

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE *House*
March 24, 1981

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. Jim Lear, Legislative Council, was present.

SENATE BILL 33 DIANA DOWLING, Legislative Council, presenting the bill for SENATOR GOODOVER, stated this bill is to amend numerous sections consistent with the mandate to the Code Commissioner contained in 1-11-204. In 1975 the council started to recodify the laws. Work was performed for four years and the bill was passed in 1979. During the process the council read three million words in which there were many inconsistencies and errors. No one was comparing the various sections. DOWLING believed this bill will eliminate archaic, duplicative and inconsistent laws and clarify the existing law. The information is contained in one bill this session as compared to many bills as in previous sessions. The entire legal staff of the legislative council has worked on the bill. The council has no personal interest in the bill.

BOB PYFER, representing Code Commissioner, stated each attorney from the Legislative Council would present his sections of the bill.

CORT HARRINGTON, representing the Code Commissioner, stated Title 1, section 1 deals with the Code Commissioner and recodification. The amendment on page 2, lines 21-22 clarifies the language. During the '79 session there was a bill that reorganized the property classification system. A property break was given to low income people. Section 16-6-116 was amended and then repealed. The code commissioner should have codified this in the new section. This amendment puts in the language of the bill in 15-6-134. Only the legislature can reenact it.

HARRINGTON stated that different sections amended laws repealed. Section 72 deals with retirement system. An error is being corrected in this section which should be 19-11-512(6) instead of 19-11-512(5). Line 5, page 67 should be subsection 6 instead of subsection 5. Section 73 deals with school personnel. The amendments made will clarify the law.

Section 74, the use of sovereignty, is being removed. Section 75 removes redundant language. In Section 78 of title 13, chapter 18 is being repealed. Section 79 changes the wording from police officer to peace officer since that is defined and police officer is not. Section 133 has language that was inconsistent. The new wording makes it constitutional. Section 182 removes a reference to dower, which is obsolete. Section 183 also removes reference to dower. Section 184 changes judgment roll to judicial record.

Section 186 lists a definition of alternative form for inheritance taxes. Section 338 refers to failure to use land for proper use. This amendment corrects a wrong cite. The repealers in subsection 3 include section 196, which repeals reference to the Twin Bridges Children's Home. Subsection 7, 72-11-334, is repealed by the supreme court. It conflicts with the Uniform Probate Code.

LEE HEIMAN, representing Code Commissioner, stated Title 2, sections 3-10 refer to executive reorganization. Title 2, chapter 15 passed the Reorganization Act in 1973, which was amended. Because of the controversy between himself and state personnel, HEIMAN felt that section 3 should be stricken from the bill. It should be up to the courts to decide about section 3.

Section 10 would make the rest of the sections effective immediately. Section 11, line 16 was repealed. The governor has no proclamation duties. Page 10, line 22 changes the wording from "a dental profession" to "as a dentist or dental hygienist". It was felt a dental hygienist should be licensed. Section 13 deals with changing the wording from "the next session of the legislature" to "each biennium". Section 14, 2c is changed to sub 3. A subsection was added that should have been a section. Section 15 corrects the spelling of Board of Personnel.

Title 7, section 20 lists the wrong reference to the oath of office. Sections 21, 22, and 23 all have the wrong reference to the law. Page 21, line 18 refers to parts 1-6, which should be 1-7. Page 22, line 13 of the bill the language is repealed on the next page.

Section 24 "or resolution" is removed. Sections 25 and 26 remove reference to coroner and salary. Section 27 clarifies that only certain election result documents can be obtained free from the county clerk and not all records.

Section 28 changes the month from May to January for the commencement of term of office at a municipal election. Section 29 indicates the wrong program where money is collected. Sections 30, 31, and 32 refer to the bill passed last session without a codification instruction. This new language provides that. Section 34 concerns warrants. County warrants are eliminated from the section since it is about high school warrants and the interest rate that is picked up by the trustees. Subsection 3 of section 34 concerns the county commissioners. Section 35 at one time involved S.I.D.s. It was enacted and put into the section when they were establishing offstreet parking. When reading the RCM it referred to offstreet parking. Lawyers knew it applied to offstreet parking but various boards did not.

Section 36 changes "act" to "section" as the supreme court has said that "act" means "section". Section 37 deals with the state-

wide system of police retirement. If there is no retirement program the money shall go towards police training.

Section 38 corrects a typographical error from 7-33-2312 to 7-33-2311. Section 39 deals with the new election law. Section 30, page 37, line 14 repeals the section that is bracketed. Sections 41 and 42 both have material that has been repealed. There are Review Board election procedures that are to be used.

Section 43 repeals sections referring to election administration. Sections 44 and 45 deals with nominations. Section 46 deals with water and sewer revenue bonds. Section 48 refers to general obligation bond elections.

REP. TEAGUE asked if it was too premature to strike section 31. HEIMAN felt it should be taken care of with moderation.

REP. EUDAILY asked about the county and high school warrants. HEIMAN replied section 1 and 2 refer to high school warrants and subsection 3 refers to county warrants.

Section 143 repeals part 10 and 11. The same change is reflected on page 153, line 5. Lines 23-25 and line 1 on pages 153 and 154 are rewritten from the model act. Section 145 also comes from the model act. The state of Montana does not have a recorder of deeds. Page 160 lines 14-15 changes state examiner to the department of community affairs.

Section 143 removes the brackets around the chapters. Page 163 line 11 changes probate court to district court. Page 164, line 13 strikes executor or administrator and uses "personal representative". Section 150 pages 1 through 4 is changed to parts 1 through 5. Page 167 there is a typographical error. It should be 33-20-1106 instead of 33-20-1105.

Title 53, page 198 the reference to Montana Children's Center is deleted. Page 199, line 10 "program" is changed to "facilities". Page 200 deletes the reference to the children's center. The Board of Warm Air and Heating and Air Conditioning is repealed.

Subsection 7 repeals all the RCM section that referred to another part that was repealed. Section 9 repeals another codification bill in state personnel plan.

DAVID NISS, representing Code Commissioner, stated page 77, Title 25 deals with civil courts and rules of civil procedure. All of what was in the statutes changed into these rules. The code commissioner has gone back to correct the errors. Article 7, section 2 provides that the legislature can change rules of procedure following supreme court rulings within two sessions. A lot of what is done is to coordinate statutes with rules on civil

procedure. REP. MATSKO asked if the supreme court rulings are considered more sacred than the constitution. NISS replied, no the rulings are more sacred than the statutes. In several places you will see references except as provided in such-and-such section. Most rulings are now invalid. It was necessary to go back and say statute.

Section 81 deals with marriage license fees charged by the clerk of district court. There was a mistake in current law in that a portion of the fee is to be paid to the battered spouse fund. That program and funding is created in Title 40 of the code. There is no mention in Title 20, Chapter 25 as to where those fees go. Lines 9-20 on page 79 make changes to follow the law in Title 40.

Section 83 changes the rules of civil procedure, which is subject to 6(b). This deals with section 25-1-301, which is extension of time. Rule 6 provides for some of the same thing. Line 10, page 81 deals with serving of papers by the sheriff. Subsection 3 has been combined with subsection 2.

Section 87, lines 3-10 have been stricken from the bill. The rules of procedure already provide for the language that is being removed, that being instances in which a party to a lawsuit may be served with papers by publishing them in the newspaper. Material in Section 88 is stricken because it is covered in the rules of civil procedure.

Section 93 adds language "except as provided in Article II, section 7 of the Montana constitution". The judge is responsible for the jury and the facts except made by the constitution with liable and slander. There the jury has to decide.

Section 96 adds language that parties may agree to peremptory challenges in trial. The reason it is added is because other sections of the state codes provide that parties to lawsuits may agree to the number of the jury, between 6 and 12 members. The law does not state that if you do not agree, how many challenges you get. REP. HANNAH asked what challenges there are in felony and criminal cases. It was replied that would be in title 46.

The Senate Judiciary Committee reinserted language on page 90, being that "The jury must be instructed as provided in Rule 51, M.R.Civ.P." Section 101 of the bill deals with the procedure for challenging a judge in your particular case. Previously it was necessary to file an affidavit stating why you thought the judge was prejudiced. This would eliminate that procedure and when a motion is made to substitute the judge it will be automatically granted.

Section 115 was eliminated by the Senate Judiciary Committee. The original law and changes were confusing concerning civil judges and redemption. Section 112 eliminates sections that are already listed in the bill. Section 121 is a new section which is a co-ordination clause that if Senate Bill 468 is passed then Section 120 regarding counterclaims will be increased from \$1,500 to \$3,500.

Section 123 refers to the appointment of a guardian. In the case where no application is made the judge shall appoint a guardian on his own motion. This clarifies the law.

Section 146 is stricken from the bill. Subsection 1 of section 130 is eliminated because subsection 2, concerning making a deposit to the court, is used more frequently by the supreme court. Both subsections were taken from the RCM.

Sections that are to be repealed are listed on the last page of the bill. Section 25-7-210 is repealed because it is redundant and it conflicts with Rule 47C.

REP. BENNETT asked if all the stricken language on page 97 will stay in the law. Yes was the reply. REP. BENNETT asked why the reference to oxen, horses, mules, etc. had to be left in the law. It was replied the code commissioners requested the changes. The Senate Judiciary Committee determined that was a substantial change to take out some discriminating language. This would be revamped the next session.

REP. KEEDY asked if there would be any problem with making reference to all the rules in the codes on civil procedure. NISS felt there would be some danger in that. REP. EUDAILY asked about section 149 on page 122 as to why it was eliminated. NISS replied the Senate Judiciary Committee made the change. He would prefer the original language.

GREG PETESCH, representing Code Commissioner, stated title 30, section 134 following "department" the words "of business regulation" are added. Since this deals with metric sizes and no reference to which department is made, the Department of Business Regulations is appropriate.

Section 135 has two changes adding "name" after "partnership" and "or reserved" after "registered". Section 30-13-211 refers back to this section.

Sections 136, 137 and 138 the same changes are made. Corporation is changed to "business". Section 140 eliminates the temporary

provision for boards adopting rules regarding discovery procedures. The temporary provision no longer applies. Section 170 removes archaic language. Annulment of marriage is referred to as declaration of invalidity. Divorce is referred to as dissolution.

Section 190 "absent" is changed to "unlocatable" to be consistent. Section 192 refers to "minerals". The word is defined in 82-4-203(12), of which the (12) is stricken. Section 193 "in" is changed to "or" for clarity. Section 194 refers to the development permits which was repealed last session.

RUSS JOSEPHSON, representing Code Commissioner, stated the court of equity is deleted in Title 35. Section 161 changes the reference from "police officer" to "peace officer".

Section 174 eliminates the Board of Warm Air, Heating, Ventilation and Air Conditioning as it is obsolete. Title 69, section 181 an error in the reference is corrected. Title 80, section 189 deletes "[chapter]" and inserts "part". Since every part has its own penalty the reference is not correct.

JIM LEAR, representing Code Commissioner, stated Title 3, section 16 purports to exhaust the instances in which a court seal is required for various documents. There are approximately 15 other instances where this is referred to. This would remove the statutory conflict. Personal representative replaces the reference to "executor" and "administrator". Section 17 "of natural resources and conservation" is added after department to distinguish which department is meant. Section 172 the board of "pharmacy" is changed to the board of "pharmacists". Section 173 "government" is stricken and "governor" is inserted. Title 61, section 179 the "commissioner of insurance" is changed to the "division of motor vehicles".

KATHRYN ORR, representing Code Commissioner, stated Title 5 corrections are minor. "The president of the senate or in case of his absence or inability then" has been eliminated in Section 18.

Title 13 concerns elections. In the '79 session some of the sections that were to be deleted were not. The general intent is to simplify these. The reference for Section 54 is obsolete and incorrect. Title 16, section 74 eliminates reference to 33-23-102. Title 39 changes "board" to "board of personnel appeals" for clarity purposes. Title 85 corrects an internal reference. A proclamation of a purpose is no longer required and is repealed in Title 13. REP. EUDAILY asked why material on pages 47 and 48 were deleted. ORR stated that was done in the executive session of the Senate Judiciary Committee. She felt maybe it was because of obsolete language. She would check into it for the committee.

That was the conclusion of the presentation of Senate Bill 33.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 10:30 a.m.

SENATE BILL 286 REP. HANNAH moved do pass.

REP. HANNAH stated the legislature has a responsibility to clean up what is a headache of the Department of Administration. The testimony showed year after year they have tried to fix this. REP. MATSKO stated the bill could really help people that are not eligible. There is no way of handling them when they get outside. REP. MATSKO endorsed the bill.

REP. IVERSON stated the most ideal thing would be to repeal it all. He wondered if that could be accomplished in this session. If an attempt was made to repeal it and it failed something should be done so the department will not have to suffer. It is a matter of strategy. REP. KEYSER stated the present program is not working. They have tried to change it every year.

REP. BENNETT moved to amend page 3, line 22 adding "or work program in conjunction with any of the above programs" and to strike "program or a". The amendment carried unanimously.

REP. MATSKO asked if section 46-23-421 were repealed would that take away the department's authority. DAN RUSSELL, Department of Administration, stated the supervising agency was in reference to another group of people. There is no problem with the contents in there.

REP. KEEDY moved to add 46-23-421 to the bill and amend it by inserting "supervising agency" in place of department. The reference to furlough would be stricken. The motion carried unanimously.

REP. KEEDY also moved on page 6, line 24 to strike "exists" following "conditions" and to insert "occurred". The amendment carried.

REP. KEEDY felt the language on page 4, line 18 means that any prisoner who is designated as a nondangerous offender would be eligible for parole within a period of 2 1/2 years. REP. HUENNEKENS asked how long the prisoner would have to be in prison before he would accumulate time for parole. REP. KEEDY replied a prisoner who was sentenced for six years could be eligible after 1/4 of the time is spent, or 18 months. A prisoner should be required to spend some time in incarceration.

REP. HANNAH asked if the language on line 14, page 4 makes it easier to qualify. Yes was the reply. REP. DAILY stated this section has been stricken yet the House Judiciary Committee last session added that language. REP. HANNAH asked why change it. RUSSELL replied the total reason is to restrict it. Most programs do not last more than a year.

REP. KEEDY moved to amend page 4, line 15 following "every" to reinsert the stricken language on lines 15 and 16 through "and" on line 18, and to strike 18 and insert 15. The amendment carried.

REP. KEEDY stated page 2, line 3 when an offender is convicted to ten years it does not appear what it should be. RUSSELL stated by statute it does not say Montana State Prison. They have the authority to move the prisoner around under other codes. REP. KEEDY asked if there were any pending under control of a private corporation. RUSSELL stated we do not want to be in the business to place people in the Alpha House for a year.

REP. KEEDY asked the reason for striking "or direction of" and inserting the new language. RUSSELL stated if the department was given authority to start another program that would give them the authority. REP. KEEDY felt it was an ill-advised amendment. It would require a judge to sentence offenders to Montana State Prison. RUSSELL responded the department would designate where the prisoner would go. REP. TEAGUE stated the prisoner would still be confined and the department should be able to decide where he will be held. RUSSELL stated the department has placed prisoners in facilities throughout the United States; they are not all in Montana State Prison.

REP. EUDAILY asked if a statement of intent was necessary. JIM LEAR stated the question was raised in the Senate Judiciary Committee. The bill does not create new rule-making authority. If the committee decides a statement of intent is necessary the bill will have to be sent back to the Senate Judiciary Committee to be adopted. REP. EUDAILY felt with the amendments the bill would have to go back to the committee anyway. JIM LEAR responded the rules of the legislature indicate the first committee that receives the bill is to adopt the statement of intent. REP. EUDAILY asked about subsection 3. JIM LEAR replied it is broad rulemaking under the existing language.

REP. KEEDY moved to strike "may" and insert "shall" on page 6, line 14. REP. MATSKO disagreed with the amendment stating a violation could be a technical violation of some minor condition that could be magnified. REP. CONN agreed that a violation such as being tardy would reflect badly because of the technicality.

REP. KEEDY stated the prisoner would be granted a hearing. The new language on page 7 makes it clear that the person is to be returned to the state prison if he is found to be in violation. RUSSELL stated the intent was to take into consideration the language that was struck for minor situations. The department has no authority to issue a warrant. There are situations that say you will attend programs weekly, if that is one of the person's problems. The department could not afford to have hearings each time there was a minor technical infraction. Many of these problems can be dismissed in the office by talking to the prisoner. The amendment failed with only REP. DAILY voting for it.

REP. KEEDY moved to amend line 6, page 14 inserting "upon a second or subsequent violation the department shall issue a warrant for the prisoner's arrest". RUSSELL stated the department has not warrant authority presently.

REP. CONN stated since the committee does not know the people and the various circumstances it should be left up to the board. REP. MATSKO supported the amendment. The first time it happens counseling should occur, the second time a warrant and hearing would be issued. It is a proper way to handle it.

The amendment resulted in a roll call vote. Those voting yes were: KEYSER, SEIFERT, CURTISS, MATSKO, MCLANE, ABRAMS, and KEEDY. Those voting no were: CONN, EUDAILY, SHELDEN, TEAGUE and YARDLEY. The amendment carried 7 to 5.

REP. CONN moved do pass as amended. The motion carried with REP. SEIFERT voting no. REP. KEEDY was assigned to carry the bill.

SENATE BILL 240 REP. SEIFERT moved do pass.

REP. KEEDY moved amendment 1 on EXHIBIT 1 be adopted. This deals with the medical record information as supplied to insurance companies. That information is at the request of the individual to whom it pertains. This amendment would make the purpose for insurance agent designated is directed to receive the information. REP. CONN asked if this would compel the doctor to give information to the patient. REP. KEEDY stated at the individual's request it would. The amendment carried with MCLANE and CONN opposing.

The second amendment was moved by REP. KEEDY. This deals with adverse underwriting decisions. This language is necessary so it will be in accordance with subsection 3. The individual can

request the information from his examining doctor. REP. CONN disagreed stating it could be given to the individual or to whomever they designate. JIM LEAR stated lines 15 and 61 indicate "which ever the insurance agency prefers", not the individual. REP. KEEDY stated this is information that is already available to third parties. The amendment carried with MCLANE, CONN and EUDAILY voting no.

The third amendment was moved by REP. KEEDY. REP. CONN spoke against the amendment because sometimes there are situations where the doctor should not tell the patient information.

The amendment carried with EUDAILY, CONN and MCLANE voting no.

REP. TEAGUE moved on page 25, line 1 following "law" to reinsert "consumer reporting agency". The motion carried.

The motion of do pass as amended was made by REP. SEIFERT. The motion carried with CONN, MCLANE, and EUDAILY voting no. REP. HANNAH was assigned to carry the bill on the House Floor.

The meeting adjourned at 12:00 noon.


KERRY KEYSER, CHAIRMAN

mr

AMENDMENTS TO SENATE BILL NO. 240

1. Page 20, line 19.

Following: "."

Insert: "The medical professional may review and interpret the information and at the request of the affected individual shall disclose all of the information received."

2. Page 26, lines 11 through 16.

Following: "professional" on line 11

Strike: remainder of line 11 through "prefers" on line 16

Insert: ", together with the identity of the medical professional or medical care institution that provided the information, shall be disclosed in accordance with subsection (3) of [section 10]"

3. Page 26, lines 19 through 23.

Following: "(2)(b)"

Strike: remainder of line 19 through "prefers" on line 23

