

SENATE JUDICIARY COMMITTEE

J- 210

MINUTES

March 2, 1971

Chairman Monroe called the meeting to order at 10:15 a.m.

Committee Members Present: Chairman Monroe
Senator Close
Senator Foley
Senator Dodge
Senator Swobe
Senator Wilson
Senator Young

Others Present: George Zappatini - State Forester
Carl Soderblom, Tax Agent - Southern Pacific
Railroad
Press

S.B. #167 - Provides civil remedies and criminal penalties for unlawful burning.

Mr. Zappatini explained that we already have a law practically the same as this but it applies to state operated districts only. This bill was put in at the request of U. S. Forest Service. They would like to see the law apply, not only to state operated districts, but to their national forest also. This bill would make it unlawful to set fires negligently, willfully, or in violation of the law. It also provides that if fire escapes from property of one person to that of another, the damages can be collected. It provides for collecting of expenses in extinguishing a fire that was negligently set. It also requires a permit to burn, blast, or set off fireworks and things of that nature. Written permission would not be necessary if he would determine that a fire hazard does not exist or if materials are burned in a safe incinerator. There is a section where they can issue a permit to utilities, such as the railroad or power company, to work during their construction period.

They are kind of apprehensive about the railroad portion, because the railroad thought it would hamper their operation. We currently have this in effect in Elko county and it has worked very well. We have an annual meeting with the railroads and they lay out their work plans and then we issue a permit to them.

The bill also has a section for the ranchers and sheepherders who have to build fires out on the range and provides it wouldn't be necessary to get a permit if they burn with necessary control any camp or branding fires.

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Senator Close stated that this bill says that if a person sets a fire which was more than 100 feet from timberland, with one person in attendance, and that person leaves thinking it was out and the fire happens to spread, that would be negligence and under Section 2 he would be liable for a damage caused. This same thing would apply to a camper in Section 2. Isn't it quite unusual to require a person to pay for the cost of the damage and putting the fire out?

I agree that there should be some penalty imposed upon somebody who deliberately starts a fire.

Mr. Zappatini said a lot of states do this. We have to prove negligence. We've had a lot of cases, but we've won very few cases because we couldn't prove negligence. That's due to the activity at the fire and most of the evidence is destroyed in the course of putting the fire out. Sometimes we can't determine the exact cause. But we have to have a tight negligence case.

Carl Soderblom said we are not completely opposed, but I can see where it would pose a problem to the necessary operation of our railroad. We can't specifically say at the beginning of the year how many fires we will have to build in the case of burning of weeds or removal of ties. Instead of taking the full tie out, we chop them up so that we can burn them. We have to have some means of disposing of them and burning is the best way of doing it. In a case of a train accident it becomes necessary to use a torch and cut the trains apart to get them off the track to get our trains operating again. It would be difficult to get an annual permit for the number of wrecks and ties.

Senator Swobe asked if there have been any brush fires or forest fires started by the railroads.

Mr. Zappatini said in Elko County there is an extensive mileage of railroad. We annually have a meeting with both railroads and set out operating plans and we've cooperated this way for six or seven years. We have had problems several years ago, but now they're clearing rights of way, and doing prevention work so the fires have gone down. But we do bill the railroads for any fires they start, and they pay off.

Mr. Soderblom agreed that is a standing agreement they have with the forest service. If we cause a fire, we pay for the damages.

Senator Dodge stated that he proposed an amendment to limit it to the federal forest areas.

Both the forest service and the railroad were not opposed to the amendment.

Chairman Monroe asked why Senator Dodge wanted to limit it to the federal forest areas.

Senator Dodge replied that is the area of concern and he thought we ought to limit it to that area and not place unrealistic burdens on people in normal course of pursuits.

Senator Close asked to have prima facie struck out of line 20 on Page 2, because most of these problems don't come from small campfires.

Senator Dodge said that as a matter of fact most of the problems might come

after you've got the permit. It has been his observation that many fires get away by the wind after you may already have a permit and are there to supervise. He didn't think we have unusual problems that would vary too much one way or another whether you got a permit.

Senator Young made a motion to amend the bill to apply only to forest service land, and Senator Close made a motion to amend to take out prima facie in campfire lands.

S.B. #309 - Provides for liberal construction of ordinances and building codes to encourage establishment of condominiums.

Senator Swobe read the amendment on this bill.

Senator Foley asked what the objection was to this bill last time the committee discussed it. Senator Swobe replied that there was some concern about dictating to the local subdivisions that their ordinances should be liberally construed.

He said that one of the purposes of this is to allow the existing ordinances which do not cover condominiums to be liberally construed in the technical application. He didn't think there would be any problems since every other place in the state except Washoe county is doing what this language indicates. In Washoe the ordinances do not contemplate condominiums.

Senator Dodge made a motion to "do pass." Senator Swobe second the motion. Motion carried.

S.B. #255 - Makes committing felony while on bail or own recognizance a separate offense; permits denial of bail after conviction in certain instances.

An amendment was submitted for the committee's approval. The committee didn't feel the amendment accomplished what they had intended to do was to make the sentence longer, and suggested a new amendment which would provide for additional time by virtue of the aggravation and say this shall not be construed as a separate offense. Under those conditions it would not make him an habitual criminal.

A new amendment will be drawn.

S.B. #248 - Re-forms definition of excusable homicide.

Senator Wilson submitted an amendment to repeal the whole section. Senator Foley didn't buy that.

Senator Close felt there should be a definition of excusable homicide. Senators Dodge and Wilson felt that if it was a pure accident or criminal intent was clearly lacking, you could plead that and it would be considered excusable homicide.

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Senator Young pointed out there is a preceding section in NRS which deals with justifiable and excusable homicide not punishable, and felt that it would create some problems by not leaving the definition of excusable homicide in there.

Senator Close suggested taking out 1. b and 2. and leaving 1. and a.

Senator Wilson moved to amend and "do pass." Senator Dodge second the motion. Motion carried.

Meeting adjourned at 10:50 a.m.

Respectfully submitted,

Eileen Wynkoop, Secretary

Approved: _____