

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 8, 1983

The twenty-fourth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 8, 1983 at 10:07 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 246: Representative Mueller, sponsor, advised that this bill was being introduced at the request of the Task Force on Corrections. It is their feeling that there is a need to provide staggered four year terms for members of the Board of Pardons. The purpose of this request is for continuity and to treat everybody fairly.

PROPOSERS: Hank Burgess, Chairman of the Board of Pardons, spoke as a proponent to HB246 and stated that the Board could best be filled by staggered appointments. He felt the bill has merit, but admitted to there being some organization problems with it.

OPPOSERS: Mona Jamison, legal counsel to Governor Schwinden, was strongly opposed to the bill and cited Section 2-15-2402(2) which provides that the governor has the authority to appoint members to the board at the beginning of his term so as to have his policies reflected through his appointees. This section also provides for one person to be appointed during mid-term to provide for continuity.

There being no further proponents or opposers, the hearing was opened to discussion by the Committee.

Senator Brown questioned how many board members there are and their method of appointment. Mona Jamison advised there are four and one is appointed during mid-term.

Representative Mueller closed by reiterating the need for continuity on this board since they are dealing with human beings.

There being no further discussion, the hearing was closed.

CONSIDERATION OF HOUSE BILL 119: Representative Mueller, sponsor, advised that this bill is being introduced at the request of Judge Holter. This legislation is permissive and not an absolute requirement, but gives the court a standard (the

amount of AFDC being received) which the court is to consider in setting the level of child support payments.

There being no proponents or opponents present, the hearing was opened to questions from the Committee

Senator Mazurek questioned if this bill would establish the minimum amount for child support and Representative Mueller advised that nothing would be mandatory under this law; it is merely to establish guidelines for courts to follow.

Senator Brown moved that HB119 BE CONCURRED IN. The Committee discussed the intent of the bill and how it would affect the courts. Senator Brown withdrew his motion as he felt the Committee was not ready to consider action. Concern was expressed for the wording on page 2, line 16. Senator Daniels didn't see the need for this legislation as he felt the courts have the authority to use these guidelines now and the courts should not have duties such as these legislated. Senator Shaw moved HB119 BE NOT CONCURRED IN. A tie vote resulted with Senators Halligan, Hazelbaker, Mazurek, Crippen and Berg voting in opposition. The Committee then deferred consideration until a later time.

ACTION ON HOUSE BILL 246: Senator Daniels moved HB246 NOT BE CONCURRED IN. Senator Mazurek expressed concern that passing a bill for the staggered terms of board members would create a bad precedent for other board members to follow. Senator Daniels stated the Board of Pardons works well as they are now appointed. A vote was taken on the motion and it carried with Senators Galt, Hazelbaker and Shaw voting in opposition.

CONSIDERATION OF HOUSE BILL 148: Representative Keyser, sponsor, explained that the intent of HB148 is to exclude life insurance proceeds from being included when calculating compensation of personal representatives and attorneys for probate proceedings. He stated that when this bill was initially presented in the House, there was no opposition from the Trial Lawyers Association or any other attorneys. Two Montana probate cases were cited as examples of attorneys using life insurance proceeds to substantially increase their fees which Representative Keyser felt is an injustice to the widow or widower who the life insurance proceeds are intended to protect.

There being no proponents present, the hearing was opened to the opponents.

OPPONENTS: David Niklas, an attorney in Helena who handles many probate cases, spoke in opposition to this legislation as he felt it is unwarranted. He also stated that a personal representative always has the prerogative to "shop" for an attorney before deciding who would handle the probate. In his opinion,

most attorneys do not include life insurance proceeds when calculating their fees unless they have spent many hours preparing a complicated estate which would not adequately compensate them for their time unless the life insurance proceeds are included. Section (6) on page 2 caused him concern as drafted in the bill.

Ada J. Harlen, an attorney from Helena, informed the Committee of the concerns of attorneys when preparing and revising the Uniform Probate Code. She did not see the need for HB148 and felt it would cause problems with educational trusts and insurance policies payable directly to the estate.

There being no further proponents or opponents present, the hearing was opened to questions from the Committee.

The ramifications of the bill and abuses which called for its drafting were discussed. Representative Keyser advised he had no intent to create problems with trust accounts, he just wanted to discourage attorneys from receiving additional monies that the widow or widower were entitled to.

There being no further discussion, the hearing was closed.

CONSIDERATION OF HOUSE BILL 143: Representative Ernst, sponsor, advised this bill is being proposed by request of the Board of Crime Control. An employee of the state would be allowed to attend the Law Enforcement Academy if they are employed within the criminal justice system under the provisions of this bill. It would also provide that law enforcement officers would be given priority for attending the academy.

PROPOSERS: Clayton Bain, representing the Board of Crime Control, supported the bill and the concept of making the academy accessible to other employees of the state involved in the criminal justice system. In the past these employees have attended, but only after obtaining waivers, and HB143 would eliminate the need for waivers, with no increase in cost to the program.

Chuck O'Reilly, Sheriff of Lewis and Clark County and a former director of the Law Enforcement Academy, was also very supportive of the academy's use by others and felt it would be beneficial for these people to be able to attend programs there. He also stated that the Chief of Police Association supports this bill.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

The Committee's only question was what type of people would be eligible to attend the academy. They were advised that lower

court judges, probation officers, county attorneys and others involved in the criminal justice system would be eligible.

There being no further questions, the hearing was closed.

ACTION ON SENATE BILL 303: Senator Mazurek advised that he has discovered possible adverse ramifications this bill would cause. Senator Shaw moved that SB303 be TABLED. This motion passed with Senator Mazurek voting in opposition.

ACTION ON HOUSE BILL 27: The Chairman announced that the Committee was ready to consider executive action on this bill. Senator Galt moved HB27 BE CONCURRED IN. This motion carried unanimously.

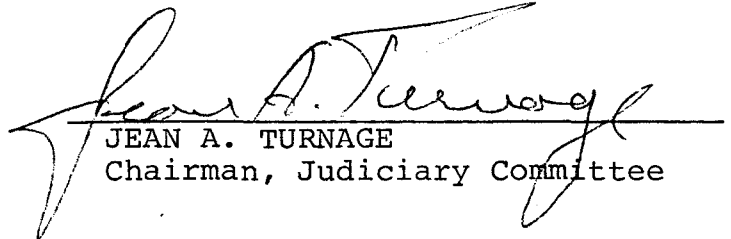
FURTHER CONSIDERATION OF SENATE BILL 262: Senator Crippen moved SB 262 DO NOT PASS. The Committee discussed the intent of the bill and how insurance agencies usually process their claims. Most Committee members felt it was not in the best interest of an insurance company for it to hold up claims and that, for the most part, there were only a few cases where these companies were making profits on interest. Most Committee members felt it would be penalizing the insured through the insurer by enacting this bill. Senator Daniels felt the bill could be beneficial but should be expanded to cover wrongful deaths. Senator Berg advised that other bills dealing with the insurance companies would be coming to the Committee and questioned if an adverse report on this bill would have an effect on future bills which the Committee feels favorable towards. Senator Crippen withdrew his original motion and then moved that SB 262 be TABLED. This motion passed with Senator Halligan voting in opposition.

FURTHER CONSIDERATION OF HOUSE BILL 53: "Grey" bills were distributed and the proposed amendments were reviewed. The Committee discussed at length the wording for figuring damages. They also debated the need for creating a civil remedy. Senator Mazurek felt HB 53 was well intended as it would take county attorney's out of the collection business. After further discussion, Senator Daniels moved that HB 53 NOT BE CONCURRED IN. Senator Crippen expressed concern for the merchants and their testimony that they need a civil remedy for bad checks. Chairman Turnage suggested changing the wording of the damages section to require a maximum amount and make damages permissible. Senator Mazurek proposed looking at a "cap" amount. The Committee discussed other possibilities at length and decided to defer action until a later time.

ACTION ON HOUSE BILL 245: The Committee did not like the concept of the bill, which could allow the entire state to be closed to competition if the seller of the business did not read the contract carefully. Senator Crippen moved HB245 BE NOT CONCURRED IN. This motion passed unanimously.

FURTHER CONSIDERATION OF HOUSE BILL 150: The Committee discussed the intent of the bill and questioned if it would include municipal courts, as well as justice courts, to have jurisdiction over misdemeanor possession of marijuana cases. The penalties as worded in the two separate sections of the bill were again discussed and Senator Mazurek felt they were worded to provide that the court could impose both a fine and jail time sentence. Senator Crippen didn't see any inconsistency with the wording of the sentences. The Committee did see a need to strike section (6) in its entirety on page 3 and to amend the title accordingly so as not to cause any misinterpretation that law enforcement officers could smoke marijuana. Senator Crippen moved to adopt the amendments as above proposed. This motion passed unanimously. Senator Mazurek then suggested deferring further consideration until the penalty provisions could be researched further.

There being no further business before the committee, the hearing was adjourned at 11:55 a.m.


JEAN A. TURNAGE
Chairman, Judiciary Committee

JUDICIARY COMMITTEE

Date 2-8-83

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STANDING COMMITTEE REPORT

February 8

19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 246

Mueller

Respectfully report as follows: That House Bill No. 246

(Third Reading)

BE NOT CONCURRED IN

~~DO PASS~~

He.

STANDING COMMITTEE REPORT

February 8, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 27

Koehnke (Galt)

Respectfully report as follows: That House Bill No. 27

(Third Reading)

BE CONCURRED IN

~~DO PASS~~

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STANDING COMMITTEE REPORT

February 8, 19 83

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **House** Bill No. **245**

Addy

Respectfully report as follows: That **House** Bill No. **245**

(Third Reading)

BE NOT CONCURRED IN

DO PASS

JLC