

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 17, 1981

The executive session of the House Judiciary Committee was called to order at 9:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Hannah, Rep. Daily, and Rep. Huennekens, who were absent. Jim Lear, Legislative Council, was present.

SENATE BILL 245 REP. BENNETT moved do pass.

REP. BENNETT moved to repeal section 10 from the law. He felt the law was archaic and makes no sense. It is none of the state's business to know who had an abortion.

REP. CURTISS opposed the motion and felt the section should be left as is. Page 10, lines 16-17 states that violation of the section is a misdemeanor. REP. HANNAH agreed.

REP. MATSKO stated section 6, making it a misdemeanor, makes it objective and it is contrary to repeal section 10. REP. BENNETT responded that leaving it in the law would be contrary to current practice since abortions can be obtained legally. REP. YARDLEY stated there must be some relationship to this and the abortion statute itself.

REP. BENNETT wondered about the possibility instead of repealing the section to leave in the language from lines 17-23 and replace the "," with a "." after "realize". On page 10, line 8, after "abortion" striking the rest of line 23 to line 10 on page 8. This would require the reporting of the abortions yet it would be confidential information. REP. HANNAH stated HJR15 was in the same lines as this amendment. Both the House and the Senate showed by passage of HJR15 stricter controls are necessary. This is existing law and it is consistent. REP. HANNAH opposed the motion. The sponsor of the bill made no attempt to take this section out of the law. It would be a radical change.

The motion to repeal section 10 in its entirety failed with BENNETT, KEEDY, ABRAMS, and SEIFERT voting for the motion. REP. CONN abstained.

REP. HANNAH felt that page 8, lines 9-10 was a radical change from current practice. When a person reaches legal age he could find out who is parents are. Page 8 stops that ability and puts it in the hands of the court to decide. REP. HANNAH objected to that.

REP. YARDLEY stated section 3 requires a court order now. The sponsor intended to go the other direction with the bill and ended up going this way.

The motion of do pass carried with MCLANE, ABRAMS, ANDERSON and HANNAH voting no. REP. YARDLEY was assigned to carry the bill.

SENATE BILL 216 This bill was passed as amended on March 13, 1981. REP. HANNAH gave EXHIBIT 1 to the committee, a list of amendments to the bill as it was previously amended.

REP. HANNAH moved the committee reconsider action on the bill and accept the new amendments.

REP. KEEDY asked if it was right to allow only the supreme court to refer the matter of judges to the judicial commission rather than allowing a party to the suit to refer. A party that has been adversely affected should be able to go to the judicial commission. REP. HANNAH agreed. From a practical standpoint, these amendments are about as good as the bill will get. The judges must be given some credit to show they can police their own house. This gives them the opportunity to do that.

REP. KEEDY stated the state auditor is not to issue a payment unless the court finds the lower court is in compliance. Shouldn't the commission determine whether the judge should be paid? REP. HANNAH stated the judge could side step this issue and demand payment from the treasurer. The judicial standards commission should have the final say in the matter.

REP. YARDLEY stated under current law the commission only makes recommendations to the supreme court. It may be proper to pass the amendments and table the bill. REP. KEEDY stated if the bill was not passed the 90 day provision would continue.

REP. EUDAILY stated the district judge would have 120 days to act. If they don't act it would go to the supreme court. Could the supreme court also postpone the decision up to 120 days? REP. HANNAH felt they probably could. JIM LEAR stated the bill does not directly address the length of time allowed for the supreme court to act, but the supreme court treated the situation as a "case" it could take up to 120 days.

REP. CURTISS stated some language should be provided that a judge could not render a retaliatory decision where a party complained about the length of time for the decision.

REP. MATSKO wondered whether the supreme court would call that a new act or just give it an additional 30 days. One side has got to lose.

REP. YARDLEY stated the judge must make a decision within 90 days. If he does not he must file an affidavit as to why it is not completed. He then has an additional 30 days to complete the decision.

REP. KEEDY moved after "court" to insert "or any party to the matter pending upon request", following "commission" insert "." and to

strike the rest of the line through "service". Begin the next sentence with "If"; following "court" insert "," and insert "acting upon the recommendation of the commission". The last sentence of the third amendment on the handout would be amended to read "If the court determines the justice is not in compliance with this section it shall order that the state auditor not issue a warrent for payment of his services."

REP. CURTISS asked if the district judges are paid by the state. Yes was the reply.

REP. KEYSER stated "upon a request" does not indicate foundation; there must be something to back it up. REP. KEEDY replied the commission is required to look at all requests. REP. CONN asked if it could be any complaint - could anyone go to the commission and turn in the judge without reviewing the reason under the amendments? REP. KEEDY said not under the amendments. Any person in the state could appear before the commission.

REP. HANNAH stated the amendments refer only to cases pending that were not solved within the 120 days.

REP. BROWN felt the amendments were a waste of time. REP. YARDLEY also opposed the amendments. He did not feel it would solve anything and it would create more burden. REP. CURTISS felt the previous amendments to the bill were more severe.

The amendments to REP. HANNAH's amendment carried with YARDLEY, BROWN, EUDAILY, and CONN opposing.

REP. KEEDY felt that the judges should not receive back pay. REP. CURTISS stated the wording should be the state auditor will withhold one month's pay. JIM LEAR stated that implies the judge will receive the money at a later date. REP. IVERSON suggested the judge would forfeit the salary for a month. REP. CONN felt that would not hold up in court. REP. IVERSON disagreed saying the pay could be legally withheld. REP. EUDAILY stated if he were a judge he would be inclined to throw away the cases that were holding him up and start fresh.

REP. KEEDY moved one month's pay be forfeited. The amendment carried with YARDLEY, BROWN, SHELDEN, CONN and EUDAILY voting no.

REP. KEEDY moved the identical language of the amendments be inserted on the second page of the bill. The motion carried with EUDAILY, YARDLEY, BROWN, CONN, and SHELDEN voting no.

REP. KEEDY moved on page 1, line 2 to strike "the same shall have been submitted" and to insert "submission for decision". The motion carried unanimously.

REP. KEYSER moved on line 7 to strike "shall" and insert "must". The motion carried unanimously.

REP. KEYSER moved to strike "shall" and insert "may". The motion carried.

REP. KEEDY moved the changes be reflected on the next page of the bill. The motion carried.

REP. HANNAH moved the bill do pass as amended. The motion carried with EUDAILY, CONN, BROWN, and SHELDEN opposing. REP. HANNAH was assigned to carry the bill.

SENATE BILL 222 This bill was being held for a new fiscal note. It was noted that a fiscal note was not drawn up but if it were 10-15% would be deducted with the amendment.

REP. KEEDY moved do not pass. A responsible fiscal note could not be accomplished. The Chamber of Commerce is not aware of the existing law. No one has actually tested the law yet. REP. KEEDY did not feel there was a good enough reason to change the existing statute and it is inappropriate to make the change.

REP. CURTISS asked about the amendment previously made. JIM LEAR read the amendments. After costs insert "attorneys fees" in the title. On line 9 strike "if" and insert "unless"; line 24 strike ":"; line 25 strike subsection (a); page 2 line 15 strike "costs" and insert "attorneys fees". All were in favor of the amendments.

REP. KEEDY moved do not pass as amended.

REP. CURTISS stated at the time the bill was presented the school boards were not aware they were involved in the bill. The bill involves political subdivisions.

REP. CONN stated under the present law frivolity is hard to prove. This would try to put the present law in better use.

REP. EUDAILY stated line 23, page 1, seems with the existing language there is a possibility of awarding the attorneys fees.

The motion of do not pass resulted in a roll call vote. Those voting yes were CURTISS, EUDAILY, MCLANE, ABRAMS, KEEDY and YARDLEY. Those voting no were KEYSER, SEIFERT, BENNETT, CONN, HANNAH, IVERSON, MATSKO, SHELDEN and BROWN. The motion failed 9 to 6. The vote was reversed to do pass as amended. Those voting yes were KEYSER, SEIFERT, BENNETT, CONN, HANNAH, IVERSON, MATSKO, SHELDEN and BROWN. Those voting no were EUDAILY, MCLANE, ABRAMS, KEEDY, and YARDLEY.

REP. SEIFERT was assigned to carry the bill on the House floor.

SENATE BILL 162 REP. KEEDY moved do pass.

REP. KEEDY explained a tortfeasor is one who commits a civil wrong; damage is done against another party.

A consolidation should be allowed. In some cases it is important to have a clear and fair determination. REP. KEEDY told of a supreme court decision concerning a car accident. The plaintiff filed suit not against the person who hit them but against her own insurance company, which also insured the driver of the car in which she was riding, in an attempt to collect the insurance. The insurance company tried to bring in the third party, the driver of the other car. The supreme court felt they should all get together. This would allow that to happen so it can all be done in one lawsuit.

REP. EUDAILY moved on page 2, line 6 following "which" to strike lines 6, 7, and 8 and to insert "make any party indispensable pursuant to Rule 19, M.R.Civ.P.". The motion carried unanimously.

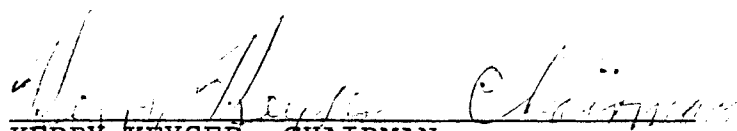
REP. KEEDY moved do pass as amended.

REP. KEEDY moved to strike "proportion" and to insert "apportion" on page 2, line 3 of the bill following "shall". The motion carried.

The motion of do pass as amended carried with EUDAILY voting no.

REP. KEEDY was assigned to carry the bill.

The meeting adjourned at 10:45 a.m.


KERRY KEYSER, CHAIRMAN
mr

FINAL AMENDMENTS

Exhibit 1

AMENDMENT TO SENATE BILL 216
THIRD READING COPY

1. Title, line 8
Following: "DAYS;"
Insert: "REQUIRING AN AFFIDAVIT FOR MATTERS PENDING OVER 90 DAYS; PROVIDING FOR REFERRAL TO THE JUDICIAL STANDARDS COMMISSION AND FOR THE WITHHOLDING OF SALARY;"

2. Title, line 9
Strike: "SECTION 3-2-104, MCA; REPEALING SECTION 3-5-212"
Insert: "SECTIONS 3-2-104 AND 3-5-212, MCA"

3. Page 1, following line 23
Insert: (2) If any cause, motion, or other proceeding remains pending and undecided for a period of 90 days after the same shall have been submitted for decision, the justice of the supreme court who has been assigned to write the opinion, order, or decision of the court shall submit an affidavit on or before the 90th day to the chief justice setting forth the case name, cause number, and the reason the matter has not been decided. Copies of the affidavit shall be furnished to all parties to the matter pending. A cause, motion, or other proceeding is considered submitted for decision when all hearings have been held and final briefs have been submitted by all parties to the matter pending. Upon the filing of the affidavit, the justice shall have an additional 30 days to decide the matter which has been submitted. No cause, motion, or other proceeding shall remain undecided for more than 120 days after submission for decision without the approval of a majority of the other members of the supreme court for good cause shown in an affidavit requesting additional time. If a justice of the supreme court violates the provisions of this section, by a majority vote the other members of the supreme court may refer the matter to the judicial standards commission and may order that the state auditor not issue a warrant for payment of services until the court determines the justice is in compliance with this section."

4. Page 1, line 24
Following: "{3}"
Strike: "(2)"
Insert: "(3)"

5. Page 2, line 3
Strike: Section 2 in its entirety
Insert: "Section 2. Section 3-5-212, MCA, is amended to read:

"3-5-212. Salaries not to be paid until affidavit filed: The state auditor shall not draw a warrant in payment of the services of any judge of the district court until such judge shall have filed with the auditor an affidavit that no cause, motion, or other proceeding in his court remains pending

and undecided for a period of 90 days after the same shall have been submitted for decision unless casualty or sickness shall have intervened: if any cause, motion, or other proceeding remains pending and undecided for a period of 90 days after the same shall have been submitted for decision, the district court judge before whom the matter is pending shall submit an affidavit on or before the 90th day to the chief justice of the supreme court setting forth the case name, cause number and the reason the matter has not been decided. Copies of the affidavit shall be furnished to all parties to the matter pending. A cause, motion, or other proceeding is considered submitted for decision when all hearings have been held and final briefs have been submitted by all parties to the matter pending. Upon the filing of the affidavit, the district judge shall have an additional 30 days to decide the matter which has been submitted. No cause, motion, or other proceeding shall remain undecided for more than 120 days after submission for decision without the approval of a majority of the supreme court for good cause shown in an affidavit requesting additional time. If a district judge violates the provisions of this section, by a majority vote the supreme court may refer the matter to the judicial standards commission and may order that the state auditor not issue a warrant for payment of services until the court determines that the judge is in compliance with this section."