

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
March 28, 1981

The executive session of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Matsko, who was absent. Jim Lear, Legislative Council, was present.

SENATE JOINT RESOLUTION 4 REP. CURTISS moved do pass.

REP. CURTISS felt many groups delay energy projects frivolously.

REP. SHELDEN made a substitute motion of do not pass. He felt this would make certain groups a different class of citizens. He stated the bill was out of order and unAmerican. It would make a laughing stock out of the Montana legislature. REP. CONN supported the motion. It would not be right to give congress the power to do this by just handing it over to them and telling them to do something.

The motion of do not pass resulted in a roll call vote. Those voting yes were: CONN, IVERSON, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. Those voting no were: KEYSER, SEIFERT, BENNETT, CURTISS, HANNAH, MCLANE and DAILY. The motion tied 7 to 7.

REP. BROWN moved to table the bill. A roll call vote resulted. Those voting yes were: CONN, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. Those voting no were: KEYSER, SEIFERT, BENNETT, CURTISS, EUDAILY, HANNAH, MCLANE, and DAILY. The motion to table the bill failed 8 to 6.

The discussion went back to the original motion of do pass. A roll call vote resulted. Those voting yes were: KEYSER, SEIFERT, BENNETT, CURTISS, EUDAILY, HANNAH, MCLANE, and DAILY. Those voting no were: CONN, IVERSON, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. The motion of do pass carried 8 to 7.

REP. CURTISS was assigned to carry the bill on the House Floor.

SENATE BILL 272 REP. DAILY moved do pass.

REP. HANNAH could not support the bill. If payment is not made a warrant may be filed. The system is not working.

REP. KEEDY moved to insert "the" on line 19 and 22 following "collect" and to insert "or agent" on line 25 following "sheriff" on page 4. On page 7, line 3 strike "4" and insert "1". The amendment carried.

REP. CURTISS wondered if the provision for a lien has priority over other liens at banks. This could be a period of time, like 30 days.

Judiciary Committee

March 28, 1981

Page 2

Under present law a person can pay interest on that and not pay all of it. Here if any portion is not due it is wrong. REP. CURTISS felt it was remiss to give them this opportunity.

REP. KEEDY stated there were 7,000 delinquent taxes statewide. An order of distraint is made when tax is due and not paid. This is not quite as automatic as it is made out to be.

REP. EUDAILY said the amount of delinquent taxes on the books presently is a problem. All areas of government depend on the taxes that come in and they cannot operate without them. There was a special effort this fall to collect taxes in Missoula.

REP. HANNAH made a substitute motion of do not pass. He felt this would force the taxpayer to come to Helena and argue their side of the matter as to why a tax is not appropriate.

REP. KEYSER stated the taxpayer has a petition break under this language that would enable them to appeal the process.

REP. YARDLEY was against the motion. The department would not handle local or inheritance taxes.

Some people are always delinquent on taxes, stated REP. CONN. They should have a right to request a hearing.

Also speaking against the motion was REP. SHELDEN. This was amended because the department would thus be able to apprehend people who could reasonably be expected to leave the state without paying their taxes. This builds in a safeguard.

REP. CURTISS was opposed to the bill. She stated 142 people were called in for audit all because the woman who prepared their taxes was not certified by the department. The woman was not allowed to be at the hearings to explain why the taxes were figured as they were. REP. CURTISS stated this was the type of situation that goes on in the administration of the department. She urged the committee to vote do not pass.

The motion of do not pass failed with TEAGUE, CURTISS, MCLANE and HANNAH voting for the motion. REP. ANDERSON moved to reverse the vote to do pass as amended. The motion carried with TEAGUE, CURTISS, MCLANE and HANNAH voting against the motion. REP. YARDLEY was assigned to carry the bill on the House Floor.

SENATE JOINT RESOLUTION 4 REP. ANDERSON moved to reconsider the committee's action on Senate Joint Resolution 4. He stated that some of the representatives were at another meeting and they would like to have the opportunity to vote on the issue. The motion

resulted in a roll call vote. Those voting yes to reconsider the action were: CONN, EUDAILY, IVERSON, ANDERSON, DAILY, ABRAMS, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. Those voting no were: KEYSER, BENNETT, CURTISS, HANNAH, and MCLANE. The motion carried 11 to 5.

REP. ANDERSON moved do pass.

REP. BROWN made a substitute motion of do not pass. The motion of do not pass resulted in a roll call vote. Those voting yes were: IVERSON, ANDERSON, SHELDEN, KEEDY, TEAGUE, YARDLEY, BROWN and CONN. Those voting no were: KEYSER, SEIFERT, BENNETT, CURTISS, EUDAILY, HANNAH, MCLANE, DAILY and ABRAMS. The motion of do not pass failed 9 to 8.

The vote was reversed to do pass. Those voting yes were: KEYSER, SEIFERT, BENNETT, CURTISS, EUDAILY, HANNAH, MCLANE, DAILY, and ABRAMS. Those voting no were: IVERSON, ANDERSON, SHELDEN, KEEDY, TEAGUE, YARDLEY, BROWN and CONN.

SENATE BILL 287 REP. HANNAH moved do pass.

REP. KEEDY moved on page 3, line 19 to strike "as set forth in [section 1]." REP. KEEDY stated that was a carryover from the original bill, which section 1 was deleted. The motion carried unanimously.

JIM LEAR stated on page 4, section 2 the language "owner or his successor interest" is not clear. It could be possible that the original owner and the successor are both available. LEAR suggested to strike on line 14 following "owner" through "interest" and to insert "the equitable owner of the property adjacent to the real property interest obtained by eminent domain". REP. KEEDY felt that wording went beyond clarifying it. LEAR stated there is not an option where "or" is included. REP. KEEDY replied if it is limited to the original owner it will be only land that is condemned by eminent domain. LEAR stated the owner of the real property interest that was condemned, the successor and interest should be included. REP. KEEDY replied the language should be the present owner of the real property when it was condemned acquired through eminent domain. REP. BENNETT responded it was not true in all cases. It should be the successor in interest. REP. KEEDY stated the present owner of real property interest which had been condemned through the exercise of eminent domain. REP. IVERSON stated the present owner is the one who condemned the land.

REP. KEEDY moved on page 4, line 16 following "or" to strike "his" and to insert "otherwise or, if there is a" and following "interest" to insert "the successor in interest".

REP. EUDAILY felt there could be several owners.

The motion carried.

REP. DAILY moved do pass as amended.

REP. EUDAILY questioned why in the title disposition is stricken. LEAR responded that the original bill did not refer to just sale of property. It also referred to exchange and reversion. It is proper to strike disposition since right of first refusal is all that remains in the bill.

REP. YARDLEY stated this would not apply in most cases. Nine out of ten landowners will agree without going to court. REP. CURTISS stated this would be a help for people whose land is condemned. In the Libby dam situation the people have no option to obtain their land back.

REP. IVERSON stated this will not help any of the people whose land was used for the Milwaukee. None of that land was condemned.

REP. DAILY moved to provide an immediate effective date and to amend the title accordingly. The amendment carried.

REP. KEEDY felt the language should be changed from condemnor and include somebody who has purchased the land. REP. KEYSER replied that would change the title and the intent of the bill.

REP. IVERSON agreed with REP. KEEDY. The committee should consider whether they want to get involved with the sale of the property. REP. KEEDY stated that does not change that. It would expand from condemned landowner to present landowner acquired through purchase. He felt that was fair. REP. IVERSON replied if someone bought the land he cannot see how we could involve ourselves on how to dispose of it. REP. KEEDY stated his amendment would expand the application of the bill. The condemnor may sell it but will not have to. REP. EUDAILY stated if land is purchased the owner has a right to do what he wishes with it.

REP. ABRAMS stated many times land is sold through the threat of eminent domain. REP. YARDLEY replied land taken under eminent domain is for public use.

REP. CURTISS asked if this would apply to a railroad that is going to merge. It was replied no, this is about abandonment.

REP. HANNAH stated property sold for public use that is now being abandoned, if it is not for public use he could not support it.

The committee decided to have JIM LEAR work out appropriate amendments concerning land for public use if abandoned. All were in favor of the motion but EUDAILY.

Judiciary Committee  
March 28, 1981  
Page 5

The motion of do pass as amended carried with REP. EUDAILY voting against the motion. REP. DAILY was assigned to carry the bill on the House Floor.\*

SENATE BILL 381 REP. MCLANE moved do pass.

REP. KEEDY moved on page 3, line 13 following "may" to strike "be given" and insert "not be withheld as". On line 12 after "publicity" strike "in" and insert "when". Following "petition" insert "is filed". REP. KEEDY stated the reason for the amendments is that under the present law it is permissible to open up proceedings or to close them at the judge's discretion. The proceedings should not be required to be open. The amendments carried with BROWN, CONN, YARDLEY, EUDAILY and SHELDEN voting no.

REP. KEEDY moved on page 3, line 19 following "adult" to strike the rest of the line through "imprisonment" on line 20. If an act is committed by an adult it would have been a felony, criminal mischief is covered. REP. IVERSON stated that is the same argument used on one of the other bills on this subject. REP. KEEDY stated criminal mischief six months or more must be a felony. LEAR stated it must exceed one year if it is going to be a felony. A judge might sentence within six months and one year. REP. KEEDY moved to amend his original amendment to include the striking of criminal mischief in the title of the bill. The motion carried unanimously.

REP. DAILY stated he would make a motion on the House Floor to strike line 15 "formally charged with or" because he did not feel the names should be provided to the press until the youth is convicted. REP. BROWN agreed.

JIM LEAR stated page 4, line 1 "may" should be changed to "must". The same change should be reflected on page 8, line 3 and page 2, line 20. REP. EUDAILY asked who would be responsible to give the information to the press when it says it must be made open to the public.

REP. CONN felt the wording was necessary. REP. IVERSON stated no one has the absolute responsibility. The motion was made by REP. KEEDY to change "may" to "must" as indicated above. The motion carried.

REP. MCLANE moved do pass as amended. The motion carried with CONN, BROWN, and SHELDEN voting no. REP. MCLANE was assigned to carry the bill.

SENATE BILL 479 This bill was passed at the 3/27/81 meeting in executive session. JIM LEAR gave the committee EXHIBIT 1 outlining proposed amendments to clarify the bill. The amendments include language that was previously passed by the committee. Using "now pending" is meaningless when talking about a point of time. The effective date of the act clears the language.

REP. HUENNEKENS stated the first part deals with giving of notice. It is different than the validity of rights. LEAR replied that could be obsolete. It does not really hurt anything.

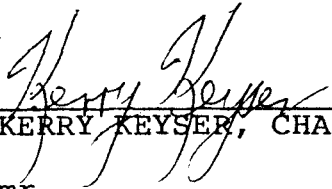
REP. KEEDY asked what if property is bought after January 1, 1981. LEAR responded one would have to assume that this act would have no validating effect after January 1, 1981.

REP. HUENNEKENS asked about the validation of the contents of an instrument. It was replied it is the execution of the instrument and other defects of a technical nature.

REP. SHELDEN moved the amendments be adopted. The motion carried with KEYSER and CURTISS voting against the motion.

REP. SHELDEN moved do pass as amended. The motion carried.

The meeting adjourned at 9:25 a.m.

 Chairman  
~~KERRY KEYSER, CHAIRMAN~~

AMENDMENTS TO SENATE BILL 479

1. Title, line 7.

Following: "EXECUTION"

Insert: "; AMENDING SECTION 70-21-309, MCA,"

2. Page 1, line 10 through line 7, page 2.

Strike: all of the bill following the enacting clause

Insert: "Section 1. Section 70-21-309, MCA, is amended to read:

"70-21-309. Validation of conveyances recorded after defective execution - notice imparted. (1) Any instrument affecting real property, provided no action is ~~now pending~~ as of [the effective date of this act] to set such instrument aside, which was, previous to January 1, ~~1973~~ 1981, ~~copied into the proper book kept recorded~~ in the office of the county clerk and recorder shall be deemed to impart after that date notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any technical defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof or the absence of any such certificate, ~~and all such instruments acknowledged before July 1, 1973, by the vice-president and assistant secretary of any corporation or by either of them or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation and recorded shall be valid and shall have the same force and effect as though acknowledged by the president or secretary;~~ but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to ~~that date~~ January 1, 1981.

(2) Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded."