

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Dick Pinsoneault, Chairman, on January 8, 1991, at 10:30 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: Joseph Mazurek (D)

Staff Present: Valencia Lane (Legislative Council).

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

Announcements/Discussion: Chairman Pinsoneault conducted an initial briefing for the Committee. He introduced Committee Secretary, Jody Bird, and Staff Legal Counsel, Valencia Lane. Chairman Pinsoneault stated his preference that Room 325 be referred to as the Senate Judicial Hearing Room and not the old Supreme Court Chambers. He also introduced new Senators Doherty, Grosfield, Rye and Svrcek, and welcomed returning senators.

Valencia Lane explained that her function as Staff Legal Counsel is to prepare amendments for committee bills and prepare reports to the floor, as well as assist with requests of committee members and bill summaries, as time allows. She requested that the Committee authorize her to put amendments into Legislative Council bill draft form in order to make the language work more efficiently.

Chairman Pinsoneault announced that the Committee would meet jointly with the House Judiciary Committee at 10:30 a.m. on Wednesday, January 9, 1991, to hear comments from Attorney General Racicot and his staff.

Chairman Pinsoneault advised committee members that meetings would begin at 10:00 a.m. He asked that members planning to be absent notify Vice Chairman Yellowtail prior to planned absences. He stated that the Committee would hear proponents of a bill, then opponents, and then entertain questions from committee members. He asked members of the Committee to note the names of witnesses as they testify, for later questions. Chairman Pinsoneault also requested that committee members not duplicate questions, and said he would be responsible for notifying a rambling witness.

Chairman Pinsoneault stated that he expected every member of the Committee to vote on every bill, and advised that a proxy vote form would be available from Vice Chairman Yellowtail in the event of a planned absence.

Chairman Pinsoneault advised the Committee that executive session would be held after bills were heard or at the next appropriate meeting time. He added that other means would be employed if this method did not appear to work efficiently.

Chairman Pinsoneault asked committee members to tuck any related material behind the corresponding bill, should they wish to save it, and to set aside any information not to be added to their committee books.

Further addressing executive session, Chairman Pinsoneault asked that committee members notify him of their witness information requests. He added that he would prefer to limit this action to precise questions and necessary information only.

Chairman Pinsoneault advised committee members that a page would be present during meetings to go for coffee, and that a coffee pot would not be in operation in the meeting room.

Senator Halligan asked about proxy votes. Senator Brown stated that proxy votes could be left for a special bill or amendment, but not for general voting purposes. He added that a vote could be held open for absent members.

Senator Towe made a motion that the proxy information provided by Senator Brown be adopted by the Committee.

Lastly, Chairman Pinsoneault requested that proponents and opponents of bills heard by the committee ensure they sign the visitor's register and a witness statement.

HEARING ON SENATE BILL 24Presentation and Opening Statement by Sponsor:

Senator Bob Williams, District 15, told the Committee he hoped to take advantage of the Consent Calendar for Senate Bill 24. He read the bill which requires that children of indigent parents pay for burial and interment costs of said parents. Senator Williams advised that an amendment would delete "burial and interment costs" and insert "upon death all costs for final disposition".

Senator Williams said the bill was brought to him by MACO through the Fergus County Commissioners. He explained that a resolution was drawn by the Montana Association of County Commissioners to address such burials.

Proponents Testimony:

Gordon Morris, Executive Director, Montana Association of Counties, (MACO), expressed his approval of the proposed amendment to the bill and said it included cremation.

Donna Heggem, Fergus County Commissioner, told the Committee she had experienced two situations during the past year wherein children of indigent parents asked for county burial, even though they were in a position to pay for burial themselves. She explained that the Fergus County Commissioners denied both requests on this basis, but believe the problem should be addressed state-wide.

Bonnie Tippy, Montana Funeral Directors Association, requested that the Committee adopt a statement of intent since the Department of Social and Rehabilitation Services (SRS) has rule-making authority. She added that funeral homes have become bill collectors and don't want to continue in this capacity because of this bill. She read from a statement of intent (Exhibit #1).

Opponents Testimony:

Don Miller, Helena, (representing self), told the Committee he knew of two elderly persons who would probably die indigent because being hit by drunk drivers who had no insurance had exhausted their monetary means. He stated the situation is unfair and that children should not be held responsible for burial in such instances. Mr. Miller asked what the Committee would be doing to address this problem.

Questions From Committee Members:

Senator Rye asked if the bill would have jurisdiction over children who reside outside Montana. Senator Towe replied it would be a matter of minimum contacts, and said this question had never been raised before.

Chairman Pinsoneault asked Senator Williams if the bill would only be added burial costs to food, shelter, and other means of support. He commented that in a case such as referred to by Senator Rye, Montana counties would probably be stuck.

Senator Svrcek asked Gordon Morris if the ability to ask children to pay for burial of indigent parents were standardized throughout the state.

Senator Towe asked Senator Williams or Gordon Morris to respond to whether or not they were familiar that the next section referred to misdemeanor. He asked if the intent of the bill were the same for this next section, and what expenses are for county burials. Donna Heggem replied that Fergus County pays \$1200 for burial and \$800 for cremation, and that these amounts are negotiable with area funeral homes throughout the state.

Senator Towe asked Bonnie Tippy about the proposed statement of intent. Ms. Tippy replied that the bill would expand the rule-making authority of SRS, and that she would prefer to see the statement of intent included with the bill. She added that the interpretation requiring spouses to pay for burial of spouses is interpreted very loosely in some counties.

Senator Towe asked if the county paid providers and was reimbursed by families. Donna Heggem replied that the county pays the difference that children cannot pay. She stated that there are some instances wherein funeral directors are providing more than basic services, and said some counties are requiring cremation because it is less costly.

Senator Towe asked Ms. Heggem about Ms. Tippy's statement that funeral directors have become bill collectors. Ms. Heggem replied that the counties do not see themselves as collectors for funeral directors.

Senator Bruce Crippen asked Bonnie Tippy if the bill would put the Funeral Directors Association in worse shape than before. Ms. Tippy replied that there is a wide disparity in funeral charges (\$700-1200). She said the question is whether or not counties are going to request funeral directors to collect from children. Senator Crippen stated that a hospital or a physician has the same concern, and asked if the proposed statement of intent addressed them. Ms. Tippy replied that she only wanted to prohibit any changes in rules, and said she believes the counties should continue to have payment responsibility if they cannot collect from children.

Senator Halligan expressed his concern about language in the proposed amendment, and said there should be more. Gordon Morrison replied that the bill addresses death and final disposition of the body. He added that he would clearly support more definitive language.

Senator Towe stated that Staff Legal Counsel, Valencia Lane, pointed out to him that 53-3-110, MCA, requires counties to pay burial costs of deceased indigents. He advised members present that this statute would need to be changed correspondingly if Senate Bill 24 were to pass out of committee.

Closing by Sponsor:

Senator Williams said he appreciated the fact that the Fergus County Commissioners were trying to find a way to stretch funds and serve the public more effectively. He urged passage of Senate Bill 24. He asked the Committee to refer to Gordon Morrison, MACO, regarding any changes in the bill.

EXECUTIVE ACTION ON SENATE BILL 24

Motion:

None made this date.

Discussion:

Senator Towe advised that a statement of intent should not be necessary for this bill. He added that if payment is required by another section of code, counties must remain consistent with applicable codes.

Senator Halligan stated that the Missoula County Attorney's Office would end up taking care of indigent burials at great cost of time and money to the community.

Senator Crippen commented that Title 53 of SRS statutes, as written, sounds as if the burden is on the counties for indigent burials. He added that section 40 would deal with obligations of children and that this section should be expanded, without change to section 53. Valencia Lane stated that 53-3-110, MCA, is very specific in stating that counties will pay burial costs for indigent persons. She advised that SRS does have an obligation to pay medical costs. Ms. Lane said she is concerned with ending up with two different statutes, requiring two different parties to pay burial costs.

Chairman Pinsoneault asked Ms. Lane to resolve language in the bill to make both sections compatible.

Vice Chairman Yellowtail asked Ms. Lane to also address the "globality" of the bill. Ms. Lane stated she could insert "after final disposition of the body" in the bill.

Amendments, Discussion, and Votes:

None made or taken this date.

Recommendation and Vote:

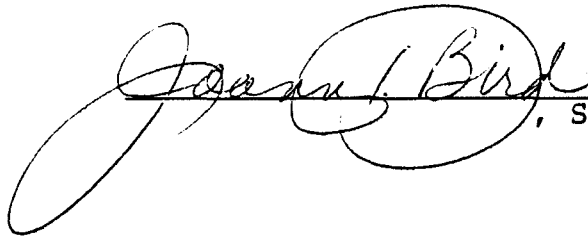
None made or taken this date.

ADJOURNMENT

Adjournment At: 11:50 a.m.



, Chairman



, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 8 Jan 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SEN. NO. 18 Jan 9124**SENATE BILL 24****TESTIMONY SUBMITTED BY THE MONTANA FUNERAL DIRECTORS ASSOCIATION****JANUARY 8, 1990****CONTACT/BONNIE TIPPY OR MARGARET RICHARDSON/449-7244**

Because SB 24 does not specify exactly how monies will be collected from adult children of indigent parents, we strongly recommend that the legislature adopt a statement of intent which will make clear the counties responsibility for payment to funeral homes. Language which will cover the potential problem of counties expecting funeral homes to become collection agencies is as follows:

Statement of Intent

The Department of Social and Rehabilitation Services has authority under 53-3-114 to adopt rules for the burial of deceased indigents. Any rules changes made as a result of this bill should continue to have the county or department initially pay for indigent funerals and then pursue reimbursement from solvent children.

EX. 2
1-8-91
SB 241

SENATE BILL NO. 24 AMENDMENTS

INTRODUCED BY WILLIAMS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A CHILD TO
PAY ~~BURIAL AND INTERMENT COSTS~~ UPON DEATH ALL COSTS FOR
FINAL DISPOSITION FOR INDIGENT PARENTS; AND AMENDING SECTION
409-6-301, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-6-301, MCA, is amended to read:

"40-6-301. Duty of child to support indigent parents.
~~It is hereby declared and made the duty of every~~ Each adult
child, having the ability ~~so~~ to do so, ~~to~~ shall furnish and
provide necessary food, clothing, shelter, and medical
attendance, and ~~burial and interment costs~~ UPON DEATH ALL
COSTS FOR FINAL DISPOSITION for his indigent parent or par-
ents, unless, in the judgment of the court or jury, he is
excused ~~therefrom~~ by reason of the intemperance, indolence,
immorality, or profligacy of ~~such~~ the parent."

Toule
If Payments ^{are} made by the County pursuant to other ~~and~~ sections
they may ~~be to~~ seek reimbursement.

- 53-3-110 - also must am.

SB 24

NAME: Donald Miller

DATE: 1/8/91

ADDRESS: Box 487 Helena, MT 59624

PHONE: 227-5162

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL:

DO YOU: SUPPORT? _____

AMEND? X

OPPOSE?

COMMENT :

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

VISITORS' REGISTER

SENATE JUDICIARY COMMITTEEBILL NO. SB 24DATE 8 Jan 90SPONSOR Williams

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
DONNA HEGGEM	Winifred, MT	X	
Bob Williams	Helena MT	X	
Ernie Tapp	Helena		
Margaret Richardson	Helena		
Donald Miller	Helena		
Jordan Morris	MAC	X	
Alfred Lunden	Helena	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.