

MINUTES OF THE MEETING
HUMAN SERVICES AND AGING COMMITTEE
49TH LEGISLATURE
SPECIAL SESSION NUMBER III
HOUSE OF REPRESENTATIVES

June 23, 1986

The meeting of the Human Services and Aging Committee was called to order by Chairman Nancy Keenan on June 23, 1986 at 11:00 a.m. in room 325 of the state capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 41: Rep. Jack Moore, sponsor of HB 41, stated he was proposing a constitutional amendment to permit the legislature greater discretion in providing economic assistance and social services to persons in need. He said that, if HB 41 was approved by the legislature, the proposed amendment would appear on the November election ballot. On the ballot, the voters would be asked to decide whether or not to amend the state constitution in order to allow the legislature greater discretion to determine who is in need of economic assistance and social services in Montana.

Rep. Moore felt there was an absolute need for this constitutional amendment because of recent court decisions that seem to limit the ability of the legislature to restrict eligibility for general relief assistance. He indicated that HB 41 was not intended as a punitive measure, and he believed the bill would complement HB 28, which would be heard later, as well as HB 12, which passed in the last special session. Further, he felt the legislature should be allowed greater discretion in determining who is in need of services because the rolls in the general relief assistance program have increased at an alarming rate during the past year. Rep. Moore offered an amendment to HB 41 to be prepared by the committee researcher, Tom Gomez.

CONSIDERATION OF HOUSE BILL NO. 33: Rep. Bill Hand, prime sponsor of HB 33 stated this bill lends itself to the general assistance case load where payment levels now far exceed projections even in the 1985 legislature. These projections for FY87 indicate that if no changes are made in the program, SRS will be required to make an almost \$1 million supplemental request. It is his understanding the bill needs to be amended due to a recent supreme court decision which the committee will be asked to do at a later time.

CONSIDERATION OF HOUSE BILL NO. 28:

Rep. Dorothy Bradley stated this was an alternative to everything which had previously been considered in the way of able-bodied that the committee and legislature passed a year ago and was turned down by the supreme court, plus the constitutional amendment approach which was also voted down by the legislature in the March special session. She further stated there is no question that because of limited financial resources in our state today we have to think very carefully about non-able-bodied people, who are completely at the mercy of the state and what we decide to do for them, i.e. the retarded, mentally infirm or a wide variety of other things. Secondly, the challenge is to come up with a statutory proposal that is as clear as possible. In her opinion, able-bodied is a vague kind of term that could get us into some legal problems in the future. Discussion followed on what does able-bodied really mean, and the fact we are really looking at the wrong kind of definition. The second part of the challenge is to try and work within the supreme court dictates of the Butte Community Union case, that overturned our previous decision on the able-bodied. The court did not like us making the distinction of age. They said we have made an arbitrary classification and the court would not abide with that. Secondly, the supreme court said something which was a surprise to the plaintiffs in the case, is that they did not say welfare is a fundamental right. For this reason, Rep. Bradley felt they were saying the legislature could come back with a different kind of classification and make another attempt with a different kind of classification that is not arbitrary which has nothing to do with age, very narrowly and carefully defined and would uphold a supreme court test if it went that far.

It sets up three different categories (1) voluntarily destitute, (2) unemployable and (3) employable for classifications. A person who is determined "unemployable" has three reasons which could fit into this classification: they are physically infirm, mentally infirm, or they have a dependent minor or minors. As far as being found physically or mentally infirm, this would require the diagnosis or basically the certification of proper medical personnel or proper authorities that deal with benefits, or mental health expert. If a person is determined by professionals to be unemployable, this state does have an ongoing responsibility to provide some kind of minimal care.

Rep. Bradley pointed out that the effective date when this bill would actually be triggered insofar as anyone being removed from benefits really meshes with Rep. Hand's bill, which would probably be July 1. The six-month period would carry on until January 1; therefore, any person who is getting that six-month benefit would not lose it until the legislature is back in session. Therefore, by her calculations the fiscal implications should be indential to the governor's bill because the obligations we presently have under the law will last until that time. Rep. Hand's bill has an effective date of November 1, so the triggering period when someone is removed would not take place until January 1. Rep. Bradley is opposed to amending the constitution unless it is absolutely a last resort and she very strongly believes they do not have to go to a last resort at this time because the leeway she believes the supreme court has left us. All they have said is they do not like the age classification. But, they said, this is a fundamental right; that leaves the legislature going a statutory route with a lot of flexibility.

The second problem she has with the constitutional approach is that the language which is proposed to be inserted really renders that entirely meaningless. The constitution stands for fundamental rights and is not the place for vague language.

Chairman Keenan called on Dave Lewis, Director of SRS to make his presentation. He submitted written testimony to the committee secretary. See (Exhibit 1). Mr. Russ Cater, legal counsel for SRS explained the issue regarding the supreme court decision just received. Mr. Cater also discussed the amendment which was given to the secretary. (See Exhibit 2).

Chairman Keenan called for proponents to any of the three bills. Lorna Frank, representing Montana Farm Bureau, spoke in support of all three bills. The Montana Farm Bureau feels that with the Supreme Court decision the responsibility for the welfare people in Montana should be up to the legislature and the people of Montana, not the Supreme Court. We feel that we should provide help for those who cannot help themselves, and she stated, she is reading from their policy book, which was adopted last year at their annual convention. We encourage programs to train persons at productive jobs to improve their job opportunities, but we oppose the retraining of any person who has had prior job skill training thru any government agency unless retraining is necessary as a result of debilitating injury or sickness. (There is no Exhibit #3). Chairman Keenan called on opponents to any of the three bills. Diane Sands, representing Women's Lobbyist Fund spoke in opposition to House Bill 28, House Bill 33,

and HB 41 and delivered testimony to the secretary to be distributed. See Exhibit (4).

John Ortwein representing the Montana Catholic Conference spoke in opposition to HB 41, and delivered testimony to be distributed. See Exhibit (5).

Adele Fine, representing the Women's Law Caucus, University of Montana Law School, spoke in opposition to the three bills, HB 41, HB 28 and HB 33. (See Exhibit 6)

Judith Carlson, representing the National Association of Social Workers, Montana Chapter, spoke in opposition to all three measures.

Don Judge, Montana State AFL-CIO appeared in opposition to House Bill 41 which was not included in the call, (his statement) and in fact, submitted testimony in opposition to all three bills. See Exhibit (7).

Mignon Watterman, representing the Montana Association of Churches, feels the legislature must address the most basic issues of providing the fundamental needs of food, clothing, shelter, and medical care for Montana's most needy and supports the funding of social services so as "to provide the necessities of life compatible with decency and health." See Exhibit (8).

Richard Freeman, representing the Montana Low Income Coalition spoke in opposition to HB 28, HB 33 and HB 41. See Exhibit (9).

Dan Shea, Attorney from Helena, spoke in opposition to the provision whereby it is proposed that the constitution be amended and he stated that the proposal does not amend the constitution with regard to general assistance. That proposal abolishes the constitution with regard to general assistance and it really concerns him. It is not a question of actually eliminating, taking the teeth right out of the constitution and substituting nothing in there that the legislature does not have by virtue of its own legislative power anyway. He asked the committee why didn't they just say we want to abolish this, eliminate it entirely from the constitution. Then he thought it would be honest and the voters would have an honest judgment on whether or not to vote for that provision. He felt the legislative committee knows the constitution is a basic doctrine -

the legislature has those powers that are either right in the constitution or that may be inferred. The present constitution says the legislature has certain duties with regard to welfare. The amendment says the legislature in its discretion can do what it pleases with regard to welfare. Well, if there were not constitutional provision in there it would always be the right of the legislature to do what it pleases with regard to welfare. So if you are going to submit anything to the people, he asks this committee to be honest, to tell the people exactly what you are doing. You are not amending the constitution, you are abolishing it with regard to welfare and that bothers him as a lawyer and it bothers him as a former justice of the Montana supreme court. He does not know of any provision in the entire United States that is more christian in motivation than that document. We cannot ignore the needs of the poor or the misfortunate. That document, the constitution as it now exists, is simply a recognition of that fact. It says we are taking responsibility for the poor and we recognize our responsibility to help them. So I am asking this committee not to go with the proposed constitutional amendment, to simply say no, we are not going to amend that document. But if you still insist on doing it, he insists that you be forthright with the people of Montana and tell them exactly what you are doing.

Lori Buxel, G.A. worker from Helena, and MLIC spoke in opposition to HB 41, HB 33, and HB 28. See Exhibit (10).

Connie Conway, representing G.A., C.C.C. and MLIC spoke in opposition to HB 41, HB 33 and HB 28. See Exhibit (11).

Chet Kinsey, representing Montana Low Income Coalition and Montana Senior Citizens spoke in opposition to HB 41 for the reason the constitutional amendment removes protection for the elderly, the disabled and the unemployed. See Exhibit (12).

Sue Fifield, representing MLIC and LIGHT spoke in opposition to HB 41, HB 33 and HB 28, stating that G.A. helps women survive at a time when they have nowhere else to go. See Exhibit (13).

Debra Flora representing the Montana Loan Coalition and the Butte Community Union voiced her opposition to HB 41, HB 33 and HB 28 and made the statement it was a scary thing that the constitution could be broken and left open to changes at the whim of anyone who decides it would suit their purpose.

Human Services and Aging Standing Committee
June 23, 1986
Page 6

Mary Ellen Prime from the Concerned Citizens Coalition of Great Falls and MLIC stated they were also in opposition of HB 41, HB 33 and HB 28.

Barbara Thom, with ACC and MLIC stated they opposed HB 33, HB 41 and HB 28.

Ann Barnes representing LIGHT and MLIC, stated their opposition to HB 41, HB 33 and HB 28.

Gail Rodriguez representing Poeples Action stated their opposition to HB 41, HB 33 and HB 28.

Chairman Nancy Keenan called for questions from the committee.

Rep. Connelly had a question for Lorna Frank. She stated that last session they had several bills which dealt with problems the farmers were having and wondered if Ms. Frank testified in favor of those bills - she seems to be opposing help for other people but not opposing farming help and this bothers Rep. Connelly, that you would be here as a proponent for something that would limit assistance for someone else. Lorna replied that last year there were three of them lobbying regularly and she was not here herself during that particular time; the policy of the Montana Farm Bureau is that we believe in helping those people who cannot help themselves, but they should be able to help themselves also. They don't feel that people should be on welfare and continue to be on welfare all of their lives. As far as supporting the other part of her question, the farm bills, she is not sure which ones Rep. Connelly is talking about. She did not know what the bills were, or the position taken on it.

Chairman Keenan called for further questions. Rep. Wallin asked Adele Fine, if in her opinion, did she feel these bills would abolish general assistance? Ms. Fine said one problem with Rep. Bradley's bill is that it seems that the only people who would be eligible for general assistance in the long term are people who would also be eligible for other federally funded programs like supplemental social security income, so if what you are trying to do is abolish general assistance, she thought those bills would achieve that in the long run, yes.

Question was asked would these bills take away food stamps?

Mrs. Fine stated she believed they were only directed toward general assistance.

Rep. Gould spoke to Rep. Bradley and stated he didn't really like the word "destitute" and would the word "dependent" fit instead of destitute? Or there may be another word that is better than dependent. He does not like the word destitute and it does not seem like the proper word to him and hoped they could up with a better word.

Rep. S. J. Hansen asked Dan Shea question - as a lawyer did he believe that the definition in Rep. Bradley's bill defines a person who is voluntarily destitute? Mr. Shea answered that he was only familiar with the constitutional provision and he represents only himself. If someone has the bill, he might be able to answer her question. He asked Rep. Hansen to again define the question. Rep. Hansen asked if he thought constitutionally they could define a "voluntarily poor person" - or would that be discriminating? Mr. Shea replied that sitting on a court he would not want to decide that - it would be awfully difficult, that it was truly a can of worms, no doubt about it. "Voluntarily destitute" - does that mean that a man starts off with money and squanders it and decides not to do anything, becomes a skid row bum? "Voluntarily destitute" - what are the standards by which one can define either destitute or voluntarily? Rep. Hansen stated she knows what Dorothy is trying to address and she appreciates that; she has seen some of these people in Missoula who are well educated and who choose to be poor and not work - but she did not see how they could define it and it bothers her. Mr. Shea suggested then why didn't they just say it - those who have made a deliberate choice not to work.

Rep. Simon asked a question of Mr. Lewis (SRS). It is his understanding that other states have limitations on who is eligible for general assistance, etc.; could Mr. Lewis speak to the difference between our constitution and other surrounding states' constitutions and/or their rules and regulations in regard to who is eligible for general assistance? Mr. Lewis stated the legislative council made a good summary of each state's constitutional provisions on general assistance. This document would be available from the council and they have identified what each state has, and our constitution very clearly at the current time and given the supreme court decision, is probably one of the more liberal ones as

far as any in the country as reported by the study which was done by the council. Rep. Simon asked the chairman if copies of the study could be made available to the committee. Chairman Keenan said the committee would have the report before the executive session.

Rep. Rehberg asked Don Judge, AFL-CIO the following question: Judge had said 29% of the people were on unemployment insurance - what happens to the other 71% and why are they not eligible; what time were the 29% eligible and what was the amount of time? Mr. Judge did not have the statistics with him but replied there were factors on the amount of time for which they were available but there are a number of factors which read into the lower rate of people who are currently receiving unemployment compensation. One of those factors would include the change in the law, i.e. those who are no longer eligible because of the longterm unemployment. Two things have to happen: one thing is if you are longterm unemployed and still can't find a job, we have a number of people like that in the state as a result of the closures of the Anaconda Company and Burlington Northern (people who are longterm unemployed) have exhausted benefits. The only way in Montana you can get benefits after that is to requalify and work a certain number of quarters and earn a certain amount of money before you can become re-qualified for unemployment compensation. Those are the prime reasons that people are off the rolls.

Rep. Rehberg said one of the things that we did find out is there is no residency requirement and by our constitution we have to take care of all inhabitants and that is creating a particular problem for us - some states are giving them a bus ticket to Montana to get general assistance. Question about the Dillon situation. First of all, did you say they hired illegal aliens from Mexico? If that being the case, what possible requirements could they put on that job that illegal aliens from Mexico - -

Mr. Lewis stated he found that he had his terms confused. Mr. Cater explained to him that actually they hired legal aliens, they have in fact green cards and are allowed to come into the country. He did check with the job service today to find out how many people they brought in and what process they had gone through in advertising those jobs to be certified by the U.S. Department of Labor if people were not available in the state - at what point they are allowed to bring in legal aliens to employ them down there. But

they are basically irrigating jobs.

Chairman Keenan called for further questions from the committee.

Rep. Winslow had a question for Mr. Shea. He asked if Shea was aware of the financial situation of the state? Shea replied he did not see how anyone who reads the paper could not be aware. Rep. Winslow asked if he was aware that it puts the legislator in a very difficult position. Shea replied he would not want to be in his position. But, on the other hand, he would want to tinker with the constitution last and not first. Rep. Winslow then asked Mr. Shea what areas would he eliminate the assistance to - aid to the elderly, to the children, aid to the handicapped? Mr. Shea replied that Rep. Winslow is asking him to provide him with answers which none of them have themselves. The question is basically, do you do it by eliminating under and in essence what he considers a subterfuge, an amendment which is really an abolishment of the constitutional right and a duty therefore imposed on the state to give general welfare assistance to the needy citizens of this state, and the level at which you give that assistance, he is not prepared to say. He stated he had no idea what may be permissible under the constitution as it now stands. He stated further he does know this, that it is certainly the duty of the legislature to make a good faith effort to fund based on the constitutional provision that now is in existence. He asked where does the constitution say and where does the supreme court say that you must fund everybody at a certain level?

Rep. Winslow stated that last session in regard to HB 843, there was much discussion before we eventually came out and decided there is some rational thought behind the fact that somebody 35 years of age and younger has a better opportunity to find a job because they are younger than someone over 50. Now we are looking at legislation that is going to remove all able-bodied or employable even though people are over 50 - now we are in a worse position than what we were facing last session.

Louise Kuntz, representing MLIC addressed the meeting and stated her organization never questioned the financial crisis that we are in and have never questioned the need to deal with the money picture. They have stated that general assistance is a small part of the overall budget. There is no way that MLIC can conscionably support removing people from general

assistance when there are no jobs. A state that has a large labor market - high employability - then all of the rationale that you use is justified. If you can say that the unemployed can find jobs you remove them from general assistance, then your rationale is solid. From the testimony that everyone who has come before you, there are no jobs. In the financial crisis we are in we feel that maybe this burden should be shared more equally; that maybe you should be looking at the fact there are people in the state that are not bearing justly the burdens of government. And maybe that needs to be addressed as well as addressing cuts at the bottom end of the scale. We, as a low income group, cannot support conscientiously this - you're asking us what color rope we want to be hung with, literally. Further, she said she is not convinced that the approach is proper but from her perspective it is the well-being of the individual. Rep. Winslow stated they were in a worse position than before. Louise Kuntz agreed with that position but she thought that maybe in this case if you had addressed it a few months ago, you may have found reason to cut back still further. Is it just to hire people for an unjust wage to keep the group going? You are making bottom line that these people are employable - we are saying bottom line there is no employment, it doesn't make it binding because there is nothing for it to lean on. There has to be employment to be employable.

Chairman Keenan called for further questions from the committee. There were no more questions. She then called on Rep. Moore to close on HB 41. Rep. Moore said before he closed he wanted to state that he was also a co-sponsor on HB 28 and although there are a few minor points in there that have to be corrected, he believed it was a very intelligent and well-thought out bill. He also wished to state that there is nowhere that he could find in thoughts, deeds or anything else where the general assistance would be eliminated by a change in the constitution. He would also like to state that in the several and total states in the United States, he thinks the legislative power has been usurped by the courts of this country in the last few years. He has always had a great compassion for those people who by reason of need, age, infirmity are what we would call "involuntarily destitute"; but HB 41 only does one thing - it allows the voters of Montana, especially the tax paying public, the working man and woman, retired people who pay the taxes, to vote whether or not the elected officials of this state, the legislature, may determine the level and the need of economic assistance to those who by reason of age or


infirmary require that economic assistance. Let's let the people decide - not a small group of self-sacrificing individuals.

Rep. Hand closed on HB 33, stating he thinks Montana does have and does recognize that we have a commitment to welfare and he would doubt that HB 33 would in any way define a state of charity. He believes we all have a compassion there. Perhaps something can be done if the two months time is too short and can be altered. He does question that this is not in the call - this happens to be HB 33 which is the governor's bill and he would suppose that it must be in the call. It would be remiss if he did not address the 100 jobs now filled with legal aliens in Dillon. They usually are there to handle the summer irrigation work; they of course will leave but they are legal this time. He would like to see those jobs filled by Montanans. He does appreciate the job training that is in HB 33 and he would hope it would relieve the situation.

Rep. Bradley closed on HB 28. She stated she thought it had all been said. The points to remember about her bill is that it is an attempt to make a classification that is both fair and that is constitutional, and that classification is the unemployable to which the state makes an ongoing commitment and the employable to which it only makes a temporary commitment to help people get on their feet and give them assistance in finding a job.

Chairman Keenan thanked the people who had testified for being there, and to both committees. It is not her intention to take executive action today and she will do that in the next few days, depending on the availability of rooms. She then closed the hearing on HB 41, HB 33 and HB 28. She will notify the committee of executive session from the floor.

ADJOURNMENT: There being no further business to come before the committees, the hearing was adjourned at 1:45 p.m.



NANCY KEENAN, CHAIRMAN

DAILY ROLL CALL

HUMAN SERVICES AND AGING

COMMITTEE

49th Legislature Special Session III

Date June 23, 1986

NAME	PRESENT	ABSENT	EXCUSED
Keenan, Nancy, Chairman	✓		
Gould, R. Budd, Vice-Chairman	✓		
Bradley, Dorothy	✓		
Brown, Jan	✓		
Campbell, Bud	✓		
Cohen, Ben	✓		
Connelly, Mary Ellen	✓		
Darko, Paula	✓		
Gilbert, Bob	✓		
Hansen, Stella Jean	✓		
Hanson, Marian	✓		
Hart, Marjorie	✓		
Hayne, Harriet	✓		
Neill, Charlotte	✓		
Phillips, John	✓		
Simon, Bruce	✓		
Veleber, Dennis	✓		
Wallin, Norm	✓		

VISITORS' REGISTER

Human Services & Aging COMMITTEE

BILL NO. HB 38 HB 33 HB 41 DATE June 23, 1986

SPONSOR _____

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Debra Glover	Manana Lewiston Coalition/Battle Community Union		X
Richard B Freeman	Montana Low Income Coalition		X
Mary Carpenter	ACC Anaconda Concerned Citizens		X
Alford Switzer	A.C.C. Anaconda		X
Carol L. LaHay	ACC Anaconda		X
Rick Thom	ACC anaconda		X
Paul Carpio	MLIC		X
Cornie Wilson	ACC Anaconda		X
Ken Dickman	ACC Anaconda		X
Edith Carpenter	ACC Anaconda		X
James Baillie	ACC Anaconda		X
Annie Barnes	L.I.B.M. Mula		X
Lorna Frank	Mont. Farm Bureau	X	
Don Hea	self		
Gay McEach	Neck Health Assn		X
Don Judge	Montana State AFL-CIO		X
Lorise Kury	MLIC		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Human Services and Aging COMMITTEE

BILL NO. HB 28- HB33- HB-41

DATE

June 23- 1986

SPONSOR _____

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
JUDITH H CARLSON	NASW		XXX
Diane Sand	Womens Lobbyist Fund		XXX
DAVE Brown	State Rep Butte-Silver Bow		XXX
John G. Antunian	Mt Catholic Conf		XXX
Carolyn Good	# CCC		XX
John R. Miller	Council City Council		XX
Barbara Thom	Anaconda Concerned Citizens		XXX
Go Lindberg	Gr Falls CCC		XXX
Mariellen Prince	Gr Falls CCC		XXX
Jina Vallier	Gr Falls CCC		XXX
John Loran	Gr Falls CCC		XX
Connie Conway	Gr Falls		
Jer Burchel	Helena MLC		XX
Mignon Waterman	Montana Assoc. of Churches		HB33
Halle Rodriguez	Montana People's Action		XXX
Louis Durand	London Corne		XX
Aug Sanders	Gr CCC		!!!
Sue Field	Msle - MT LIGHT, MLC		XXX
Chet Hunsay	MILS		XXX

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.