

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Bob Brown, on January 16, 1989,  
at 8:00 a.m.

ROLL CALL

Members Present: Chairman Brown, Vice Chairman Hager,  
Senator Bishop, Senator Crippen, Senator Eck, Senator  
Gage, Senator Halligan, Senator Harp, Senator Mazurek,  
Senator Norman, Senator Severson, Senator Walker.

Members Excused: None

Members Absent: None

Staff Present: Jeff Martin, Legislative Council Researcher,  
Jill Rohyans, Committee Secretary

Announcements/Discussion: None

HEARING ON SENATE BILL 90

Presentation and Opening Statement by Sponsor: Senator  
Hager presided as Senator Brown presented Senate Bill  
90.

Senator Brown, District 2, sponsor, opened the hearing on  
the bill stating it was introduced at the  
request of the Department of Revenue. He said it is  
hopefully the final chapter in the bank tax story. In  
the 70's the bank shares tax was in effect, and was  
subsequently found to be unconstitutional. Several  
methods of taxing have been in effect since that time.  
In the most recent court case, the Montana Supreme  
Court found this section of the law unconstitutional  
(15-31-116). Therefore, the bill repeals that section.

List of Testifying Proponents and What Group they Represent:

Jerry Foster, Administrator, Natural Resource and  
Corporation Tax Division, Department of Revenue

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Jerry Foster, Administrator, Natural Resource and Corporation Tax Division, Department of Revenue, gave a brief history of bank taxation. Ten years ago there were two ways of taxing banks: (1) bank shares tax, which reverted back to the counties, and (2) corporate license tax. Because the United States obligations under the corporate license tax were exempted, only the basic \$50 fee was paid.

The legislature passed a bill which repealed the bank shares tax and at the same time amended the corporate license tax to remove the exemption for all interest on U.S. obligations, thereby substantially increasing the tax banks would pay. It also provided 80% of these proceeds would revert back to the counties to replace the bank shares tax. That tax was challenged by the Havre Home Federal Savings on the basis it was an income tax. The Montana Supreme Court ruled it was a license tax, but because it was measured by net income, it was also an income tax and, therefore, unconstitutional. A new bill, HB 116, specified every dollar of U.S. obligations that is exempt from tax will also be offset by a dollar's worth of deductions. This was an attempt to return to the old tax method. Burlington Northern challenged the constitutionality and the Supreme Court held HB 116 was unconstitutional. However, the Supreme Court reversed its decision in the Havre Home Federal case. That Supreme Court ruling held that it is a license tax and it is constitutional to tax U.S. obligations. That ruling made the provisions of 15-31-116, MCA unconstitutional. Consequently, this bill repeals that section of the law.

There were no further proponents.

Questions From Committee Members: Senator Eck asked Mr. Foster if it would be a more stable base of income if a share of the corporation tax were given to local governments rather than taxing banks. It would also eliminate the refund problem.

Mr. Foster said a bill will be introduced which will do away with the 80% distribution on financials and give local governments a flat 10% of the corporate license tax.

He noted the source of income has been unstable the last few years, especially with some of the larger banks sustaining substantial losses. Under the corporate license tax, losses can be carried back through the year and the counties can find themselves having to make large refunds. He noted another bill may be introduced which would eliminate the three year carry back and instead institute and carry forward from 7 to 10 years, which would help stabilize the situation.

Closing by Sponsor: There being no further discussion, Senator Brown closed.

#### EXECUTIVE ACTION ON SENATE BILL 90

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Crippen MOVED Senate Bill 90 DO PASS. Senator Brown noted there was no fiscal impact. The motion CARRIED unanimously with Senator Harp absent.

#### EXECUTIVE ACTION ON SENATE BILL 42

Discussion: Senator Gage questioned the figures on the fiscal note.

Senator Eck will contact the Department of Revenue for clarification.

Senator Mazurek expressed concern regarding the language on page 10, line 18. He was concerned that the word "shall" means that the Department of Revenue has to provide enforcement services forever. He compared that language to that in PL 100-203. (Exhibit 3).

Senator Crippen felt the Department would enforce the collection until the child support decree ran out. At that time it would automatically terminate unless the mother asked for early termination of services.

Senator Mazurek felt "shall" should be changed to "may". He also questioned the use of "only" on page 10, line 25. He questioned whether this is a convenience or a mandatory service.

Senator Eck said she would also check this with the Department of Revenue to make sure the language is clear as to the intent of providing lifetime service or eliminating an application procedure.

Amendments and Votes: Senator Eck moved to adopt the Statement of Intent (Exhibit #2). Jeff Martin reviewed the Statement of Intent for the committee. The motion CARRIED unanimously.

Recommendation and Vote: None

ADJOURNMENT

Adjournment At: 10:00 a.m.

  
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SENATOR BOB BROWN, Chairman

BB/jr

min116jr.sr

ROLL CALL

TAXATION

COMMITTEE

505+ LEGISLATIVE SESSION -- 1989

Date 1/16/89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BROWN	X		
SENATOR BISHOP	X		
SENATOR CRIPPEN	X		
SENATOR ECK	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR HALLIGAN	X		
SENATOR HARP		X	
SENATOR MAZUREK	X		
SENATOR NORMAN	X		
SENATOR SEVERSON	X		
SENATOR WALKER	X		

Each day attach to minutes.

SENATE TAXATION

EXHIBIT NO. \_\_\_\_\_

DATE 1/16/89

BILL NO. SB 90

STANDING COMMITTEE REPORT

January 16, 1989

MR. PRESIDENT:

We, your committee on Taxation, having had under consideration SB 90 (first reading copy -- white), respectfully report that SB 90 do pass.

DO PASS

Signed: Bob Brown  
Bob Brown, Chairman

*J.C. 1/16/89  
2:42 P.*

JEFF MARTIN

SB42

SENATE TAXATION

EXHIBIT NO. 1

DATE 1/16/89

BILL NO. SB 42

OMNIBUS BUDGET RECONCILIATION ACT OF 1987  
(P.L. 100-203)

PART 3—CHILD SUPPORT ENFORCEMENT AMENDMENTS

SEC. 9141. CONTINUATION OF CHILD SUPPORT ENFORCEMENT SERVICES TO FAMILIES NO LONGER RECEIVING AFDC.

(a) IN GENERAL.—(1) Section 457(c) of the Social Security Act is amended to read as follows:

“(c) Whenever a family with respect to which child support enforcement services have been provided pursuant to section 454(4) ceases to receive assistance under part A of this title, the State shall provide appropriate notice to the family and continue to provide such services, and pay any amount of support collected, subject to the same conditions and on the same basis as in the case of the individuals to whom services are furnished pursuant to section 454(6), except that no application or other request to continue services shall be required of a family to which this subsection applies, and the provisions of section 454(6)(B) may not be applied.”

(2) Section 454(5) of such Act is amended by striking “(except as provided in section 457(c))”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective upon enactment.

SEC. 9142. CHILD SUPPORT ENFORCEMENT SERVICES REQUIRED FOR CERTAIN FAMILIES RECEIVING MEDICAID.

(a) IN GENERAL.—Section 454 of the Social Security Act is amended—

(1)(A) by striking “an assignment under section 402(a)(26) of this title” in paragraph (4)(A) and inserting “an assignment under section 402(a)(26) or section 1912”;

(B) by striking “, and” at the end of paragraph (4)(A) and inserting “, or, in the case of such a child with respect to whom an assignment under section 1912 is in effect, the State agency administering the plan approved under title XIX determines pursuant to section 1912(a)(1)(B) that it is against the best interests of the child to do so, and”; and

(C) by inserting “or medical assistance under a State plan approved under title XIX” immediately after “aid to families with dependent children” in paragraph (4)(B); and

(2)(A) by striking “provide that,” and inserting “provide that (A)” in paragraph (5); and

(B) by striking the semicolon at the end of paragraph (5) and inserting “; and (B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1912, such payments shall be made to the State for distribution pursuant to section 1912, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on July 1, 1988.

any regulatory revisions. Section 9143 repeals an unnecessary child support revolving fund, while sections 9121 and 9122 provide for demonstration programs in Washington State and New York State, respectively.

Continuation of Services to Former AFDC Recipients.

When section 457(c) of the Act was amended by the Child Support Enforcements Amendments of 1984 (P.L. 98-378) to require (rather than allow) provision of CSE services to families after AFDC eligibility ends, the intent of Congress was that all CSE services continue to be provided, as in non-AFDC IV-D cases, to families whose AFDC eligibility was terminated, without payment of a fee or filing of an application for services. However, as amended by P.L. 98-378, there remained a transition period of up to five months during which cases were treated differently from non-AFDC cases. During the five-month period, States were not given the option to recover costs of providing services and distribution of amounts collected was inconsistent with distribution in other non-AFDC cases. The statute also required authorization for continuation of IV-D services after the five-month period, while prohibiting the necessity of filing an application or paying an application fee.

The enactment of section 9141 of P.L. 100-203, effective December 22, 1987, eliminates this temporary category of cases. Without an application or application fee, these cases become non-AFDC cases once AFDC eligibility ends. The IV-D agency must notify the family that the case will become a non-AFDC case and that CSE services will continue to be provided without the need for an application or payment of an application fee. In accordance with 45 CFR 302.51(e)(2), the notice must explain to the family the State's fees, cost recovery and distribution policies. The notice must inform the family that services will be continued unless the IV-D agency is notified by the family that continued services are not desired.

Because these cases become non-AFDC cases, a State may recover the costs of providing CSE services, if it does so in other non-AFDC cases. Distribution of collections for former AFDC recipients will now be consistent with each State's non-AFDC distribution policy, i.e. priority must be given to current support and the State may choose whether to reimburse itself for AFDC payments made to the family first or pay collections of past due support to the family first. In accordance with 45 CFR 302.51(f), the IV-D agency must attempt to collect any unpaid support obligation which accrued under the assignment of rights to support while the family was receiving AFDC.

These ideas provisions of  
the bill will not  
require.

JEFF -- we  
propose to amend the  
notice as part of the AFDC  
makeovers - (as part of  
the initial application process)

EXHIBIT NO. 1  
DATE 11/6/89  
BILL NO. SB 42



SENATE TAXATION

EXHIBIT NO. 2

DATE 1 1/16/89

BILL NO. SB 42

564 Legislature

SB 0042/si

SB 0042/si

STATEMENT OF INTENT

SENATE BILL 42

Senate Taxation Committee

5 A statement of intent is required for Senate Bill No.  
6 42 because it amends several sections within Title 40,  
7 chapter 5, part 2, on child support enforcement services.  
8 These amendments are proposed to bring state law into  
9 compliance with federal law. The department of revenue is  
10 granted an extension of authority to adopt rules in  
11 accordance with this bill that conform with federal laws and  
12 regulations.

13 The legislature intends that the department adopt rules  
14 that:

15 (1) reduce aid to families with dependent children  
16 (AFDC) expenditures by ensuring that the parent or other  
17 person responsible pays for the care, support, or  
18 maintenance of a child under the provisions of 40-5-202(1);  
19 (2) ensure child enforcement services will continue to  
20 be provided to families that cease to receive public  
21 assistance under AFDC, without requiring an application or  
22 payment of a fee;

23 (3) establish the terms and conditions of providing  
24 continued services for families no longer receiving public  
25 assistance; and

1 (4) establish procedures for the discontinuance of  
2 child support services when the custodial parent:  
3 (a) ceases or fails to cooperate with the department  
4 as provided under 40-5-204; or  
5 (b) takes an action to prejudice the rights of the  
6 department under 40-5-202(4) and (5).

THIRD READING

SB 42



