

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 14, 1979

The thirty-seventh meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, Chairman, in room 331 of the capitol building on the above date at 9:33 a.m.

ROLL CALL:

All members were present with the exception of Senator Brown, who was excused.

CONSIDERATION OF SENATE BILL 380:

Senator Hafferman, District 11, Lincoln County, gave an explanation of this bill, which is an act to revise certain laws consistent with limits set by statute. He stated that in 1967, the legislature passed sovereign immunity legislation and he gave a history of this legislation.

Glen Drake, who is a former senator and served on the interim committee in 1967 - 1969 on sovereign immunity laws, gave a statement in support of this bill.

Boyce Clark, representing the Independent Insurance Carriers of Montana, stated that last year they very much supported the sovereign immunity bills that were entered and that he hoped that the committee would look with favor on this bill.

Pat Melby, representing the Alliance of American Insurance, gave a statement in support of this bill.

There were no further proponents and no opponents.

There were a few questions.

A motion was made that the bill do pass. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 376:

Senator McCallum gave an explanation of this bill, which is patterned after a Washington bill. This bill is an act to require recipients of public assistance to report income not previously declared; requiring recipients to repay the state for assistance overpayments, and providing a civil penalty when fraudulent means are used to obtain assistance.

Jack Vaughn, Administrator of the Investigation Division of the Department of Revenue, gave a statement in support of this bill.

Mr. Ron Bartsch, from the Department of Revenue was also present for answering any questions.

There were no further proponents and no opponents.

Senator Galt asked a question in connection with line 8, page 2, about what "and is a debt due to the state" actually means.

Senator Turnage questioned the wording "purposeful failure to reveal resources or income" and whether this is not already covered in the codes. Mr. Vaughn stated that there is a companion bill that is being introduced and it specifically enumerates that welfare fraud is to be considered theft and that this is going into the theft statute. Senator Turnage commented that this makes it even worse.

Senator Towe asked about a situation where a person comes in, fills out an application and subsequently something happens and they get more income, and he asked if they want to make failure of not reporting that income a criminal offense comparable to theft.

Mr. Vaughn replied that the language in the theft statute does not cover welfare fraud right now and this new bill will cover it.

Senator Turnage moved that the new language on page 1, lines 15 and 16 be stricken. The motion carried unanimously.

Senator Van Valkenburg moved that on page 2, line 8, after the word "and" insert "until fully paid". The motion carried unanimously.

Senator Turnage questioned how often does a recipient of A.D.C. have to come in. Mr. Vaughn answered every six months.

Senator Turnage stated that this makes it prima facie evidence of a crime when someone doesn't report his income and that tends to be a little sticky. Senator Towe said that he agreed and if he does not get in immediately after receiving some amount, he has committed a crime. Mr. Bartsch stated that it must be within ten days of getting a check and they would look at bank records to determine when it was deposited.

Senator Turnage questioned if they really have to have that presumption, and Mr. Vaughn stated that he thinks the whole idea is that people are lying to us regularly and that it is way over to the other side when we do catch them. Senator Towe said he did not think they need a presumption.

Senator Turnage moved that the bill be amended on page 1 line 23, by striking the new material following "department" through "53-2-107" on line 25. The motion carried unanimously.

Senator Van Valkenburg wondered what sort of notice will these people get that they have to report any change. Mr. Bartsch said that it states this on the application form and that it is explained each successive time once every six months unless there is another reporting period earlier. Senator Turnage suggested that this language be put on the back of the warrant. Senator Towe questioned if there was any doubt that they were being adequately warned and Mr. Bartsch said that there was no doubt at all.

Senator Turnage moved that the bill do pass, as amended. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 454:

Senator Stimatz gave an explanation of this bill, which is an act to clarify that a youth may waive the right to counsel unless a petition has been filed under the Montana Youth Court Act.

There were no further proponents and no opponents.

Senator Turnage moved that this bill do pass.

Senator Towe asked what was the normal procedure if someone is picked up and wondered if the petition was filed immediately or do they hold it for a while. Senator Stimatz stated that how much time they have to deal with them has a great deal to do with it.

Senator Turnage stated that the problem is a question of interpreting all proceedings on a petition and that he believed that in 99.2 per cent of the cases, petitions are never filed.

Senator Van Valkenburg wondered about the police dealing with some 16 and 17 year old, who has never had any problem whatsoever before and they request that he waive rights to counsel. Senator Turnage said that he has to have his parents in there, if they get rough with him, there is no question but what his constitutional rights are not observed.

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Senator Anderson commented that at some point, it stops being an investigative process and begins to be something more serious.

Senator Stimatzy stated that he did not think this bill would hurt anyone.

A vote was taken on the motion to do pass. The motion carried with Senator Towe voting no.

CONSIDERATION OF SENATE BILL 221:

Senator Turnage gave an explanation of this bill, which is an act to establish administrative procedures for enforcing support for dependent children.

Jack Vaughn, Administrator of Investigation Division of Department of Revenue, gave a statement in support of this bill.

Garth Youngberg, representing the HEW, Office of Child Support from Denver, gave a statement in support.

Senator Turnage stated that he requested Fred Silvester, a specialist from the Department of Social Services of the state of Utah, to come and give us information on this bill.

Mr. Silvester stated that the child support program in Washington has tried to work out a state-to-state exchange so that they can use each other's expertise. He said that in the 30s, the primary reason for going on Aid to Dependent Children was the death of a parent, but now this has changed drastically. He stated that now, 90 per cent are from the desertion of one parent and this placed a new emphasis on the program. He said that one of the reasons why absent parents were not supporting their children was their inability to go efficiently after the parent who disappeared and he stated that child support is one of the lowest priorities in our society.

He gave many statistics and told how the program in Utah has been effectively working.

Mike Garrity, representing the Department of Revenue, said he was in support of a uniformity to these laws across the nation.

Mr. Silvester stated that it is important not to abuse the rights of the absent parents, they send a notice to them, the person has the right to have a hearing, or the right to negotiate with the agency, the state has the right to get an order, once they get an order it makes that order legally enforceable. He stated that this bill provides specific remedies. He said that there is increased collections and more money coming into the general fund.

Senator Van Valkenburg questioned if this money has to be returned to the federal government. Mr. Silvester stated that welfare money is matched by the federal government and they get their matching fund back and the states get their matching funds.

Mr. Youngberg stated that the federal law required that in ADC cases, they had to assign rights to the state, it put the burden on the states and the states had to set up a way to do it. We had to see that the states have the tools to try and collect this money. He stated that the state of Washington and the state of Utah lead the nation in their collection - \$36.00 per case per month in the State of Utah and the state of Montana collects \$7.73, and is about in the middle of the nation in their collections. He said that often with the husband paying on a regular basis and with other programs, that the wife often becomes self-sufficient.

Senator Turnage question on page 35, line 25 allowing all administrative review-de nova review- and that our administrative procedure act does not lock this in.

Senator Towe stated that this is kind of rulemaking authority and gives a tremendous amount of authority to the department and that he is apprehensive when you turn over to the state this kind of authority. He stated that on page 15, it states a notice is to be send as provided in the rules of civil procedure and if you don't pay in twenty days, liens will be taken on property. He said in the state of Montana, we allow public notice and he said what if a person moves to California and without his knowledge, notice could be served, and he will have a lien against his property. He said there would be an enormous amount of trust put on the department.

Mr. Silvester said that you need rulemaking authority that this is a very logical thing if the department is going to initiate this. He stated that in the case of liens, it is an

important part of the child support enforcement and he stated that in 22,000 child support cases, they found, prior to implementation of this program, that 5 per cent of the absent parents voluntarily paid support. He said that if you rely on the courts to do this, it is ineffective and that you have to have someone who will be responsible for this enforcement. He also stated that Utah has the same provision in their law for notice by public notification and that not one was entered into by public notice; and he felt that the committee would find that it was not being used.

Senator Towe stated that the lien thing really bothers him and that it depends on the good faith of administrators; and if they were not careful about it, that they can abuse it and that the notice could become meaningless. He felt that without court supervision, there is no other area in the law where you can get a lien without going through the court except the internal revenue.

Senator Turnage stated that there was no right of redemption and that he agreed with Senator Towe and that he did not like to think you should have the department of revenue selling property. It was noted that in section 28, there was a redemption period of 240 days after sale of the property.

Senator Anderson stated that these people are not the cream of the crop of our society in that 95 per cent of them have skipped out on their families; and that we have mechanics liens that cover everything from automobile repairs to branding cows and that under the processings, they have regress to the courts.

Senator Towe stated that he hates to get us in a situation where there will be some hardships on some people who really try. He stated that it has become too easy to get a divorce, abandon one family and go start another one; but the guy who is being responsible, we must be careful of and let's not go overboard.

Mr. Silvester stated that in the majority of cases where there is an honest desire to make child support payments, we do not have these problems, but this is designed to get at the hardcores and that you must have some trust in the agency doing their work. He also said that in the state of Utah, they have established a sliding fee schedule for non-welfare recipients and this discourages them for applying for welfare.

Mr. Youngberg testified that the IRS can come in and take any property and that this has been available since 1975 and only one case that has been collected on.

Senator Anderson wondered if Jack Vaughn could supplement the fiscal note assuming a recovery rate similar somewhere between our present rate and what Utah collects.

Mr. Vaughn stated that he had a minimal amount of records now, but there are only three county attorneys that are doing anything now; and he stated that they have agreements with some, but they are not doing anything.

Senator Towe said that it seems that a lien should be through the courts, get the courts involved so that the discretion of the agency is at least reviewed by the court.

Senator Turnage commented that a warranty of distress becomes a judgment right and this is a potential right on personal property. He wondered how you could loan a farmer some money if there is a lien on his cattle. Senator Towe said that the lien could be filed, but it could not be executed unless by a court order; and this is more stringent than anybody filing a mechanic's lien or any other kind of lien.

Senator Lensink suggested that Senator Turnage work on this bill and see what they can come up with.

Mr. Vaughn stated that they are all available for comment and they felt this was ranked the highest priority of the bills from the department of revenue.

Senator Lensink noted that the state of Utah has been commended nationwide for their work on this matter.

There being no further business, the meeting adjourned at 11:37 a.m.

Everett R. Lensink
SENATOR EVERETT R. LENSSINK, Chairman
Senate Judiciary Committee

Date Feb. 14, 1979

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

Each Day Attach to Minutes.

Please sign & return the following

DATI

COMMITTEE ON

Franklin Endicott

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check On Support Op
Senatorial Staff	Senate	380	✓
Julie Nystrom	aid		
Beth O'Gwynnberg	HEW - Office of Child Support	221	
Bob Bork	HEW - Code Review	221	
Red Bratich	Dept of Revenue	376	✓
Jack Vaughan	" " "	221	
Pat Melly	Alliance of Concerned Jrs.	380	✓
Michael J. Flattery	Dept. of Revenue	221	
Fred H. Silvester	Dept of Social Services (4th)	271	✓
Raymond L. Under	MT. Dept Revenue	55 221	
Jerry Johnson	Alt. Statewide Income Organization	321 376	✓
W. L. Winkler	State Bar	380?	

STANDING COMMITTEE REPORT

February 14

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MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 376

Respectfully report as follows: That Senate Bill No. 376, introduced bill, be amended as follows:

1. Title, lines 8 and 9.

Following: "ASSISTANCE" on line 8

Strike: ";" CLARIFYING FRAUD; AMENDING SECTION 53-2-107, MCA"

2. Page 1, lines 12 through 18.

Strike: section 1 in its entirety

Renumber: all subsequent sections

3. Page 1, lines 23 through 25.

Following: "department." on line 23

Strike: remainder of line 23 through "53-2-107." on line 25

DO PASS

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4. Page 2, line 8.

Following: "and"

Insert: ", until fully paid."

5. Page 2, line 13.

Following: "and"

Insert: ", until fully paid."

And, as so amended,
DO PASS

STANDING COMMITTEE REPORT

February 14, 1972

MR. President:

We, your committee on Judiciary.....

having had under consideration Senate..... Bill No. 389.....

Respectfully report as follows: That Senate..... Bill No. 389.....

DO PASS

STATE PUB. CO.
Helena, Mont.

Everett R. Lensink Chairman.

H.R.

(#37)

STANDING COMMITTEE REPORT

February 14, 1979

MR. President:

We, your committee on Judiciary,

having had under consideration Senate Bill No. 454,

Respectfully report as follows: That Senate Bill No. 454,

DO PASS