour he works or you give him a retainer and he regularly bills you for the amount of money of a contingency fee which you have agreed to, or with some lawyers, you do not have to pay him anything until judgment time comes and then he takes a certain amount from the judgment and he stated that there are certain advantages to each arrangement. He stated that if the state of Montana wants to condemn some land and the landowner obtains a lawyer, you can only do this on an hourly basis now. He said that this bill would put it back to where it was before 1977. He said that the advantage to the landowner is that if this bill is passed, the landowner is not going to have to pay this out of his pocket all the money that the lawyer bills him for.

Jim Beck, Chief R/W Attorney for the Department of Highways, gave a past history of this bill and stated that after several years of experience they came to the conclusion that the department was awarding attorney's fees that were excessive. He stated that last session they introduced a bill whose purpose it was to define what was necessary fees of litigation and it also stated that a contingency fee could not be satisfied as a result and he said that this bill seeks to repeal this action. He said that he does not know of any landowner who has not been able to get an attorney, that the present law has worked well and the method of computing fees has worked well. He stated that in eminent domain laws, the landowner never pays. He contended that you could charge 75 to 100 per cent contingency fees and there would be a no-lose proposition for the landowner. He also stated that they do not have to have up-front money, there is nothing to prevent the lawyer not to charge the man until the case is heard, and secondly, the case that goes to trial involves large sums of money and that there is no way the

attorney is going to be slighted on the money. He said that he felt this old law was fair to the landowner, to the taxpayer and to the lawyer.

Senator Lensink questioned if this bill addresses a theoretical problem or has there been some real problems. Representative Scully stated that if he had known exactly what he was doing last session, he would not have voted for that bill. He said that anytime you are a lawyer in practice, it is a problem when people analyze whether they are going to appeal and he said that Mr. Beck sitting in the highway department has no way of knowing but obviously there were people involved in the contingency fee from the figures he gave.

Senator Anderson questioned how many condemnations do they have in a year and how many are contested. Mr. Beck stated that we buy or purchase 90 to 94 per cent of the land and there is never any litigation with that but the number of cases we file in a year varies tremendously with what projects we are working on and he stated that there were 250 active cases at the present time.

Senator Anderson asked how many cases were settled in 1978 and Mr. Beck stated that he had no idea. Senator Anderson then asked out of a 100 cases how many cases does a landowner receive more money. Mr. Beck said that since 1972, that he knows of less than five where the landowner did not prevail and there may be a couple more. He stated that sometimes we can't offer as much as they want because of federal constraints or because of protected trusts with other landowners that have already settled.

Senator Lensink questioned in relation to what you have said, do you have a problem with hometown attorneys and hometown juries and Mr. Beck answered yes.

There being no further questions or comments, the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 401:

This is an act to amend the laws relating to witness fees to include provisions for lodging and meal expenses, etc. Representative Harper gave an explanation of this bill.

Douglas Olson, representing himself as an attorney residing in the state of Montana and working for state government, stated that through his work with state government, he has had to go to court, and should the other side prevail, they can collect their costs, but that the witness fee is only \$10.00 daily for attendance fee, and they are not entitled to any expenses for lodging and for meals; and this seems inequitable; and they are not adequately or fully compensated.

There were no further proponents and no opponents.

Senator Olson questioned if this would be paid for by the state and Senator Turnage answered that in criminal cases, the state pays, but in civil actions, normally the person calling the people pays; and then if you win the case, you can fall back on the losing side.

Senator O'Hara said that it is kind of taken care of now then; and Senator Turnage answered that if you only pay him \$10.00 a day, you might get an entirely different version of what you would if you took care of him.

There were no further questions and no comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 396:

This is an act to repeal section 46-18-404, to eliminate the designation of nondangerous offender for the purposes of eligibility for parole, etc. Representative Keedy stated that he feels it is preposterous to think that no matter how brazen or how serious the offense is, that the current statute allows the designation of non-dangerous offender if the man is entitled to it; and he feels that this is an outrage.

There were no further proponents.

Larry Zanto, representing the Department of Institutions, stated that he felt that this should be the discretion of the judge. He also stated that he thought that there is a difference - that most correctional people and judges recognize the substantial difference between non-dangerous and dangerous offenders. He stated that this bill would result in a substantial increase in the prison population and

they feel that it might run it up as high as 13 to 1400 more inmates.

Karen Mikota, representing the League of Women Voters, questioned why the "or" could not be changed to "and" and Senator Lensink stated that this had already been done in another bill.

Senator Keedy stated that he is opposed to the terminology of non-dangerous offender and he felt that there is sufficient latitude right now, and he felt that the sentencing provisions are adjusted accordingly to take in those offenses. He stated that he is suggesting that the judge has sufficient discretion to now take into account the different kinds of activities. He stated that he felt that this is an assault on the public and misleading to the public, that it creates a subterrian system whereby people are allowed premature paroles to the surprise of many people and he felt that the sentencing structure in the state of Montana was adequate to take care of this problem.

Senator Van Valkenburg stated that he understood from some of the things that Representative Keedy said that he professed to have some knowledge of how the criminal justice system should work but he asked him if he knew the background in Montana and did he know how the non-dangerous thing came to be in the first place.

Representative Keedy stated that he understood that the law that this bill seeks to repeal was enacted accidentally. He said that Representative Scully indicated to him that the non-dangerous offender section was one of several that was thrown into the hopper and was one that was not really intended to be there.

Senator Van Valkenburg stated that in essence what we had until 1977's session was a flat requirement that a person was eligible for parole if he had served 1/4 of their time, for an habitual offender 1/3 of their time and a stiffer law if they had a prior conviction - 1/2 of their time. He stated that if we pass this bill, we take everybody up to the level of 1/2-that there would be no discretion of any kind and no incentive to avoid future violations of law and he wondered if Representative Keedy had enough background information.

Representative Keedy stated that the sentencing is so broad right now - in the case of a deliberate homicide he can sentence for as little as two years up to a death sentence and he felt that this is about as broad as a judge needs. He said you can add to that the provision for "good time" and this can add up to 1/2 of his time and then you would get back to a release in a little more than 1/4 or 1/3 of their sentence.

Senator Van Valkenburg noted that Mr. Rhay is here and he wondered if he would give the committee some comments as he has had considerable experience and he would like some comments in regard to treating people as individuals.

Mr. Rhay stated that this is the thrust of the whole procedure today - to treat them as individuals and he said that he would not be interested in treating enmass to any prisoner.

Representative Keedy stated that this bill will not increase the prison population and that what puts pressure on the prison is criminal activity.

There were no further questions or comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 487:

This is an act to require periodic pharmaceutical or medical reviews of resident medications; establishing stipulations for the release of records, and generally revising and clarifying the laws relating to the developmentally disabled, etc. This bill was co-authored by Representative Bengtson and Senator Towe. Senator Towe gave an explanation of this bill and said that this should make it a little easier for the people in Boulder who have to deal with the patients and these people decided that they could do without the first three sections.

Aage Hansen, representing the Association of the Developmentally Disabled, stated that they support this bill as it has been amended.

Peter Blouke, representing the Mental Health and Residential Services Division of the Department of Institutions, stated that they support this bill as amended.

There were no further proponents and no opponents.

Senator Galt questioned if all this has to be written into the law and doesn't the superintendent have rule-making authority. Senator Towe answered that some of these changes are minor, but the medical records and review of the drugs is so important that it should be in the statute in that they are subject to abuse.

Senator Galt wondered if they need to have the degree of clothing and kinds of clothing. Senator Towe said that it is incredible about some of the things that have to be spelled out such as the use of a telephone or pencils, things that should be obvious - they have to be stated or they just are not being provided and if they are in the law, there is no question about it.

Senator Olson questioned if Boulder or Warm Springs is accredited and the answer was no.

Senator Olson questioned if these institutions have formal bylaws and Senator Towe said they do have formal medical bylaws. Senator Olson stated that he did not think this should be in a statute and if the medical staff is on the ball, he felt that they should not have to be put in the statutes.

Senator Towe said that probably because of the shortage of medical doctors, particularly at Warm Springs, and he stated that they found that it was not being reviewed at all and no procedures were being carried out. He felt that in taking this out altogether that they will pass regulations that they won't have to.

Senator Turnage asked what it means on page 13, lines 6 through 11. He stated that this seems to say that they have the right to treatment but can refuse treatment. Senator Towe stated that the refusal of treatment is only allowed in one instance in the state of Montana and that is 24 hours before a hearing. He said that there is a right to treatment established by statutes. Ms. Hansen stated that if they have a behavior problem, they have a tendency to over-medicate.

Senator Olson questioned if they had applied for accreditation and Mr. Blouke stated that they had but they were unable to get accreditation and he stated that without large expenditures of funds they will not be able to comply. Senator Olson questioned if the failure to comply was because of primarily physical plant or medical care problems. Mr. Blouke stated that it was a combination of the two and he said that the superintendent of Boulder is preparing a plan to deal with this. He said that the real problem is physical plant problems and that is the part that is very difficult because of the shortage of funds. Senator Olson asked them if they told them when they could reapply and Mr. Blouke stated after one year, he believed.

Senator Turnage moved that the bill be amended on page 13, line 7, following "regard to" insert "other rights he may have regarding" and on line 10, after "of" insert "such". The motion carried unanimously.

Senator Turnage moved that the bill be amended on page 13, line 10 by striking "by a resident". The motion carried. Senator Turnage moved that the bill be concurred in as amended. Joan Mayer from the Legislative Council stated that there were a couple other problems with this bill and Senator Lensink asked her to take care of this.

DISPOSITION OF HOUSE BILL 396:

Senator Van Valkenburg moved that this bill be not concurred in. He stated that we are going right back to the situation before 1977 and he stated that there is good reason to say that someone who is a first offender should not be treated the same as someone who is a second offender. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 401:

Senator Turnage moved that this bill be not concurred in. He stated that this creates additional costs - meals, lodging, etc., - and he just did not think it was necessary. Senator Towe stated that he would agree with Senator Turnage and the costs could be pretty high. The motion carried with Senators Brown and Van Valkenburg voting no.

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DISPOSITION OF HOUSE BILL 514:

Senator Towe moved that the bill be amended on page 1, line 16, following "deeds of trust" strike "or" and insert a "," and on page 1, line 17, following "deeds," insert "or trust indentures," and amend the title accordingly.

Senator Brown requested that this bill be held over until this evening's meeting.

DISPOSITION OF HOUSE BILL 519:

Senator O'Hara moved that the bill be not concurred in. Senator Lensink stated that this would give us another two years trial. A vote was taken and the vote tied. (See roll call vote.) A tie vote means that the bill will stay in committee.

There being no further business, the meeting was adjourned.

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 3/1/79

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)	✓		
Gall, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

(151)

Please sign & return to Secretary's Office

SENATE

Judiciary

COMMITTEE

BILL

VISITORS' REGISTER

DATE 3/27

Please note bill no. (check one) SUPPORT OP?

NAME	REPRESENTING	BILL #	SUPPORT	OP?
Darcy Olson	myself	401	✓	
Paula K. Reed	He. Long	519		✓
Michelle Meloy	Mr. Tribal Language	519	✓	
Susan A. Fleming				
Patsy D. Hartman				
Joson C. Compton				
Linda ...				
Linda C. ...				
Kevin ...	Mountain ...	396		
Cheryl Zonta	Deputy ...	396	✓	✓
Patricia ...	"	423	✓	
Daryl Hansen	P.D. ...	467		✓

Bills to be heard by
Senate Judiciary
Monday, March 5, 1979

1.) HB 396 (Keedy)

Proposed Bill - repeals 46-18-404, abolishing of nondangerous offender for purposes of eligibility for parole.

NOTE:

SB 228 and SB 426, passed by the Senate, amend 46-18-404 which creates the designation. SB 228 tightens up the requirements for qualifying for designation as a nondangerous offender.

2.) HB 487 (Bengtson)

Current Law - Title 53, chapter 20 deals with the developmentally disabled.

Proposed Bill - generally revises and clarifies the laws relating to the developmentally disabled. As originally drafted, the bill provided procedures for allowing a seriously developmentally disabled person to voluntarily admit himself to a residential facility - this provision was deleted by the House.

Section 1. amend 53-20-104. Powers and duties of mental disabilities board of visitors.

Changes "patient" to "resident".

Section 2. amend 53-20-114. Appointment of responsible person. Provides that the responsible person cannot be an employee of a residential facility and that the appointment will terminate when the resident is discharged.

Section 3. amend 53-20-123. Outcome of examination - dismissal of petition - court ordered evaluation and treatment - hearing.

Allows the professional person to recommend placement in consultation with the department of institutions and the department of social and rehabilitation.

Section 4. amend 53-20-130. Patient transfers from mental health facilities.

Allows transfer from a mental institution to a residential facility or an appropriate less restrictive alternative.

Section 5. amend 53-20-142. Rights while in a residential facility.

Adds the right to habilitation services.

Section 6. amend 53-20-144. Rights concerning photographs.

Section 7. amend 53-20-145. Right to be free from unnecessary or excessive medication.

Allows for more frequent review of medication.

Section 8. amend 53-20-146. Right not to be subjected to certain treatment procedures.

Provides that mechanical devices to help the developmentally disabled are not physical restraints.

Section 9. amend 53-20-148. Right to habilitation.

Lengthens the time a resident can be in a facility before a habilitation plan is begun from 14 to 30 days and provides that the parent or responsible person, in addition to the resident, will receive information concerning the care and habilitation of the resident.

Section 10. amend 53-20-161. Maintenance of records.

Establishes procedures for release of records. Release can be authorized by a resident, parent, or guardian, or the superintendent of the residential facility under certain circumstances. Parties can be object to the release of information by the superintendent.

Section 11. amend 53-21-187. Clothing for patients discharged or conditionally released.

3.) HB 519 (Scully)

Current Law - in certain cases, a party to a law suit can recover his attorney fees from the other party. Currently, "reasonable and necessary" fees are the customary fees charged in the county in which the trial is held, and such fees can not be computed on a contingency basis (fees which are contingent on winning and are usually higher).

Proposed Bill - changes the method of computing fees. Bill provides that reasonable and necessary fees are the customary fees charged in the county in which the attorney practices or the customary fees charged by attorneys in a specialized field.

Note - there is no geographical limitation on the specialty (ex. there is probably a difference between a New York tax lawyer and a Montana tax lawyer's fees). Also, the bill allows necessary fees to be computed on a contingency basis.

4.) HB 401 (Harper)

Current Law - allows witnesses in all courts in civil and criminal cases only a per diem and mileage.

Proposed Bill - adds payment of expenses of meals and lodging to witnesses on the same basis as employees of the state are allowed such expenses.

Problems -

1. Typo in title, line 6: should read "26-2-501".
2. Should 26-2-507 be amended to provide for prepayment of expenses of meals and/or lodging as well as prepayment of fees and mileage?

5.) HB 514 (Ramirez)

Current Law - provides for two basic methods of financing purchases of real property: mortgages and trust indentures.

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In the case of a mortgage, the purchaser holds title to the property. In the case of a trust indenture, the title is held in trust for the benefit of the purchaser.

Proposed Bill - clarifies that arrangements in which title is transferred for security purposes but which do not meet the statutory requirements for trust indentures are not invalid and are to be treated as mortgages.

Question - Is the application of this bill retroactive?

SENATE COMMITTEE JUDICIARY

Date _____ Bill No. 519 Time 11:26

NAME	YES	NO
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)		✓
	5	5

Secretary _____

Chairman _____

Motion: Be not considered

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

..... March 5, 19 79

MR. President:.....

We, your committee on Judiciary

having had under consideration HOUSE Bill No. 396

Respectfully report as follows: That House Bill No. 396

BE NOT CONCURRED IN

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~~NO PASS~~

STANDING COMMITTEE REPORT

March 5, 1972

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 401

Respectfully report as follows: That House Bill No. 401

BE NOT CONCURRED IN

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