

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 8, 1983

The thirty-seventh meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 8, 1983 at 10:04 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 502: Representative Pavlovich advised that he was sponsoring this bill at the request of the Public Service Commission. He then introduced Eileen Shore who would present the bill.

PROPOSERS: Eileen Shore, an attorney for the Public Service Commission, stated that this bill deals with the judicial review provisions of the Public Utility Act. Under the provisions of this bill automatic transmission of additional evidence would be eliminated. If new evidence is admitted the commission would have 30 days in which to report back to the court on what the commission decided, rather than 10 days as now required. She urged the Committee to give the bill favorable consideration.

Gene Phillips, representing Pacific Power and Light testified in favor of the bill.

Perry Weidler, representing the Montana-Dakota Utilities Company, also voiced his support for HB502.

There being no further proponents, no opponents, and no questions from the Committee, Representative Pavlovich closed by advising the Committee that Senator Stimatz would carry the bill if it receives a do pass recommendation.

CONSIDERATION OF HOUSE BILL 616: Representative Holliday, sponsor, advised that this bill will require timely payments of royalties to royalty owners by oil and gas producers and require interest on any unpaid royalties. In the past the only remedy available to royalty owners for payment was to pursue the matter through district court. HB616 would provide the royalty owners with more protection to assure payments.

PROPOSERS: Senator Tveit testified in favor of the bill and distributed an amendment which was proposed by the Mineral Owners Association (see attached Exhibit "A"). He reviewed the reasons for the amendment and advised that the bill was modeled after the North Dakota statute.

Don Allen, representing the Rocky Mountain Oil and Gas Association, spoke as a proponent and apologized for not proposing the amendments

in the House. He advised that the attorney responses to the bill were not available before the House heard it. His Association's main concern was with the oil and gas companies who delay paying royalties and he felt HB616 would be an effective way to alleviate this problem.

Jerome Anderson, representing Shell Oil Company, worked with the authors who drafted HB616 as well as the mineral owners and oil and gas companies. He urged the passage of the bill and the amendments as it will give greater protection to royalty owners.

Pat Underwood, representing the Montana Farm Bureau Federation, advised that he supported the bill.

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

Senator Mazurek asked Jerome Anderson if cancellation of the lease would be an appropriate remedy. He was advised that this would be appropriate for a material breach of the lease, but they did not want to encourage cancelling the lease and losing the well.

Senator Halligan asked Senator Tveit if "ON THE DATE DUE" referred to the date the product is marketable. He was advised that this refers to the due date in the lease.

Senator Mazurek questioned if there would be an objection to inserting the language on page 2, lines 15-17 in place of the language on page 2, lines 5-7. He felt this language would be clearer. There was no objection as this would not change the meaning.

Senator Shaw asked Representative Holliday if the bill would be better with the proposed amendment. She acknowledged that it would.

There being no further questions, the hearing was closed.

CONSIDERATION OF HOUSE BILL 234: Chip Erdmann, representing the Montana School Board Association, presented the bill in the temporary absence of the sponsor, Representative Yardley. He advised that a two-thirds vote of both Houses is required for the passage of this bill. HB234 would exempt school board trustees from individual liability for exemplary and punitive damages when they are acting in their official capacity. They currently have no protection. He also stated that an essential reason for granting the board members immunity from liability is that their decisions could be influenced if they are faced with the possibility of being sued for their decisions. Essentially, HB234 would make the board members' liability more reasonable. (See written statement, Exhibit "B").

Charles Briggs, a trustee for the Missoula School District, testified in favor of the bill and submitted his written witness statement (see attached Exhibit "C").

Tammy Hall, a Bozeman School Board member and State School Board Association director, testified in favor of the bill. She stated that she does not want to gamble with her business, home and other assets in being liable for her decisions as a board member. She felt that the board members are accountable for their decisions by the fact that they are subject to election. HB234 would afford them more protection. (See written statement attached as Exhibit "D").

Claudia Steen, a school trustee for the Great Falls School District, also testified in favor of the bill and submitted her written statement (see attached Exhibit "E").

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

David Sexton, representing the Montana Education Association, stated that he was not necessarily an opponent but raised several questions. First, he questioned what kind of immunity the bill would grant and if it would cover civil rights violations. Second, he questioned what would happen if a board member made a slanderous remark while acting in his official capacity. Third, he questioned if this would affect the formal decisions of the board.

OPPONENTS: Karla Gray, representing the Montana Trial Lawyers Association, testified in opposition to the bill. She stated that there was no justification or abuse of the system shown which would warrant passage of this legislation. Under current statutes, only oppressive, malicious and fraudulent actions would subject a board member to punitive damages. If their conduct remains within acceptable bounds, then there should be no reason for the possibility of punitive damages to arise. She urged the Committee to give the bill a do not pass recommendation.

Representative Yardley, sponsor of the bill, appeared late and reviewed the need for this legislation.

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

The Committee inquired what type of justification would be necessary in order for Karla Gray to endorse this bill. She

did not have any objective criteria, but felt the need for it was not essential.

Senator Mazurek was concerned that the passage of this bill would be granting a license to board members to make slanderous statements. Chip Erdmann felt that malicious statements outside the scope of the trustee's duties would subject him to damages.

There being no further discussion the hearing was closed.

CONSIDERATION OF HOUSE BILL 642: Representative Yardley, sponsor of the bill, advised that it would authorize possession of antique slot machines. These machines are defined in the bill as those machines which are manufactured prior to 1950. 35 states have legalized the possession of antique slot machines and the federal government has legalized the transfer of these machines from one state to another.

PROPOSERS: Bill Erwin of Helena testified in favor of the bill. He passed a picture around of an antique slot machine. Most people do not possess these machines as a gambling device; rather, they collect them as a hobby.

Senator Keating voiced his constituents desire to have an opportunity to collect these antique machines. Their hobby of collecting these machines is prohibited under the current law and they also have the possibility of the machines being destroyed. Their intentions are not to use these devices for public gaming purposes. He suggested that the bill could be amended to provide absolute restrictions on the use of these machines for charitable fund raising.

Robert Quinn, representing himself, testified in favor of the bill. He stated these antique machines could not stand up to continued use and, therefore, could not be used as public gaming devices.

Darryl Meyer of Great Falls, also testified in favor of the bill.

There being no further proponents, and no opponents, the hearing was opened to discussion.

Chairman Turnage affirmed from all proponents that it is not the intent of this bill to allow public gaming devices. This fact was acknowledged by everyone. Chairman Turnage felt the bill should be amended to assure this interpretation. He referred his written ideas for amendments to counsel for research.

The Chairman announced that the Committee was ready to consider executive action on bills previously heard.

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ACTION ON HOUSE BILL 234: Senator Shaw moved HB234 BE CONCURRED IN. The Committee discussed their interpretation of "official capacity." It was their consensus that official capacity is well enough defined and Senator Crippen pointed out that whether a person is acting in his official capacity is a fact issue for the court to decide. Senator Mazurek was still concerned with the interpretation of "official capacity" and felt it should be more specifically defined. A vote was taken on the motion and it carried with Senators Halligan, Brown and Mazurek voting in opposition. The Committee further discussed amending the bill on second reading to include "acting at a school board meeting." Senator Mazurek will suggest this to the sponsor.

ACTION ON HOUSE BILL 502: Senator Crippen moved HB502 BE CONCURRED IN. This motion carried unanimously.

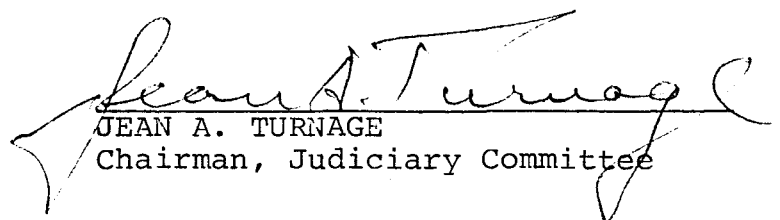
ACTION ON HOUSE BILL 616: Senator Galt moved to adopt the amendments proposed by Senator Tveit (see attached Exhibit "A"). This motion carried unanimously. Senator Crippen moved that AS AMENDED HB616 BE CONCURRED IN. This motion also carried unanimously. It was agreed that Senator Tveit would carry the bill on the floor.

ACTION ON HOUSE BILL 575: The Committee felt there was a problem with respect to the amendment. Once the workermans' compensation carrier accepts a claim medical benefits are paid directly to the hospital. It was agreed that major revisions would be required in order for HB575 to accomplish what its sponsors intended. Senator Mazurek moved to TABLE HB575. This motion carried unanimously.

ACTION ON HOUSE BILL 628: Senator Daniels moved to TABLE HB628 as it would encourage too many law suits. This motion carried with Senator Mazurek voting in opposition.

The Committee agreed that there is merit to requiring written notice to the patient of his rights, and that perhaps something could be done which would speak to this issue.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:35.


JEAN A. TURNAGE
Chairman, Judiciary Committee

JUDICIARY COMMITTEE

Date 3-11-83

[illegible]

DATE 3-8-83

COMMITTEE ON

Judiciary

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

EXHIBIT "A"
March 8, 1983

AMENDMENTS TO HOUSE BILL 616

1. Title, line 9.
Strike: "TO CANCEL A LEASE OR"
Insert: "SEEKING A REMEDY OR TO"
2. Page 1, line 17.
Strike: " -- remedy for breach"
3. Page 1, lines 23 through 25.
Following: "contract."
Strike: the remainder of line 23 and lines 24 and 25 in their entirety
4. Page 2, line 1.
Strike: line 1 in its entirety
5. Page 2, line 3.
Strike: "INITIAL"
6. Page 2, line 4.
Strike: "90"
Insert: "180"
7. Page 2, lines 4 and 5.
Strike: "receipt of a signed royalty division order"
Insert: "oil or gas produced under the lease is marketed"
8. Page 2, lines 11 through 20.
Strike: subsection (3) in its entirety
Re-number: subsequent subsections accordingly
9. Page 2, line 21.
Strike: "cancellation of a lease"
Insert: "a remedy"
10. Page 3, line 7.
Following: "minerals"
Insert: "or entitlement to royalties"

WITNESS STATEMENT

Name Chip Eremann Committee On SED
Address Helena Date 3/8/83
Representing MSBA Support X
Bill No. HB 234 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. This bill would offer immunity from punitive and exemplary damage for school board members while acting within the scope of their official duties.
2. - It would prevent large damage claims being made against trustees for punitive and exemplary damages just for use as leverage in getting them to settle a lawsuit against the board itself.
3. - School board trustees are responsible for multi million dollar enterprises. For their efforts they are unpaid - except for the satisfaction they receive. It should be a statement of public policy that these individuals should not be subjected to large and often untounded punitive and exemplary damages.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Charles Briggs Committee On S. Judiciary
Address 132 University Ave., Missoula Date 3/8/83
Representing Missoula School District #1 Support yes
Bill No. H.B. 234 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. I am here, on my own time, representing the Missoula Dist. #1 Trustees, as a trustee to simply record the support of the Missoula Municipal Trustees for H.B. 234.
- 2.
3. We stress the voluntary, unpaid service of community residents serving as local trustees.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Tammy Hale Committee On _____
Address 6734 Goodrich Hill Rd Date March 8, 83
Representing Bozeman MT Support X
Bill No. 234 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Support Bill because legally sound
2. fair - still accountable - actual damages
more responsible decisions regarding
lawsuits
3. Same Protection Regulators have
4. Crucial to local control.

→ NO insurance for bread
→ affected job -
→ not out of bread
no central bank

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Claudia Stump Committee On _____
Address 1113 14th St SW Mt Falls MT Date 3-8-83
Representing Mt Falls School Board Support X
Bill No. HB 234 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. This bill deals with punitive damages which are not and can not be covered by insurance.
2. In order to assure candidates of quality and diversity we feel this bill is very necessary.
3. We feel the last time this bill was brought before you and failed it was because it was much broader and included all elected officials. I believe
4. the controversy ~~was~~ was concerning the sheriffs.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

STANDING COMMITTEE REPORT

March 8

19 83

PRESIDENT

MR.

Judiciary

We, your committee on

House

having had under consideration Bill No. 234

Yardley (Shaw)

House

Respectfully report as follows: That Bill No. 234

third reading bill,

BE CONCURRED IN

~~XXXXXX~~
DO PASS

Handwritten signature/initials

STANDING COMMITTEE REPORT

March 8 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 502

Pavlovich (Stimatz)

Respectfully report as follows: That House Bill No. 502

third reading bill,

BE CONCURRED IN

XXXXXX
DO PASS

STANDING COMMITTEE REPORT

March 8

19 83

PRESIDENT

MR.

Judiciary

We, your committee on

House

having had under consideration Bill No. 616

Holliday (Tveit)

Respectfully report as follows: That House Bill No. 616

third reading bill, be amended as follows:

1. Title, line 9.
Strike: "TO CANCEL A LEASE OR"
Insert: "SEEKING A REMEDY OR TO"
2. Page 1, line 17.
Strike: " -- remedy for breach"
3. Page 1, lines 23 through 25.
Following: "contract."
Strike: "the remainder of line 23 through "cancellation." on
page 2, line 1.

Continued on Page 2

And, as so amended,

BE CONCURRED IN

~~DO PASS~~

J.A.C.

4. Page 2, line 3.
Strike: "INITIAL"
5. Page 2, line 4.
Strike: "90"
Insert: "180"
6. Page 2, lines 4 and 5.
Strike: "receipt of a signed royalty division order"
Insert: "oil or gas produced under the lease is marketed"
7. Page 2, line 11.
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Re-number: subsequent subsections.
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Strike: "cancellation of a lease"
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Insert: "or entitlement to royalties"

And, as so amended,

BE CONCURRED IN