

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 19, 1981

The meeting of the House Judiciary Committee was called to order by Chairman Kerry Keyser at 8:00 a.m. in Room 437 of the Capitol. Rep. Seifert was excused. All other members were present. Jim Lear, Legislative Council, was present.

SENATE JOINT RESOLUTION 4 SENATOR HAFFERMAN, chief sponsor, stated this resolution is to urge Congress and federal branches to implement ways to make groups intervening in construction of energy facility proceedings responsible for their acts. EXHIBIT 1 was read to the committee.

FORREST BOLES, Montana Chamber of Commerce, was in support of the bill. The last federal study is appropriate. Some of the action brought about could be known as frivolous.

REP. AUBYN CURTISS was a proponent for the resolution. A recent bill she sponsored attempted to address the same issue. The overall effect of these lawsuits is to dry up capital. It increases the cost of production. This would help the economy.

Also in support of the bill was REP. BUD GOULD. Two years ago GOULD co-sponsored bill 452, which at that time was one way of making views known as an opponent to these long delays. The cost of delays amounts to an increase of 1% per month. GOULD stated an article in U.S. News & World Report covered this subject in Citizens Against Trident. GOULD stated he did not think that because of nitpicking things they should be allowed to use the courts as allies.

There were no further proponents to the bill.

MIKE MALES was opposed to the bill. He did not feel it was a tremendously critical issue. This will seek to deny people their day in court. Frivolous suits are for the courts to decide. What is frivolous to one party might be very important to another. Delays are advantageous to some people. The resolution does not address the full question of liability. MALES felt this issue was very one-sided.

PATRICK OSBORNE, Northern Plains Research Council, stated this bill is similar to 364 and 668. OSBORNE stated we should not send a resolution to congress urging this. The state is not willing to do this on its own. This will be urging congress to do something that is already covered. There is a test of standing that must be achieved by a plaintiff. It is questionable that a court would issue an injunction or restraining order before they would halt construction. OSBORNE felt this was unconstitutional. Legally it will deny free access to the courts.

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There were no further opponents.

In closing, SENATOR HAFFERMAN read EXHIBIT 2, an article entitled "Will Anyone Miss Squawfish?"

REP. DAILY asked if it were true that the highway construction between Butte and Helena was stopped because of two eagles. MALES was not aware of the situation.

REP. YARDLEY asked about the dam at Libby. What law would have been passed that affected that? The Senator replied all this resolution is doing is to ask congress to do something. Some solution must be made to develop energy.

REP. YARDLEY asked what happened on the reregulation dam in the Libby area. The Senator replied the Endangered Species Act was brought in. Mansfield and Metcalf were instrumental in this. The Libby dam was to have 12 generators, but was cut down to 8.

REP. SHELDEN stated the Gray Rock Suit names the State of Nebraska as plaintiff. SENATOR HAFFERMAN was not aware of the suit. REP. SHELDEN stated the reregulation dam was not authorized by congress. Should they investigate it? The Senator responded the intent seems to be based under law. REP. SHELDEN stated the court says they don't need the reregulation. The Senator disagreed.

SENATE JOINT RESOLUTION 2 SENATOR VAN VALKENBURG, chief sponsor, stated this resolution is to request an interim study of the Montana Criminal Justice System. This was introduced at the request of the Attorney General. There is a need to restructure the judicial districts. This bill would also establish a statewide district attorney system for criminal prosecutions, provide for a statewide system of representation for indigents accused of crimes and require a report of the findings of the study to the legislature.

In 1975 a study was made to redistrict. The effect was unsuccessful. Based on that experience we should try to get the job done. There is an imbalance of workload. The district judges at that time had some political clout. The political atmosphere has changed. People are more confident to make the changes that need to be made. There are more statistics available that have been gathered over the last 6-7 years. The cost of the interim study committee needs to be weighed against the cost of maintaining the present system. The Attorney General's office feels the cost will be less. A district attorney would be appointed by the Attorney General's office.

The courts say we must provide counsel. Adequate representation must be provided. There has been some study done in Montana at the appellate level. Some states have vouchers, pure appeal counsel systems. Because of the geographic area of Montana this might be valuable for the state.

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By passing this resolution it does not mean it will be chosen to receive funding and undertaken by the Legislative Council. At the end of the session that will be determined.

JOHN MAYNARD, Attorney General's Office, was in support of the resolution. It will provide for an interim study of the criminal justice system and caseload. It will not be very expensive. Most of the material is already compiled and available. The '76 Montana District Court Study could be used as a tool. Chief Justice Haswell in his speech to the legislature this session was in favor of this study. There are 60,000 cases per year. Broken down per judge that could be 400 to 1,400 cases. Travel encountered varies from 300-20,000 miles per year. This creates a problem for speedy trials. The cost of redistricting the courts would be less than the cost of the current system.

Currently there are 12 county attorneys that are fulltime and 44 that are parttime. It is important to have a public defender. A good defenders' office keeps the prosecutors on their toes. MAYNARD urged that a study must be made. The problem will not go away. The cost will be insufficient as compared to the savings.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. MATSKO asked if existing juvenile justice system on page 3 of the bill should be reflected in the title. The Senator replied it would not hurt to be in the title.

REP. KEEDY asked about page 1 concerning the inconsistencies in the administration of the criminal justice and the county attorney. The Senator replied the Attorney General's office drafted the bill. Sometimes decisions are made because parttime attorneys do not want to spend the time needed. This might include plea bargaining.

REP. KEEDY stated there was a bill in the Senate that was killed concerning county prosecutors service. What was the rationale for killing that bill? SENATOR STORY stated the committee decided that bill's outcome. It would have called for one attorney and one secretary. It was felt that could not begin to do the job that was needed. In many of the counties the judges themselves are quite aware of what happens if an incompetent is appointed for a trial. There was not a compelling need for the bill.

REP. KEYSER asked if the language was drawn up by the Attorney General's office. Yes was the answer. REP. KEYSER asked if the intent is to have the county or district attorney under the Attorney

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General. MAYNARD replied the Attorney General has supervisory control presently. Under this proposal it would be included in the same way as county attorney.

REP. KEYSER wondered why the county attorneys did not testify for the bill. TOM HONZEL, County Attorneys, stated he was for the resolution, but because he was in another committee he was not able to testify in time. HONZEL stated there have been attempts to come up with a better system. County attorneys do not have recourse for this. County attorneys have both civil and criminal responsibilities. This study would be an attempt to separate those two things. There is a great disparity in the caseloads. A parttime county attorney may receive a big case every ten years. In Roosevelt County there have been two big cases in just a few months. There should be a system that is able to respond to those situations. Service is not being derived as it should.

The Senator felt this study would be well received.

SENATE BILL 246 SENATOR STORY, chief sponsor, stated this bill is to require replacement value of a motor vehicle to be the measure of damages. If a vehicle is totalled and someone is responsible for its loss they should pay enough money for the value of the car. If you buy a new car and drive it off the lot and someone hits you, the insurance company wants to pay the value of a used car. Automatically \$1,500 is taken off the price of the car.

Older cars are usually driven by the elderly. They might have a car they love that they have had for years. The car might be worth more than the book value. This bill would protect the people. They should be given enough money to compensate their loss.

WILLIAM ROMINE, representing the Wrecking Yards, was in support of the bill. EXHIBIT 3.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. HANNAH asked if this would impact the cost of insurance. The Senator replied insurance companies will probably have a slight increase. By not having the bill it is asking the victim to subsidize the other cars. REP. HANNAH felt all other people will be

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required to subsidize the victim. He questioned how the value of a ten year old car would be established. SENATOR STORY replied it would be arbitrated with the adjustor.

REP. KEEDY asked how this would drive up costs if they are already in the books. ROMINE replied when a person has a comprehensive and liability policy and is hit he is protected because of the policy. Under the present law there is coverage up to \$10,000 worth of property damage. The Senator stated if a car is totalled someone will be out the difference; the question is should it be the victim or the one who did the damage who pays.

REP. KEEDY asked if an older car that is off the books is hit under the present law what happens. ROMINE replied he would anticipate that the owner would go to a used car dealer. The car dealer would have the market value of the older car. Market value would be established rather than book value. If the car is unique and a classic a court of law would probably establish the value.

SENATE BILL 277 SENATOR VAN VALKENBURG, sponsor, stated this bill is designed to limit placement of individuals under supervision of the Department of Institutions. Probation and parole would only be by district judges. Presently the law permits justices of the peace to place people under the supervision of probation and parole. This is financially bad for the Department of Institutions. The situation is expanding.

CURT CHISHOLM, Department of Institutions, was in support of the bill. The magistrates and justices of the peace convict thousands of these people. If the department has to supervise all of them it will codify the problem.

There were no further proponents.

There were no opponents.

In closing, SENATOR VAN VALKENBURG stated the bill was not well drafted. It would have prevented judges from suspending sentences; that was corrected in the Senate.

REP. KEEDY stated the title suggests it would prevent justices of the peace from placing offenders on probation. The Senator responded that the title is misleading. REP. HUENNEKENS stated the bill is almost opposite from the title. He felt this was violating the rules of the legislature. The Senator responded the bill was improperly

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drafted. It is designed to solve the problem. The Senator did not intend to challenge the bill.

REP. EUDAILY asked about line 21 concerning the Board of Pardons. CHISHOLM responded it was changed from the Board of Pardons to the Department of Institutions because the department supervises this for the state. It is a housekeeping change.

SENATE BILL 57 SENATOR B. BROWN, sponsor, stated this bill is to amend laws on discrimination in housing.

RAYMOND BROWN, Montana Human Rights Commission, was in favor of the bill. BROWN gave out a fact sheet, EXHIBIT 4.

DAVID HUNTER from the governor's office, was also in favor of the bill. This will assist cities and towns as it will allow them to turn their investigation to the Equal Housing. Time will be saved.

CLIFF CHRISTIAN, Montana Association of Realtors, stated his organization was opposed to the bill originally because of page 2. As the language has been stricken, however, he is in support. If a complaint is currently filed the federal government in Denver handles the problem. If this bill is passed the Human Rights Commission in Montana will handle the cases. Montana people would rather deal with Montana people as opposed to those in Denver.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. HANNAH asked about the money involved. SENATOR BROWN responded the federal government does not like to do the same work twice. They are willing to pay the commission to do the work for them. The Human Rights Commission might be eligible for \$20,000 if this bill is passed.

REP. HANNAH asked if the money would be on a case-by-case basis or on a grant basis. The Senator replied he was not sure they would receive the money. The grant would be \$20,000 assuming the federal funds are available. REP. BENNETT asked assuming the money is available will it be used only for discriminating housing purposes? It was replied the money would be added to the budget of the Commission.

It was asked by REP. BENNETT how many cases that come before the board are discriminatory cases. BROWN replied 50 cases, which

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represents approximately 3%.

REP. CURTISS asked if HUD is competing for the same money. The Senator responded HUD has this if federal government appropriates the money for their budget. If the bill is passed the money would be handed over to the state for the state to use on investigations.

REP. CURTISS asked if HUD has a representative in Montana. No was the reply.

REP. HANNAH asked if the bill was passed would the Human Rights Commission next biennial want more money from the legislature if funds were not available from the federal government to continue the program. The Senator replied maybe the state will receive the money and maybe they will not. They will not count on the money coming in.

REP. CURTISS asked if the Human Rights Commission was very far behind in its cases. BROWN replied the commission has a backlog of about 300 cases. The Senator stated no additional employees would be hired. The \$20,000 would be reducing the Human Rights Commission commitment to state general fund revenue. CHRISTIAN stated if the bill does not pass Montana will be dealing with the federal government. If it passes, Montana will be dealing with Montana people.

REP. KEYSER asked if we do not get the \$20,000 where is it to say there will not be a duplication of what is happening. BROWN replied we are trying to avoid going in twice. An agreement can be entered into with HUD that will be at the local level. There is presently not an agreement with HUD because of the present law. Even if the bill is passed it is possible an agreement will not be reached with HUD. There is no guarantee the people in Washington will agree. REP. EUDAILY asked if HUD agrees with the bill in its amended form. It was replied the amended form will not change their acceptance.

REP. KEEDY asked if an adverse effect would result between HUD and the commission because of the backlog. BROWN replied the investigations have to be made by the commission anyway. BROWN felt the commission is much more efficient than HUD.

REP. KEEDY asked when a complaint comes in where does it go on the list. BROWN stated it goes to the top of the list. REP. KEEDY asked if it goes over the pending 300 cases. BROWN replied yes.

REP. KEEDY asked what other allegations of discrimination are handled

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by the commission. BROWN replied employment discrimination, which includes marital and handicapped cases.

REP. KEEDY asked what the commission's staff is. BROWN replied there are six employees - one administrator, one attorney, two investigators and 1.5 secretaries.

REP. KEEDY asked if a complaint was filed how long would the party have to wait. It was replied six months to one year.

EXECUTIVE SESSION

SENATE BILL 57 REP. DAILY moved do pass.

REP. DAILY stated the federal government would handle this if the bill is not passed.

This would be an opportunity to bring it back to the local level, however there is no guarantee HUD will agree with it, stated REP. HANNAH. The commission will probably want more money the next biennium. REP. HANNAH did not like the bill.

REP. TEAGUE stated the time element of HUD would be longer than the commission. REP. HANNAH stated the problem is the state would count on federal money and the funding would be dropped. Any time federal money is accepted restrictions are placed on it stated REP. CURTISS.

The motion of do pass resulted in a roll call vote. Those voting yes were: EUDAILY, ANDERSON, DAILY, ABRAMS, HUENNEKENS, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. Those voting no were: KEYSER, BENNETT, CURTISS, HANNAH, IVERSON, MATSKO and MCLANE. The motion carried 10 to 7. REP. DAILY was assigned to carry the bill on the House Floor.

SENATE BILL 277 REP. HUENNEKENS moved do not pass. The title is not consistent with the bill.

REP. DAILY asked if justices could still suspend sentences. The answer was yes. REP. DAILY asked if a justice of the peace gave a suspended sentence who would handle the probation. REP. YARDLEY replied there would be no actual control. If the person is reported in violation his suspended sentence is revoked.

REP. HUENNEKENS felt the sponsor should have written an additional sentence in the codes. This bill is a backdoor approach.

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REP. DAILY felt someone should oversee the person. REP. YARDLEY stated if the person was convicted of drunken driving he would report to a special school. If he did not show up the school would notify the courts.

The motion of do not pass carried with BROWN, YARDLEY, TEAGUE, ABRAMS and MATSKO voting no.

SENATE JOINT RESOLUTION 2 REP. MATSKO moved do pass.

REP. MATSKO moved following "PROSECUTIONS," to strike "AND" on line 10 and on line 12 following "CRIMES" insert ", AND EVALUATING THE JUVENILE JUSTICE SYSTEM". The amendment carried unanimously.

REP. MATSKO felt the resolution was necessary. REP. EUDAILY thought this was too much for an interim committee to handle.

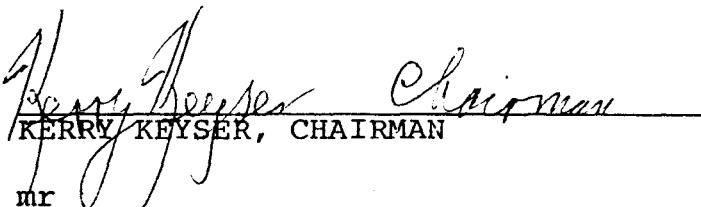
REP. KEEDY made a motion to strike subsection 10, juvenile justice system, from the bill in its entirety. REP. HUENNEKENS was opposed to the motion stating the interim committee would set its own priorities. REP. KEEDY replied he felt the interim committee would abide by the legislature's intent to review all of the resolution. The committee would be reluctant to throw portions of it out.

REP. EUDAILY supported the motion. The first three items of the bill fit together better.

The motion to delete section 10 from the bill carried unanimously.

REP. MATSKO moved do pass as amended. The motion carried with DAILY, BROWN, and BENNETT voting no. REP. MATSKO was assigned to carry the bill on the House Floor.

The meeting adjourned at 10:15 a.m.



KERRY KEYSER, CHAIRMAN
mr

Exhibit 1

Just a few years ago the power cooperative that was planning to develop the Greycliffs dam in Wyoming was forced to pay out what amounted to a \$7 million bribe to establish a habitat area in Nebraska for whooping cranes. The area in question had not been true habitat, it was merely a stopping place for the cranes -- not a nesting or breeding area.

Wyoming officials estimate that ~~20 to 30~~ per cent of the cost of a power plant in that state can be ~~directly attributed to environmental safeguards~~. When ~~they~~ ~~experts~~ construction of these plants is ~~delayed~~ despite ~~their~~ ~~compliance~~ with the costly environmental requirements, it can double or ~~triple~~ the original pricetag on the plant, as we've seen here in Montana with Colstrip ~~and~~. When environmental extremists are allowed to cause those kinds of ~~delays~~, they will then tell you that large-scale energy projects are not cost effective.

11. ACCOUNTABILITY OF INTERVENOR GROUPS

Senate 13.11.4

we

Montana Associated Utilities, Inc., urges Congress and our Federal Government to study ways to make intervenor groups legally and financially responsible for their actions. Present laws should be examined and changes should be considered to make certain that the causes of intervenor groups are legitimate and not undertaking activities solely for the purpose of delay.

Therefore, the members of Montana Associated Utilities, Inc., urge our Nation's Senators and Congressmen to have legislation enacted or amend existing legislation that will prevent special interest groups or Federal agencies from stopping the construction of electric generation power plants, once all the necessary legal hearings and reviews have been held, the permits granted and the actual construction has begun.

Will anyone miss squawfish?

Perhaps we are uninformed, for as crude and barbaric as it may sound, other than fish bait, we can find no value or use for squawfish or chubs.

Yet, a water development project in the arid plains of the Rocky Mountains, on the Little Snake River, is in jeopardy because the Colorado squawfish, the lumpback and bonytail chub are found to be included on the Endangered Species list.

While we agree there is a definite place for the Endangered Species Act, when it benefits the seemingly useless at the expense of civilized progress, we charge that priorities are a little mixed up.

Squawfish and chubs were once poisoned because they were regarded as trash fish. Even in this

food-starved world, we can think of no reasons to justify saving a mutant "trash fish", and stop a water project that will inadvertently benefit thousands.

And besides, the chub and squawfish in question don't even live in the Little Snake. They are further downstream in the Colorado and Yampa Rivers.

We find ourselves agreeing with Wyoming's U.S. Senator Malcolm Wallop when he says, "The time has come to go back to the drawing board and take another look at revising the Endangered Species Act." A little flexibility will go a long ways toward some semblance of balance.

We are not out to destroy any life forms, but like the snail darter, we can't believe a chub or squawfish

should take precedent over humans and their goals to make better use of waterways.

If the application of the Endangered Species Act is allowed to stand as in the case of the Cheyenne water development project, states along the Colorado River will forever be prohibited from administering their water laws and from developing any further uses of their water.

We sympathize with environmentalists, and agree with them in most cases, but until someone comes up with a redeemable value for the squawfish or chub, we say "forever" is a long, long time.

WJD January

Exhibit
2

NAME: William L. Roanice DATE: 3-19-81ADDRESS: Box 1191 NelsonPHONE: 442-2220REPRESENTING WHOM? Wrecking YardsAPPEARING ON WHICH PROPOSAL: S.B. 246DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: This bill will be a benefit to the owner of the older well maintained auto and the owner of the auto which is less than one year old. If either vehicle is totaled, under the present system the owner will be offered its Book Value. The older vehicle may be worth substantially more than its book value. The street version is generally replaceable with a newer one. Under this bill, the owner will receive the actual cash value of the auto.

FACT SHEET

SB 57 Introduced by Senator Bob Brown at the request of the Montana Human Rights Commission.

A bill for an act entitled: "AN ACT TO AMEND LAWS ON DISCRIMINATION IN HOUSING TO CONFORM TO FEDERAL REQUIREMENTS TO ENABLE THE STATE TO RECEIVE FEDERAL FUNDS BY THE DEFINITION OF EXPANDING UNFAIR HOUSING TO INCLUDE PRESALE TRANSACTIONS, REALTY TRANSACTIONS, AND ADVERTISING; AMENDING SECTION 49-2-305, MCA."

1. "The state may be neglecting potential sources of funding and technical assistance. Consideration should be given to establishing permanent agreements with those federal agencies which could provide Montana with financial and technical resources. (State of Montana, REPORT TO THE LEGISLATURE, Sunset Review, COMMISSION FOR HUMAN RIGHTS; Office of the Legislative Auditor, 1980, p. 44.)
2. Consolidation of federal and state authority at the state level.
3. Enforcement at the state level -- one investigation only. (No change in enforcement powers.)
4. Benefits to cities and towns. Points given in the awarding of Community Development Block Grants with local Human Rights Commission. (Grants awarded by Department of Housing and Urban Development.) Financial and technical benefit.
5. No new laws... Advertising already forbidden at federal level for discriminatory reasons. "Substantially equivalent."
6. Financial and technical benefit to state.
7. Technical assistance to cities, towns, realtors.

VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

SENATE

BILL 57

Date 3/19/81

SPONSOR B. Brown

| NAME | RESIDENCE | REPRESENTING | SUP- PORT | OP- POSE |
|------------------|-----------|-------------------------|--------------|-------------|
| Farnsworth, John | St. Louis | Int. Comm. of the Comm. | ✓ | |
| W. J. Smith | " " " | Int. Comm. of the Comm. | ✓ | |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 277

Date 3/19/81

SPONSOR Van Valkenburg

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VISITORS' REGISTER

SENATE HOUSE JUDICIARY COMMITTEE
BILL 246 Date 3/19/81
SPONSOR Story

| NAME | RESIDENCE | REPRESENTING | SUP- | OP- |
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| William L. Roaine | Hobson | wrecking yards | ✓ | |
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VISITORS' REGISTER

SENATE HOUSE JUDICIARY
BILL SJ2

SPONSOR Van Valkenburg

COMMITTEE

Date 3/19/81

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

SENATE BILL SJ4

COMMITTEE

Date 3/19/81

SPONSOR Hafferman

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.