MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

FINANCE & CLAIMS SUBCOMMITTEE ON SB 374

Call to Order: By **CHAIRMAN TOM KEATING**, on March 11, 1997, at 8:10 a.m., in Room 108.

ROLL CALL

Members Present:
Sen. Thomas F. Keating, Chairman (R)
Sen. Larry Baer (R)
Sen. Greg Jergeson (D)
Sen. Dale Mahlum (R)
Sen. Ric Holden (R)

Members Excused: Sen. Mignon Waterman (D)
Sen. Mike Halligan (D)

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 374, 2/25/97
Executive Action: None

HEARING ON SB 374

Proponents: **George Bennett, Montana Banker's Association**
John Larson, Missoula District Judge
SEN. DON HARGROVE, SD 16, BOZEMAN
John Cadby, Montana Banker's Association
Stuart Doggett, Montana Land Title Association

CHAIRMAN KEATING We'll go through this page by page, addressing amendments for each page. I'm going to allow public testimony and comments but I'd like them as concise and direct as possible. I want to allow as much input as possible so that we all get a good, full understanding of this.

SEN. LARRY BAER A very important case came down on February 5, 1997 regarding federal funding, federal mandates and their interaction. This was the Commonwealth of Virginia versus Riley, **SEN. BAER** gave a brief summary of the case.

CHAIRMAN KEATING I would like to start with a general overview of the bill, as we go through I'd like to know what is part of the federal act and what is being proposed by DPHHS.

{Tape: 1; Side: A; Approx. Time Count: 8:16; Comments: None.}

Mary Ann Wellbank, Department of Public Health and Human Services (DPHHS) We were not aware of the decision that **SEN. BAER** refers to. We are required to conform to certain requirements for TANF or AFDC money, one of those requirements is child support enforcement. Without knowing too much about the decision, my inclination is to think that our state plan is our contract that guarantees we have an effective child support enforcement program. The federal government has told me that if we don't meet the requirements of the IV-D plan, which is the child support plan, they will cut funding of the IV-D program. If you have a non-compliant IV-D program, you can't meet the state's requirement for TANF funding and therefore that federal funding is removed. About $52 million over the biennium is at risk. **Ms. Wellbank** explained the bill. In Senate Judiciary **SEN. LORENTS GROSFIELD** introduced amendments to clarify intent, limit rule making and give us the responsibility to waive the need for information against the personal intrusiveness of the information requested. Sections 47, 48 and 51 are not mandated by the federal government.

{Tape: 1; Side: A; Approx. Time Count: 8:32; Comments: None.}

<u>Proponents</u>:

George Bennett, Montana Banker's Association Banks are going to be under this bill as financial institutions as defined in the bill, payors as they will be paying interest to obligors and employers thereby subject to support orders and income withholding orders. Banks will be subject to new hire reporting and other obligations. Our major concern is orders: child support orders; income withholding orders; and orders for documents that originate outside the State of Montana. There are going to be small banks and small employers receiving legal process from outside Montana which may raise questions as to invalid or forged legal process. The process may direct payment to unauthorized persons or entities. It puts on the employers, payors, and financial institutions the obligation to determine the legal validity of the legal process. Since obligors may have families in many different states, the bill puts the burden on payors, employers, and financial institutions to sort out priorities between the various orders that have been issued in other states. We suggest adding a section which says that if a financial institution, payor, or employer in Montana is served with a form of legal process, they may respond to that through the department, in other words they may simply send that process with payment to the department, and let the department sort out the priorities and find out if the process is valid. Senate Judiciary amended out language that said if the process appeared

to be valid on its face, it would be honored. I don't know what the effect of that is. I don't know whether this would affect federal mandate or not. **(EXHIBIT #1)**

John Larson, Missoula District Judge We're supportive of the bill. My concern is with the central state registry. I think the central state registry decision making should be shared between judiciary, CSED and local clerks, therefore I'm suggesting an amendment. There is a new state wide property lien that's being created and we need to make sure that the counties know about it. We need a joint effort for Marriage and Divorce Act issues, to get decrees registered and child support coming as quickly as possible. There is nothing in the federal act that precludes this and I don't think CSED opposes it. I also have a couple of amendments for Sections 47 and 75 that deal with timelines. Montana Supreme Court has held unanimously that the Constitutional protection of due process apply to the way CSED handles it's cases. And while CSED feels that these timelines are crucial to that case, I think the Constitution is what's crucial. As you go through this bill you'll see a multitude of requirements on the obligors for timelines. In-person hearings are another issue to be addressed. In every other contested case proceeding under the Administrative Procedure Act it presumes hearings take place in person. If you look at the language in this bill, it's turned over and presumed that the hearing will be telephonic. As a district court judge, I have to sit in front of these people, I face them, I hear their stories, I see their kids. It is sometimes important for litigants to actually see the person who is making the decisions and who is testifying against them so that they can ask questions. I request an amendment so that the hearing could either be in person or telephonic and the parties could make the choice. Section 59 deals with district court clerks issuing an order for automatic withholding. Federal law requires that we do it without prior judicial hearing, there's a long standing court process, the District Court Temporary Order. It gets the order out, gives the parties the opportunity to come back to contest and is consistent with federal requirements. Judge Lankton and I sent a note to the Senate Judiciary Committee noting that many of the issues in this bill are outside the Federal Welfare Reform Act. The formula used for child support is very difficult, the State of Wisconsin has a brief, simple child support calculation that we strongly recommend be adopted. The last section of the bill is for access and visitation program grants I've provided a copy of the Missoula visitation guidelines and Montana Supreme Court decision material. **(EXHIBIT #2)**

SEN. DON HARGROVE, SD 16, BOZEMAN We need to look at what we are trying to do, which is to make people responsible for their own actions. We should look at this as if there was no mandate, what are we going to do to force these people to be responsible and take the burden off the taxpayers? From that standpoint I think we should try to be as simple as possible. For all practical purposes this is paid for completely by federal funds, if we

start adjusting process we might get into General Fund. This is intrastate, all of the states in the country are struggling with this, we don't want our dead beats to go to other states and therefore escape their responsibilities. We also don't want to become a haven for those from other states, we don't want to make it so it won't be easy to find them or make them responsible for their actions.

{Tape: 1; Side: A; Approx. Time Count: 8:50; Comments: None.}

John Cadby, Montana Banker's Association Colorado solved the problem **Judge Larson** refers to, they developed a central electronic registry data bank for all liens which can be accessed on the Internet. Two employees work on this public enterprise run by the private sector. I think you can see the need for a central data bank to serve all the counties, district judges and business people throughout the state. This might be one solution to the communication problem, intrastate as well as interstate. **(EXHIBIT #3)** handed out.

Stuart Doggett, Montana Land Title Association There is concern with Section 48, if this exception is passed into law it would make a final administrative order of the department forcible to the same degree as a district court order without filing the docket and the order of district court. We feel this is unfair to the purchasers because as it is not filed or docketed in district court as is required for other means. A purchaser might move into his home to find that he really does not own it. Here is a letter from Richard Shors. **(EXHIBIT #4)**

{Tape: 1; Side: B; Approx. Time Count: 8:55; Comments: None.}

<u>Questions from Committee Members</u>:

SEN. DALE MAHLUM On Section 9, do we have to do this reporting when hiring high school students for the summer? **Ms. Wellbank** You would have to report every single person that met the requirements. As an employer, you would be allowed to deduct $5.00 from the employee's wages.

SEN. MAHLUM If that is the case, what are we doing to these people that are 18 and 19 years old, are we putting them into a security bank someplace so the FBI can know what their names are or something like that? I am scared of your bill. **Ms. Wellbank** There are confidentiality provisions related to the new hiring of an employee, Section 10 addresses information and records disclosure. Only specified child support type agencies would have access to this information.

SEN. BAER How much money are we receiving from the federal government directly to fund this program? **Ms. Wellbank** They are not giving us extra money but everything they give us comes with a 66% federal match, we need to match whatever it costs us in the fiscal note and the feds give us 66% to go along with it.

SEN. BAER What do we use for match? **Ms. Wellbank** The Child Support Enforcement Division (CSED) currently receives some General Fund money, 34% state special revenue which is matched with 66% federal. We generate the state special revenue by collecting. When people go on welfare they assign their child support benefits to the state and instead of getting child support they get welfare and we keep any child support we've collected for the period of time they're on welfare. We're expected to increase collections and therefore increase what goes into the state special fund, at the same time there are expenditures associated with the development of the system.

{Tape: 1; Side: B; Approx. Time Count: 9:03; Comments: None.}

SEN. BAER Why can't we fund from the existing funding you just outlined to initiate these programs to give proper notification and have proper interaction with other pertinent agencies and other people involved in facilitation of this new law? **Ms. Wellbank** There are a couple parts to your question. One has to do with funding, we get most of our funding from AFDC. Because of the success of FAIM the interface between child support and AFDC has dropped by 2,000 people in the past year. This means we're collecting less and less money and our state special revenue is pretty thin. Income withholding will result in getting these people and the money faster, which will generate more state special revenue. If we weren't to have this bill, we couldn't get any more state special revenue than we're already getting. The second part relates to some of the things that will cost money, for example in-person hearings. We've always done telephonic hearings and want it clear in the law that it should be telephonic. If we have to go to in-person procedures, we don't have enough state special revenue to cover it and it would cause a General Fund impact.

SEN. BAER What you're saying is if a hearing is required we're going to have to fund that situation by way of the General Fund because of this bill? **Ms. Wellbank** No, I'm not saying that. We need to comply with the due process requirements in the constitution and we're very conscientious about that. But the constitution requires a hearing, it does not say in-person hearing, it could be a telephonic hearing. We conduct our hearings by telephone and that shouldn't interfere with a person's opportunity for due process, they have an opportunity for a de novo hearing if they feel they were prejudiced by the telephonic hearing and that would be in person.

SEN. BAER Whether or not a telephonic hearing is an adequate provision of due process is a question we cannot decide here. It may be a problem. You mentioned earlier that this is a federal mandate and if we don't comply with this mandate we may lose millions of dollars of federal funding. Are you talking about the 66% that we would receive for this program or other federal funding we already receive? **Ms. Wellbank** I'm talking about the federal funds of approximately $6 million per year for CSED. If

CSED can't meet it's requirements, the funding from the federal welfare program is also in jeopardy, that is about $40 million over the biennium. There is a letter in the blue book which talks about how the building blocks for this program will tumble and jeopardize federal funds.

SEN. BAER I have to differ with you on that. **Ms. Wellbank** We have not had the opportunity to look over that opinion and I'd like to research it.

SEN. BAER I'd strongly suggest you do so and base your presumptions and opinions on the current case. We are not inclined to reject federal mandates if we find them necessary and beneficial to the State of Montana which this bill very well may be in it's final version. We can't impose impediments to our decisions here based upon speculation as to what the federal government can and cannot do. I hope we can come up with a bill that will allow us to address the problem with these non-paying spousal and child support situations, but we have to give objective information in the process. **Ms. Wellbank** My job is to convey what I know. We've done a lot of research on this, we've talked to the feds but it isn't my job to tell you what to do or how do it. I respect what you're saying, I've had those same concerns myself.

SEN. BAER Is the FAIM program a medicaid program? **Ms. Wellbank** The FAIM program, Families Achieving Independence in Montana, is the old AFDC program.

SEN. BAER It's the AFDC program and is funded by medicaid, right? **Ms. Wellbank** No, some of these people are eligible for medicaid benefits, but we're talking about welfare benefits here.

CHAIRMAN KEATING The FAIM program is funded by the feds with a 28-72 match. 28% is General Fund paid by the state to match those federal funds. The benefits in FAIM are paid to AFDC recipients and then child support enforcement seeks recovery of those AFDC benefits. What amount of recovery does your department try to achieve from those FAIM benefits? **Ms. Wellbank** I don't know.

CHAIRMAN KEATING An AFDC family can get over $1,000 in support; rent, utilities, cash and food stamps. In addition they get medical coverage that's the equivalent of $300 or $400 a month in premiums. What part of these benefits does your department try to recover? **Ms. Wellbank** Our department recovers the child support that's assigned to the state which is the cash part of the benefits. We establish medical support orders which, according to our figures show we probably save medicaid over a billion dollars by going after the obligated parent. We put out an RFP the other day that would allow us to enroll children in a group policy with obligated parents buying through this RFP for about $80. If this works, it should help get people off medicaid. We don't recover the cash paid on medicaid.

CHAIRMAN KEATING Your recovery then becomes your state special which you use for the 66-34% match. **Ms. Wellbank** Yes, and in addition to that we get federal incentives based on our AFDC collections.

CHAIRMAN KEATING Our percentage has been quite high over the years, so we get a premium out of the feds, don't we? The other thing that you mentioned was that FAIM was a successful program and there appears to be fewer and fewer recipients. Are the numbers going down? **Ms. Wellbank** They are going down substantially. It has been very successful.

CHAIRMAN KEATING You have diminishing recovery because of the diminishing demand, and now we have fewer and fewer delinquent fathers. With people leaving FAIM you're looking at a diminishing return to use for match, at the same time you have increased expense because of these new requirements. **Ms. Wellbank** That is true. We think the income withholding bill will generate more state special revenue because we'll be able to get that money much quicker.

CHAIRMAN KEATING What is our current unpaid debt? **Ms. Wellbank** Approximately $160 million, this money is owed to families in Montana and other states. I believe this is an artificially high number because some people default a high amount.

CHAIRMAN KEATING Can these receivables be used for match? **Ms. Wellbank** No, and not all of it is AFDC receivables.

CHAIRMAN KEATING Now the committee has some idea what the funding is in this situation. We get 70% match in the FAIM program and collections become match money. We're collecting federal money to use as match for more federal money. This is taxpayer dollars and we have to treat it efficiently. **Ms. Wellbank** Of the money collected we need to return the federal portion to the feds.

SEN. BAER Could the funding for uniform notification come out of the 66% match, or is all that money specifically designated for certain purposes? **Ms. Wellbank** The federal money can only be designated for these purposes, did you have something particular in mind about the requirements? I think you're talking about telephonic hearings, is that correct?

SEN. BAER Not necessarily. Let's use **Judge Larson's** concern about uniform interaction between your department and the district court for enforcement of these laws, which I think is essential. I believe you are saying that creating a system to accomplish that would have to be done with moneys outside of the federal funding and more match for this program that you propose. Is that what you're saying? **Ms. Wellbank** I don't think that I am. In this bill it requires a central registry of all orders, whether they're issued by our division or by the district court, which we don't have now and I think everyone would agree Montana

really needs that. That is in this bill, it is part of the fiscal note, it will cost money but we feel that the other income generating areas that come with the bill will help us raise the state special revenue funds. We believe we'll identify more money faster with income withholding and the financial institution data matches.

SEN. BAER You're saying you think this program could be funded by other special revenue funds that come in by way of this bill, other than the 66% and the 34% state matching funds. You think you can provide enough for such a unification of notification as proposed by **Judge Larson**. **Ms. Wellbank** One of the purposes of this bill is to get that unified central registry, but the only funding that I know of that complies with federal requirements is the 34% state funds, whether General Fund or state special revenue. As long as we meet and comply and don't go beyond the federal requirements, we could get the 66% federal match.

SEN. BAER Are you now saying that we could use part of the 34% matching funds to fund a program that would satisfy the district courts as to the necessary unification of information and interaction, or can we not use part of the 34%? **Ms. Wellbank** If we're talking about the bill and if we conform to what's provisioned in the bill, yes we can use the 66% match of federal funds. If we're talking something beyond the scope of the bill, then there might not be a federal match available.

CHAIRMAN KEATING The 34% match can be used for funding whatever the department wants to buy and is available for expenditures. Can the match money be used for such a program as proposed today? We don't know the extent it will be or how it will be facilitated.

SEN. BAER: I'm concerned about the necessity for such a program. I want to make sure that a program to unify interaction is properly done and properly funded. I want to know where that money will come from.

{Tape: 1; Side: B; Approx. Time Count: 9:36; Comments: None.}

REVIEW OF SB 374

CHAIRMAN KEATING Section 1 is a new section, current law is not in these definitions? **Amy Pfeifer, DPHHS** There are definitions used in other parts of the code, but they're not necessary to the new sections.

CHAIRMAN KEATING This says that you should adopt rules to minimize the personal intrusiveness of the requested information along with minimized costs to the employers and employees in response to obtaining information. The Judiciary Committee put this in, can DPHHS comply? **Ms. Wellbank** Yes.

SEN. GREG JERGESON In your testimony you talked about obligated parent, but it is obligee and obligor in the definitions. Is there a technical editing reason why you would use obligee instead of obligated parent? Sometimes the ee and the or confuse people. **Ms. Wellbank** The obligor is the same as the obligated parent who owes the court. Obligor is the legal term, when I testified I used obligated parent because I think it's easier to understand. The obligee is the person to whom support is owed and that's another legal term so we used obligor and obligee throughout.

CHAIRMAN KEATING Section 2, Child Support Information and Processing Unit, any comments? **Judge Larson** I suggest striking "upon request" on page 4, line 17 and insert "this information must be shared with the courts of this state."

CHAIRMAN KEATING Does the department have any comment on this? **Ms. Wellbank** I don't think it's a problem mandating it be shared with the court, I am concerned about the amendment because it's also intended that it needs to be shared with the courts and agencies of other states.

<u>Motion/Vote:</u> **SEN. BAER MOVES TO AMEND SB 374 BY STATING THIS INFORMATION MUST BE SHARED WITH THE COURTS OF THIS STATE AND, UPON REQUEST, MAY BE SHARED WITH CHILD SUPPORT ENFORCEMENT AGENCIES OF THIS AND OTHER STATES FOR THE PURPOSE ESTABLISHED ON PAGE 4, SECTION 2. THE MOTION CARRIED UNANIMOUSLY.**

CHAIRMAN KEATING Anything else on page 5? **Judge Larson** I would like to strike lines 13-14, subsection A and insert the language on page 3 of my handout. **(EXHIBIT #2)**

CHAIRMAN KEATING Is Missoula County the only county that is affected by this? **Judge Larson** No, it's not, but it is the first one to hook up to their system, and so they have some technical background. The Supreme Court Administrator's Office has a common program for most of the other counties. Missoula County has a different system than most of the other counties.

Ms. Wellbank The reason we put the language about the department being ultimately responsible is because funding would come through our agency funding umbrella. Perhaps we could work with **Judge Larson** to formulate an amendment that would allow the clerks and judicial system input. Anytime you start creating a board to manage a system, it becomes more cumbersome. Our intent is to make this easy for everyone.

Judge Larson The federal act expressly allows making local registries.

CHAIRMAN KEATING Subsection A says the department is ultimately responsible for operation of the case registry, etc., and then afforded by the unit. Could we say subject to the case registry being jointly subject to the oversight of a committee and then

list the representatives? **Ms. Wellbank** What guidance are you giving the department in "subject to the oversight"? Does that mean whatever is wanted by the majority? Statutory structure probably needs to be created for how the oversight would take place.

CHAIRMAN KEATING You say you want to work with them, so we have to say something in here to allow that participation. We should put in statute the people that are going to be involved so everyone has statutory recognition for participating in the case registry. **Ms. Wellbank** Could we say the department shall consult with these groups of people in developing it? My only concern is that more guidance is needed as to what your intention is. Do they direct the system development, the cost associated with it, do we all have to come to agreement, or who has the final say?

SEN. MAHLUM What this amendment says is that you still do everything and they're an advisory council. They're the ones that see these parents and kids. These people are their customers and they should have some more input to your department. **Ms. Wellbank** I don't disagree. The fiscal note was developed as a result of communications between BDM, the Supreme Court Administrator and CSED. My concern is that the statutory language be very explicit as to what the department's role is. It looks like we don't know who is the final decision maker or how a final decision is made.

Judge Larson I think joint oversight will help us reach decisions that everyone is comfortable with. We want things that work for our clerks and CSED.

CHAIRMAN KEATING We can leave the language "the department is ultimately responsible" and insert "the case registry shall be operated jointly".

SEN. MAHLUM Is the problem with joint authority or joint facilitation of the process? **CHAIRMAN KEATING** I believe the final authority lies with the department. The courts are trying to get a statement that there will be cooperation between the department and court clerks. If we insert a subsection specifying who will be involved in joint oversight on the registry it will be clarified.

SEN. MAHLUM What does oversight mean? Are we dealing with the process or are we dealing with authority to oversee and make decisions? **Judge Larson** If problems develop we all come to the table and try to decide what the solution will be.

CHAIRMAN KEATING Let's go with that amendment and see how it fits. We can come back to it.

{Tape: 2; Side: A; Approx. Time Count: 10:00; Comments: None.}

Motion/Vote: **SEN. MAHLUM MOVES TO AMEND SB 374 BY MOVING SUBSECTION B TO C AND INSERTING A NEW SUBSECTION B STATING OVERSIGHT OF THE CASE REGISTRY SHALL BE ACCOMPLISHED BY A JOINT COMMITTEE WITH ONE REPRESENTATIVE FROM EACH OF THOSE AREAS. THE MOTION CARRIED UNANIMOUSLY.**

CHAIRMAN KEATING I'd like to know when we get to the section where the employer has to pay the child support if the employee fails. **Ms. Wellbank** That's been law since 1989, it is federally required that immediate income withholding must be ordered. This means any order, whether a person is delinquent or not, needs to be ordered unless there's some reason for an exemption.

CHAIRMAN KEATING Is it in the old language in this bill? **Ms. Pfeifer** It may or may not be, if we're not changing those sentences for other reasons, they're not here.

CHAIRMAN KEATING Section 6, distribution of payments. Is this distribution to the feds and the department? **Ms. Wellbank** This is distribution to families.

CHAIRMAN KEATING Is this the payment from the obligor? **Ms. Wellbank** Yes, it can be but most of the time it's the employers.

CHAIRMAN KEATING Sometimes FAIM is making the payments, is that right? **Ms. Wellbank** In those cases, FAIM is paying out AFDC money not child support, we still collect child support from the obligor and those are the payments we get to keep.

CHAIRMAN KEATING This has to be distributed to somebody. **Ms. Wellbank** Yes, these are cases where the obligee, the mother in most cases, is owed support. We collect it for her and pass it right out to her.

CHAIRMAN KEATING The mother in this case is not on AFDC. **Ms. Wellbank** Yes, we collect the support and pass it through. The obligated parent or the employer writes the check.

CHAIRMAN KEATING Do these funds go into an account? **Ms. Wellbank** The money goes into the state bank account, we process it and write a check, usually within 24 hours.

SEN. RIC HOLDEN I have a question on page 12, line 30, new hires. I'd like a summary of how that works in conjunction with the first 4 lines of page 13. The committee amended this section of the bill, and I'd like to know how you are going to deal with this. **Ms. Wellbank** The committee took the teeth out of the penalty but it does comply with federal requirements. An employer who doesn't report a new hire can get fined up to $3.00.

SEN. HOLDEN Do we really need this? We've been told it's federal law but I've never been satisfied we need it at all. **Ms. Pfeifer** Page 18 of the blue book addresses this.

SEN. JERGESON Is this section effective with only a $3.00 fine? **Ms. Wellbank** We're hoping employers will comply. I think most employers will because it's the law and takes them off the hook. We have employers in income withholding who fail to comply; we go after them for contempt and fine them for not complying.

CHAIRMAN KEATING I believe this was amended in Senate Judiciary. Confidentiality provisions equal to or greater than those provided by the department. Who determines confidentiality and what is the level of confidentiality? **Ms. Wellbank** Confidentiality would be determined by federal requirements. They are very, very strict and we take a lot of care with the information we have. The medicaid and state welfare programs have similar standards so we can be sure that they have equal or greater. I don't know if agencies of another state have jurisdiction and confidentiality provision, I don't know how we would determine that their confidentiality provisions are equal or greater, unless they had some federal reference.

CHAIRMAN KEATING Is there federal reference in this language that defines the standard of confidentiality? **Ms. Wellbank** Yes.

{Tape: 2; Side: A; Approx. Time Count: 10:15; Comments: None.}

Motion: **SEN. HOLDEN MOVES TO AMEND SB 374 WITH AMENDMENT #SB037401.A35. (EXHIBIT #5)**

SEN. HOLDEN In Senate Judiciary, we struck part B, line 17 & 18, I think that should have stayed in according to federal requirements. I would reinsert that line, adding to the last sentence that the employer may contact DPHHS to ascertain the validity of the order prior to implementing an income withholding order. The idea is that if the federal government is going to require these employers withhold and take other states' orders at face value, this gives our employers the opportunity to contact the department and ascertain the validity of the order. The department could develop rules to give our employers a reasonable amount of time to do this so they wouldn't be in violation.

CHAIRMAN KEATING You're asking the department to assume the obligation of ascertaining the validity of an order? **SEN. HOLDEN** To assist in helping an employer.

SEN. JERGESON Does this satisfy the Banker's Association concerning this area? **SEN. HOLDEN** I don't think the bankers are concerned with this area.

SEN. JERGESON The bankers want the department to ascertain the validity of the order. This amendment only addresses employers, you might want to put "an employer or other served and any recipient of a withholding order from another state could contact the department for validity". **SEN. HOLDEN** That would be fine.

SEN. MAHLUM I believe the bankers were talking this morning about scamming, and once a bank is scammed on something like this, they don't get their money back. This would take care of it because of this does come from another state to a business, this business can make a copy of it and send it right into your office and ask if this is for real or not, then the department can check on it and call the employer back and let them know if it is for real.

SEN. JERGESON This section deals with the employer. Is there another section that involves income withholding from financial institutions and the concerns of the bankers? **Ms. Wellbank** There is a section that requires banks to honor writs of execution, which they already do, and enhances that. I don't know that **Mr. Bennett's** concerns were in that area or in getting an income withholding order from another state or agency and not being able to tell if it was valid.

SEN. JERGESON Banks are employers, if they have an employee who is an obligor, I can understand them wanting to be taken care of there. I suppose almost every other business entity would have the same concerns. This amendment would take care of that. On the other hand, the financial institutions have the other obligations because if somebody has certificates of deposit, mutual funds or something that they own through the bank, and those investments derive income which would be obligated to child support somewhere, the bank is responsible for withholding from that income. **Ms. Wellbank** We don't generally do that. We would get a writ of execution and seize the asset instead of taking a portion of the income.

SEN. JERGESON In that case there would be a document delivered to the financial institution to secure the asset, and there's a section that deals with that and I would be interested in putting similar language as it applies to financial institutions and those kinds of documents. **Ms. Pfeifer** The section we're currently on is known as direct income withholding. It's a part of the Uniform Interstate Family Support Act so we are dealing with the requirement of the uniform act in this section. Thirty-six states voted to offer that act even before it was a federal requirement, including Montana. This is happening in more than half the states already, income withholding orders are being sent to employers of other states. It is important to put the stricken language back in because that is part of the uniform act and we're required to adopt that act verbatim. Financial institutions or other people being subject to information requests or subpoenas from other states is a specific federal requirement that occurs in a few different places in the bill, lien registry is one place, so there are a few other places where the federal law says specifically that those entities have to be subject to an order or subpoena of information request from an agency from another state.

{Tape: 2; Side: A; Approx. Time Count: 10:25; Comments: None.}

Vote: **THE MOTION TO AMEND HB 374 WITH AMENDMENT #SB037401.A35 CARRIED UNANIMOUSLY.**

CHAIRMAN KEATING Section 15, executional withholding of support obligations, who does the withholding in that area? **Ms. Pfeifer** Sections 14-21 are the provisions of the bill that relate to garnishment or withholding for public retirement systems. The federal law changed the definition of income that is subject to withholding to include public and private retirement systems. We have to be able to withhold from those systems.

CHAIRMAN KEATING Do people who have retired have kids that fall under AFDC? **Ms. Wellbank** These are only benefits that are being paid out. They're not the money you have in the system, but as they're paid out we can withhold and they're not necessarily families on AFDC,
they may have been delinquent in their support.

CHAIRMAN KEATING This is part of your accounts receivable collection process.

SEN. JERGESON If PERS gets a withholding order from out of state, is there language here requiring them to treat that as it appears? **Ms. Pfeifer** They would be subject to Section 13 the same as anybody else. The definition of income is expanded to include disability, pension and retirement income. Another specific part of the welfare reform bill requires states to have laws requiring the interceptions of lump sum payments, so if there were lump sum distributions from the retirement system we'd get it that way. We have to have a law to take that too.

CHAIRMAN KEATING Section 23, adding social security numbers to applications, license, marriage certificate, existing loans.

SEN. JERGESON We have to go back and amend our marriage certificates? **Ms. Pfeifer** New license applications have to have a number box placed on them.

Judge Larson Page 25, line 22. It's not frequent, but we have a number of cases where we don't know the social security number of both parties, I would suggest we insert "if available"

{Tape: 2; Side: A; Approx. Time Count: 10:30; Comments: None.}

Motion/Vote: **SEN. HOLDEN MOVES TO AMEND SB 374 BY INSERTING IF AVAILABLE ON PAGE 25, LINE 22. THE MOTION CARRIED UNANIMOUSLY.**

Motion: **SEN. HOLDEN MOVES TO AMEND SB 374 WITH AMENDMENT #440812CS.STS, ITEM #1. (EXHIBIT #6)**

SEN. HOLDEN There are people in the system that don't go to court. We may have a young man with an illegitimate child and he openly and willingly agrees to pay what he is told to pay. This would allow him to have a withholding exemption. Currently this

is done, but only if he hires an attorney and goes through the courts and gets a court order. There are people in the system who don't go through the courts and work directly with the department. This would simply allow him or her an opportunity to request an exemption from doing that. That's not saying it would be granted, but it would allow the opportunity to request the exemption without having to hire an attorney and take it through the court.

Ms. Pfeifer Since the 1989 session, the Federal Family Support Act required there be immediate income withholding for all new support orders, whether issued by CSED or the courts. Federal law sets up the exceptions very specifically when income withholding wouldn't be appropriate. Exceptions are allowed by federal law if the court or the administrative agency considers this at the time the order is created. This amendment would give another opportunity to argue about whether income withholding is appropriate.

Ms. Wellbank The determination needs to be made when establishing a child support order.

CHAIRMAN KEATING The court order is only when the obligor fails to pay? **Ms. Wellbank** No, if someone goes to court to get a divorce, the court will issue an order. At that point they can make a statement saying why it isn't appropriate for income withholding. A person can apply for our services and our agency can establish the order. Either our agency or the district court can establish an order in almost any case.

CHAIRMAN KEATING You establish an order for garnishing or just for payment? **Ms. Wellbank** The order is to set the amount of child support. Income withholding must be ordered unless an exception is made at the time that order is established.

CHAIRMAN KEATING If the department's attitude is that the first thing we do is garnishee the wages, then I'd like to have an amendment that says just the opposite, that only if the obligor misses payments or refuses to pay can you garnish his wages. Does the federal law require garnisheeing in the first instance, or only if there is failure to pay? **Ms. Wellbank** No, there are 2 types of income withholding. The first that you're talking about is immediate withholding. Statute gives specific exemptions from immediate withholding, but the whole purpose of the federal law, on which our state law is staged, is that income withholding is the main way of collection.

CHAIRMAN KEATING What exceptions are allowed in federal law? If they're allowing exceptions, then their first order isn't necessarily garnishing. **Ms. Pfeifer** It doesn't have to be, but the exceptions have to be met. The exceptions are in statute, 40-5-315.

CHAIRMAN KEATING What burden does that put on the court? **Judge McCarter** In a divorce case the presumption is that income will automatically be withheld. Then we look at exceptions. One of the parties may request an exception for automatic withholding and present it to the court. Most of the time the parties will agree outside court in their divorce settlement agreement that the payments will be made in another manner. If they establish that the obligor is reliable and has never had a problem in the past with paying temporary child support, then we adopt the agreement that the parties have arranged. Courts don't have to do automatic withholding, but we always start out with a presumption that the child support payments will automatically be withheld from the employer.

CHAIRMAN KEATING Is that the interpretation of the federal requirement? **Ms. Pfeifer** Yes, and state law.

CHAIRMAN KEATING What are the consequences if the state reverses that presumption and says the obligor will voluntarily pay and that there will be no withholding until several payments are missed? **Ms. Wellbank** It would not be in compliance with federal law, which does jeopardize federal funding, but also our collections would decrease because this is our primary method. I think we could probably develop language that would comply with the federal law by saying the judge or the department shall see that it's in the best interests of the child to not embarrass the parent, or something like that. To comply with federal law and make a new state policy would be to put it when these orders are established and the decision is made.

SEN. HOLDEN Our discussions have been based on the premise of a court order, the reasoning behind my amendment is to focus on department orders when people don't have attorneys. If I was to approve an amendment you're drafting, I'd want to make sure the people that don't have an attorney can not have child support withheld. **Ms. Wellbank** We can amend that section of the law and will work on what you want. We should be able to find a way to do this.

{Tape: 3; Side: A; Approx. Time Count: 10:43; Comments: Tape 2 Side B not recorded on.}

SEN. HOLDEN WITHDRAWS HIS MOTION.

Ms. Pfeifer Everything through and including Section 41, are minor changes to what is in the existing Uniform Interstate Family Support Act that was adopted in Montana in 1993. These changes comply with the federal requirement that we adopted verbatim.

CHAIRMAN KEATING Is there anything in there that somebody doesn't want us to see?

Ms. Pfeifer The blue book has the entire federal act, the uniform interstate family support act.

Motion: **SEN. HOLDEN MOVES TO AMEND SB 374 WITH AMENDMENT #440812CW.STS ITEM #2.**

SEN. HOLDEN I've been told that credit reports shows there is a garnishment but do not indicate if those are delinquent garnishments, good faith garnishments or just what kind of garnishments they are. This amendment directs the department to indicate if the person is up to date or not up to date.

CHAIRMAN KEATING Would the cause of the garnishment show up on the credit report? **SEN. HOLDEN** I would think so.

Ms. Wellbank We do not report people who's wages are garnished to the credit bureau unless they are delinquent 2 months or more.

SEN. HOLDEN I would think the department would be in full agreement with this amendment then.

SEN. MAHLUM I think this is a good amendment and doesn't hurt the department a bit.

CHAIRMAN KEATING This would direct the department that if enforced withholding is picked up by the credit bureau, the credit bureau will state that it's for delinquent support.

Ms. Pfeifer Can you clarify in this amendment that this is for the purposes of credit reporting by the department? We're not in control of other people that may report.

SEN. HOLDEN That wouldn't bother me. If you're going to make a report to the credit agency, they should know it's coming from you and everybody else looking at the report should be able to understand it's coming from you. If you think there's another word or two that needs to be added to the amendment to clarify it, I'd be open to that.

Ms. Pfeifer Perhaps you could add "to report by the department".

CHAIRMAN KEATING OK, for purposes of credit rating reports by the department, the department shall indicate if the withholding garnishment is for delinquent support.

{Tape: 3; Side: A; Approx. Time Count: 10:54; Comments: None.}

Vote: **THE MOTION TO AMEND SB 374 WITH AMENDMENT #440812CW.STS CARRIED.**

SEN. HOLDEN I have a question for the department on page 46, line 19. Can you recap your concerns with regard to where the children might be. **Ms. Pfeifer** This language comes straight from the Welfare Reform Act stating, the state has to have laws

in effect safeguarding information including prohibitions against release of information.

SEN. HOLDEN Is this going to affect parental rights to visitation? **Judge Larson** We're in control of visitation issues. Looking at the language, I would say for sure.

SEN. HOLDEN If the department may not disclose information regarding the whereabouts of a party, how are you going to find out where these kids are if you need to? It seems like there should be something in here that says the department has to give you that information. **Judge Larson** Would you want to say to the court if a party has violated a valid court order?

SEN. HOLDEN I guess that's where I'm going.

CHAIRMAN KEATING An entity failing to comply with this section is subject to contempt authority of the department, it's a court order, aren't they in contempt of court? **Judge Larson** I think **SEN. HOLDEN** means if the department has information as to where those children might be if custody or visitation orders were violated. This might be a way to track where those kids are. We might be able to locate the kids who are taken out of the jurisdiction in violation of court orders.

SEN. JERGESON On the other hand, this language could relate to an abusive spouse or parent. **Judge Larson** I think it should all be disclosed to the court. If the court is trying to locate an absent child, then they should be able to access information on where that child might be.

SEN. JERGESON Would a judge make the determination as to whether or not the obligor or obligated parent can be entrusted with the information as to where that child is? **Judge Larson** I just want to know which judge to contact in which state to find out what that judge is doing about custody or visitation support. In some instances, I need to know in what state that child was taken. This is something that could actually be beneficial to the courts regarding children who have been taken out of the jurisdiction contrary to court order.

April Armstrong, DPHHS You addressed the portion of the code that we changed to allow the court to get that information. It specifically refers to release of information to the other party, which in our case would be the obligated parent, or perhaps the obligee, and it's exactly for the point that was made. If the child is in protective custody, we have no business giving the information to the person who may potentially be the abuser, but we need to make the information available to the court if they need it. I don't think the two sections are at conflict. I think they say exactly what you expect them to say, the court is given the proper information, but the children are protected from the abuser.

{Tape: 3; Side: A; Approx. Time Count: 11:00; Comments: None.}

Judge Larson I want to step completely out of the bill, I'm requesting there be a new section to say the Supreme Court Administrator would coordinate the development of guidelines. Guidelines for these new grants have not yet been developed and they're asking for input from the states. This amendment would allow the Supreme Court Administrator to designate someone to develop the guidelines for the new federal grants. State judicial districts applying for grants would coordinate their efforts through the administrator's office also. Grant applications would be in a central location so priorities could be made if necessary. I believe this would have to go at the end of the bill. **(EXHIBIT #7)** handed out.

Ms. Wellbank There is a provision in the federal act that's not reflected in our bill that makes grant money available to jurisdictions who are interested in doing visitation projects. I don't know whether this was necessary, I think it's already in the federal bill. We don't want to do it, so this amendment would not be a problem for us.

CHAIRMAN KEATING Since the department doesn't have any objection and the Supreme Court Administrator would be the operable party we'll have a amendment drafted.

Judge Larson Page 80, line 28, I request a one word change. "At the request of a party and" is the current language, I would strike the "and" and insert "or". **CHAIRMAN KEATING** "At the request of a party or upon a showing that the party's case was substantially prejudiced", is that what you're saying? **Judge Larson** Yes, so the person would have the right to request a hearing to see who's making the decisions.

Ms. Wellbank We may have to get a revised fiscal note for this because our current process is telephonic hearings. Last year we conducted 673 hearings telephonically and 20 in person hearings. If in person hearings become equally available and the rule rather than the exception, it could be that more people will request them which would require much more travel and scheduling on our part and the custodial parent's part.

CHAIRMAN KEATING In person hearings are really part of due process, are they not? A person who is not comfortable with the telephonic hearing should be able, as a part of due process, to request an in person hearing before the telephonic hearing is imposed upon them. **Ms. Wellbank** The Department of Labor does telephonic unemployment hearings.

CHAIRMAN KEATING Right now it looks like the department is emphasizing telephonic hearings to avoid the expense. I understand that, but I still think there's certain due process here for a person that's not comfortable with telephonic hearings.

Motion/Vote: **SEN. BAER MOVES TO AMEND SB 374 BY CHANGING "AND" TO "OR" ON PAGE 80, LINE 28. THE MOTION CARRIED UNANIMOUSLY.**

Judge Larson Page 81, lines 9 & 10 addresses timelines that the department has stricken from the bill. Also page 53, line 22, had timelines for issuing decisions that the department has stricken. I don't quarrel with the fact those timelines may be unfair to the department, but I think due process would indicate some reasonable timeline, 3-6 months, when people can expect to get a decision or be told why it's taking so long. **CHAIRMAN KEATING** Page 53, line 22, within 20 days of the hearing, is that what you're saying?

SEN. BAER On page 53, line 22, **Ms. Wellbank**, what do you think would be fair for a time period for you to respond? **Ms. Wellbank** We could go with 6 months and if we could insert some sort of an exception for good cause.

SEN. BAER 6 months seems a long time to wait for a decision after a hearing. **Ms. Wellbank** We would like 6 months, mainly for the exception rather than the rule. Frequently there are continuances after briefings and briefing deadlines and dates that would extend that 20 days. The original 20 days timeline was because federal regulations required us to perform 75% of our actions within certain time periods. These are for audit and federal funding purposes, they want to make sure that we're moving the cases. The timelines were never intended as due process requirements. In a recent court decision that we lost, we considered this advisory rather than regulatory, we don't feel it will be possible to meet 100% of our cases within 20 days. We'd have to quadruple our hearing staff to be able to do that and some cases would still fall out, so if we could go with the 6 months, we'd appreciate that.

SEN. JERGESON Does the clock start ticking at the beginning of the hearing or the conclusion of the hearing? **Ms. Pfeifer** Most hearings are concluded in the same day, but some could go 2-3 days. We haven't had this question come up, I suppose it would be at the conclusion, once all the evidence was in.

Motion: **SEN. HOLDEN MOVES TO AMEND SB 374 BY REINSERTING PAGE 53, LINE 22 WITH 20 DAYS CHANGED TO 60 DAYS.**

CHAIRMAN KEATING Within 60 days of the hearing, the hearing officer shall enter a final decision. **Ms. Wellbank** An exception for good cause would be preferable. We're concerned about class action suits and not meeting time frames and what happened on this case we lost. The obligee who was owed about $78,000 has no way of collecting because we didn't comply with the time frame.

SEN. HOLDEN I'd add that to my motion.

Judge Larson I would ask "within 60 days of the conclusion of the hearing", because there is always the possibility of a continuance on the hearing.

Ms. Wellbank Often the record is left open after the hearing for more evidence.

Ms. Armstrong Perhaps with the close of the record could be inserted. Often the obligor is given the opportunity to provide receipts or something so the records may be left open for 10-15 days after the conclusion of the hearing.

Judge McCarter Close of the record is meaningless. I suggest if you say something, it would be 60 days after the hearing has been concluded and all the evidence has been submitted.

CHAIRMAN KEATING "Sixty days after the hearing has been concluded and all the evidence has been submitted, except for good cause, the hearings officer shall enter a final decision" etc.

Vote: **THE MOTION TO AMEND SB 374 CARRIED UNANIMOUSLY.**

CHAIRMAN KEATING Back to page 81, what kind of a timeline do you want? Service of notice with intent to withhold income, inform the obligor of the hearing results concerning whether income withholding will take place. Why isn't 45 days enough? What's the motion?

Motion: **SEN. HOLDEN MOVES TO AMEND SB 374 BY REINSERTING SUBSECTION B ON PAGE 81, LINE 9 & 10.**

Ms. Wellbank The date of service of the notice is the day the obligor knows about our actions. He then has to request a hearing and we have to schedule it. Doing this within 45 days is very difficult to do in 100% of the cases. We generally try to comply with it, but there are always exceptions. We're concerned about the law implying we need to do all of this during that time.

CHAIRMAN KEATING What would be a reason you can't do it within 45 days? **Ms. Wellbank** This would be 45 days from the time they're served. They have 10 days plus 3 week days to request hearings which can be 2½ weeks into the 45 day time frame before they've even requested a hearing. Once they've requested a hearing a date needs to be found when everyone is available for the hearing. The hearing may not be until thirty days. That would leave 15 days to issue a decision, and depending on how complicated it is, that may not be enough time.

SEN. BAER Another possibility would be to require them to notify the intent to withhold income within a certain period of time, and then also require them to administer holding of the hearing also within a certain period of time after it takes place. We

have two problems here, they have to have the opportunity to request a hearing after being notified of the intent to withhold. Then there has to be a hearing and notification of the decision a certain time period after the hearing and all the evidence presented as we did in the last motion we made on the other section.

Motion: SEN. MAHLUM MAKES A SUBSTITUTE MOTION TO AMEND SB 374 BY CHANGING 45 TO 60 DAYS.

Ms. Armstrong It's my understanding from **SEN. BAER'S** comment that he wants to be consistent with the last section. The last section that you proposed to amend was after the close of the hearing. Are you intending to amend this to be 60 days after the close of the hearing or receipt of all the evidence, or are you proposing an amendment just to be 60 days after the obligor is served? It's fairly common that an obligor or an obligee may wish to do a discovery schedule after service because we may not have all the information, and I'm concerned about the timeline being so short that you can't even allow an obligor to get his finances and his records together.

SEN. BAER This is why I made the suggestion that we look at this two different ways, so there is the opportunity to request the hearing and prepare for that hearing, and then they have the right to receive a decision within so many days after the hearing and all the evidence is presented.

CHAIRMAN KEATING Let's hold off on any amendments right now and craft some language for a timeline that's appropriate for the department and for the purposes of the timelines.

Judge Larson I would need to be in the loop. There's another timeline at the bottom of page 81, top of page 82 for workable data. Page 57, lines 11 & 12 relate to not having copies with the district court and in the explanation that follows this central registry will be the be all and end all of these documents. I don't think it's appropriate to let this separate track of letting them file their administrative orders and not having to file them with the district court. When we're out of the loop, people who normally rely on the courthouses for information will be out of the loop. We're going to work diligently to get the central case registry up, but right now we docket these things with the district court and then the operators just report orders.

Ms. Wellbank: If we have a lien against real property, we would still file in court. If there is no reason for the lien, we wouldn't file. Administrative orders have full face credit under federal law. Docketing in district court is more of a formality, we don't docket in every one. This is driving the clerks of court crazy and they introduced a bill to start charging us for all these abstracts because this is a majority of their work load. I'd recommend changing the effective date of this

particular section and make it effective on the date of the central registry.

Judge Larson I think that's what I said, but actually when the central registry is operable and actually exchanging information between the district courts.

Ms. Wellbank The requirement is that it be operational in October 1998, and so we could make this section effective in October 1998.

Judge Larson I think it should be actually operational. We're all hopeful it will be done, but if it's not up and running we want to be able to have what we have now.

CHAIRMAN KEATING What if we strike this language, line 11 & 12. You're operating without this now. **Ms. Wellbank:** We're operating without it, but we're not paying for the abstracts. HB 195 will start charging us for the abstracts. Additionally, this was a clerical administrative duty that's taking our hearing staff 2 FTE's to do. With the increasing number of hearings, we'd like to be able to redirect them because we think this is purely administerial and not necessary.

CHAIRMAN KEATING It still means that there would be liens against property without being recorded. **Ms. Wellbank:** No, in order to get the lien against property, we would continue to abstract in district court, but we wouldn't have to abstract 100% of our orders as we do now. It doesn't create anything new in liens, when we abstract all we're doing is sending a summary of the order to district court for their file. This would say we'll keep it in our own files and everyone has had notice, if we file the lien we need to go to district court and do all the regular things.

Judge Larson Writs of execution are issued by the district court and they're only issued after the abstract is filed. That's a very important issue for many people in business and the community. Section 54 creates this statewide lien on property which doesn't contemplate any notice filing in the county where the property is located. If they're going to have this statewide lien on property you should have it filed in the county where the property and court is.

Ms. Pfeifer We issue different kinds of orders, paternity determinations have no lien effect and there's no reason to abstract those to district court. We wouldn't have to abstract administrative orders to district court. Those we wanted a lien on would continue, we'd abstract them with the district court to have a lien effect. We don't do writs of execution in all cases, we may collect in other ways. We want the ability not to have to file them, but to file them where there's a need to have a district court effect to them.

SEN. JERGESON Would there be a way to leave this language in but put an exception in and reference the statutes related to property liens and writs of execution and everything that has lien effect? **Ms. Wellbank** We could clarify that anything with a lien effect would still be abstracted to district court. It would have to have a lien effect, but we'd be willing to clarify that in the law.

CHAIRMAN KEATING I think it should be clarified someway. **SEN. BAER** Would it be effectual if we added a subsection 4, making the above effective upon the up and running central case registry? **CHAIRMAN KEATING** As the judge pointed out, the central case registry might not be up and running for a couple of years.

Ms. Pfeifer If it's not filed with the district court, it doesn't create a lien.

CHAIRMAN KEATING What kind of final administrative order would be effective as though it were court ordered. Why do you have that language in the first place? **Ms. Pfeifer** In 1985 we developed an administrative process because we were having problems with other states honoring our administrative orders. Other states didn't do administrative orders, they did court orders. Federal law states administrative support orders and paternity orders are entitled to full faith and credit and are as effective as a district court order. This gives us the lien effect of a district court order, the court will docket it and it becomes a judgment just like a district court order would be. This gives us extra enforcement.

CHAIRMAN KEATING I'm going to recommend that you rewrite this language to make it more clear. The current language is not acceptable.

SEN. BAER I'm uncomfortable with giving an administrative order the same force and effect of a district court without going through the district court. I don't like that at all.

Judge Larson The issue of how child support is figured is not a section in the bill but relates to what is driving everything in the bill. I passed out a packet to you, the last section of the packet is the State of Wisconsin's child support guidelines. **(EXHIBIT #2)** Our complex guideline system is receiving national recognition but it takes forever to complete and creates controversy. People manipulate them, find ways to argue and bring these into child support/child custody issues. Oftentimes the guidelines drive who has custody for how many days, because they know under our system if a parent has 110 days, they're entitled to a certain reduction. A number of judges have told me that they need something they can work with, we often end up with one set of guidelines from one side, another set of guidelines from the other and then hire a special master to give a third. Then the decision is made. There isn't anything technically

wrong with what the department does, but I think it would free up some of the money you are looking for. I know the department opposes this and has strong arguments for the current system. I think you need to look at what's actually driving the wagon, this complex formula that we've developed. The Wisconsin option is 17% for 1 child, 24% for 2, 29% for 3, 31% for 4, 32% for 5, you take out the expenses and put back in depreciation. **(EXHIBIT #8)** handed out.

SEN. JERGESON I can see this works well for the typical family with 2.1 children if they're normal in every respect. What about disabled children or children in a drug treatment program? Is the obligated parent under this scenario absolved of any responsibility for helping with the child that may be more expensive than normal? **Judge Larson** We need to look at how the State of Wisconsin deals with these issues.

SEN. JERGESON What if there are 2 children, one developmentally disabled, the obligated parent looks at this formula and say they're just obligated for 25% of their income, no matter how expensive these 2 children may be to maintain. **Judge Larson** The current system in Montana doesn't make any adjustment for that. Unless the obligated parent is supplying some of the extra treatment, it's treated as a deviation.

Ms. Wellbank: This is a major public policy issue. South Dakota just completed a two year study by an interim legislative committee to come up with guidelines. Montana currently does the guidelines by rule. We have hired private contractors to gather and study data from the judiciary, individual parties, lawyers around the state and child support workers. Our guidelines take into consideration both parents income and assets and special circumstances in their household. They are complex but determining income is sometimes complex, especially with self-employed people. The Wisconsin model **Judge Larson** proposes would be exactly what I would support, but it isn't fair and equitable and the majority of people that we've interviewed want a fair and equitable model. I recommend that, if you don't want to leave the guidelines to the department's discretion, the legislature appoint an interim study commission for this issue. It is extremely complex.

{Tape: 3; Side: B; Approx. Time Count: 11:53; Comments: None.}

CHAIRMAN KEATING This is a major policy decision and too much for the subcommittee to deal with. I'd like an amendment for review by the whole committee. We could try to adapt Wisconsin's statute to Montana. I'd like either a summary or specific draft of the Wisconsin language to fit Montana's language for purposes of amendment and discussion.

Taryn Purdy, Legislative Fiscal Division I will talk with one of the attorneys.

CHAIRMAN KEATING Have you addressed all of your concerns **Judge Larson**? **Judge Larson** My last issue addresses the circuit court on page 69, lines 9 & 10. It states the clerk of court shall issue an order, I believe it is more appropriate for the court to issue a temporary order. Clerks don't usually issue orders that people are required to file. Strike "clerk and recorder" on lines 9-10 and insert "the district court shall issue a temporary order".

Motion/Vote: **SEN. HOLDEN MOVES TO AMEND SB 374 BY STRIKING THE WORDS "CLERK OF COURT" AND INSERTING "DISTRICT COURT ON LINES 9 & 10 AND STRIKING THE WORD "AN" AND INSERT THE WORDS "A TEMPORARY" ON LINE 10. THE MOTION CARRIED UNANIMOUSLY.**

ADJOURNMENT

Adjournment: 11:59 a.m.

SEN. TOM KEATING, Chairman

SHARON CUMMINGS, Secretary

TK/SC