

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on March 5, 1993, at 9:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Dave Brown (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: Rep. Tim Whalen (D)

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

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

Committee Business Summary:

Hearing: SB 173, SB 117
Executive Action: SB 194, SB 193, SB 125
SB 202, SB 117

HEARING ON SB 173

Opening Statement by Sponsor:

SEN. SUE BARTLETT, Senate District 23, Helena, said that SB 173 is intended to allow the Public Employment Retirement Board and

the Teachers Retirement Board to recognize and implement certain family law orders. Right now, neither retirement system is able to recognize court orders dealing with such things as divorces, indigent child support, child support, and spouse support. This bill will change that by making them subject to those court orders.

Proponents' Testimony:

David Senn, Director, Teachers Retirement System, presented written testimony. EXHIBIT 1

Tom Bilodeau, Montana Education Association, solicited support for SB 173.

Linda King, Public Employees Retirement Division (PERD), explained that most private plans are called Defined Congregation Plans, meaning that the value of the account is known on any given date because the value is money in the account. Montana's plans are different. Their benefits are defined by formula, so the amount of money that a member may have in the account bears little, if any, resemblance to the value of the benefit when they retire. The distinction is that a person cannot pay out a family law order before the actual retirement date on a retirement system member because until that actual date, the benefits aren't known.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON SB 117

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, Senate District 29, Missoula, said that SB 117 sets up a mediation process that is at the discretion of the judge only if the parties agree.

Proponents' Testimony:

Fay Bergman, mediation lawyer, Missoula, has done mediation for the last ten years, and she and REP. TOOLE served many times together on the Resolution Dispute Committee for the State Bar. She explained that mediation is uniquely suited for family disputes. Her only concern with the bill is section 4, Mediator

Recommendation. In Ms. Bergman's experience, mediation is a process which helps people work through their problems, and the mediator is knowledgeable in that process. It allows for an open exchange of ideas and gathering information. A mediator must pass a minimum of 40 hours training in order to be certified. Ms. Bergman is concerned that section 4 does not indicate that a mediator should have working knowledge or be certified in mediation and that it should be added to the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. GRIMES asked SEN. HALLIGAN the reason for the change of language from "may" to "shall" on page 3, line 4. SEN. HALLIGAN said the Senate Judiciary Committee felt that the word "shall" is more direct and enforceable.

REP. VOGEL, referring to section 4, line 17, "shall submit the mediator's recommendation," asked SEN. HALLIGAN whether, if the court doesn't request the mediator's recommendations, the mediator is still required to be in court; he wondered whether the language should say "shall" submit upon request. SEN. HALLIGAN said it wasn't that favored in the Senate Judiciary Committee either, but they felt that the mediator is needed in court to present pertinent material regarding specific cases.

Closing by Sponsor:

SEN. HALLIGAN said that, although mediators are receiving a negative reaction from attorneys in this process, a mediator is generally included when an attorney is involved in family/divorce law. He also explained that attorneys want to get their clients into an alternative dispute resolution process and away from the antagonism of the court. He encouraged the committee to clean up the bill, specifically section 4, and vote do pass.

EXECUTIVE ACTION ON SB 193

Motion: REP. BROWN MOVED SB 193 BE CONCURRED IN.

Discussion:

REP. RICE is concerned about deleting from the law any requirement of consideration for restitution and family support. He proposed an amendment of rules to factor in those responsibilities.

REP. BROWN explained that the waiver is a provision for an exemption from payment if the individual is not earning enough to

pay for support services. The reason the language was stricken was to allow DOC to be more flexible in the rules process. SB 193 allows the residents to take the reimbursement straight to the halfway house rather than the circuitous route through the department and down.

REP. RICE said the bill has specific statutory authorization, and if it's taken out, without any sort of reference to it at all, it would be taking away their statutory authorization by rules to do this. It is REP. RICE'S opinion that some federal language should be added, especially if they continue to adopt federal rules for their own priorities. REP. BROWN responded to REP. RICE'S comments and said the language that is stricken on page 3, lines 6, 7, and 8, "and shall consider court order restitution fines and child support when making this determination" should be reinserted in subsection (4) where it's appropriate.

Motion/Vote: REP. RICE moved his amendment on SB 194. Amendment carried unanimously.

Motion/Vote: REP. BROWN MOVED SB 194 BE CONCURRED IN AS AMENDED. Motion carried 17-1 with REP. SMITH voting no.

EXECUTIVE ACTION ON SB 194

Motion/Vote: REP. BROWN MOVED SB 194 BE CONCURRED IN. Motion carried 17-1 with REP. SMITH voting no.

EXECUTIVE ACTION ON SB 125

Motion: REP. VOGEL MOVED SB 125 BE CONCURRED IN.

Discussion:

CHAIRMAN FAGG discussed the amendment proposed in the March 4 hearing (see March 4, 1993, minutes).

REP. BROOKE referred to page 51, line 25 and page 52, lines 1-3 and explained the difference, per John Conner, Attorney General's Office, between erroneous manner and illegal manner. Mr. Conner recommended deleting the language "illegal" on page 52, line 1.

Motion/Vote: REP. TOOLE moved to amend page 9, line 7. The Senate deleted the word "requested" and changed the way the bill works. His amendment would make sure that cities and counties would each be responsible for their own investigating. SEN. VAN VALKENBURG agreed with REP. TOOLE'S amendment. Amendment carried unanimously.

Motion/Vote: REP. VOGEL MOVED SB 125 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 202

Motion: REP. BROOKE MOVED SB 202 BE TABLED.

Discussion:

CHAIRMAN FAGG said he had met with SEN. ETHEL HARDING, Senate District 25, Polson. She believes the bill doesn't do anything and that her constituents and the state would be better off if the bill were tabled.

REP. VOGEL said he supports the bill but that it had been amended a great deal in the Senate. He asked that it be amended back in conference committee.

REP. RICE asked whether, since SB 202 was tabled before it was heard in committee, it could be withdrawn from legislation.

CHAIRMAN FAGG asked Bob Person, Legislative Council, if it is possible to withdraw a bill from legislation, and Mr. Person said it is not possible to terminate a bill; the easiest way to handle this is to table the bill in committee and to notify Legislative Information that "SB 202 has been tabled in committee at the request of the sponsor."

Vote: SB 202 BE TABLED. Motion to table in committee at request of the sponsor. Motion carried 12-6 with REPS. BERGMAN, BIRD, GRIMES, SMITH, RICE and VOGEL voting no.

EXECUTIVE ACTION ON SB 117

Motion: REP. GRIMES MOVED SB 117 BE CONCURRED IN.

Motion: REP. TOOLE moved to strike section 4 from the bill.

Discussion:

REP. TOOLE is concerned that people who call themselves mediators without the proper training, i.e., mediation certification, will be representing clients in court.

REP. SMITH agrees with REP. TOOLE and would also like to insert mediator qualifications as recommended by Ms. Bergman.

Motion: REP. CLARK moved a substitute motion to strike all of section 4 except for the last sentence.

Discussion:

REP. GRIMES recommended going back to the original language of section 4 and insert on lines 16 and 17 deleted language: "The mediator may recommend the mediator's request to the court that an investigation be conducted."

REP. VOGEL supported courts allowing information from mediation. He recommended the following language: "The mediator shall recommend to the court, upon request of one or more of the mediated parties." The bill provides that the mediator shall give a recommendation to the court, even if is not wanted.

REP. TOOLE is concerned that the legislature will provide an invitation to the negotiation process. If a mediator is not at that particular level of training or is not certified to mediate, it's left up to the courts to decide with an agreement.

REP. VOGEL that, just for discussion, and not to be considered as a substitute motion, he would like to insert after "shall" on line 17: "at the request of the court or at least one of the parties."

Vote: REP. CLARK'S substitute motion to strike all of section 4 except for the last sentence carried 16-2 with CHAIRMAN FAGG and REP. VOGEL voting no.

Motion/Vote: REP. SMITH moved an amendment to insert on page 5, lines 1 and 2 after the word "and": "knowledgeable about mediation process." Amendment carried 16-2 with REPS. BIRD and WINSLOW voting no. See paragraph below for further explanation on REP. BIRD'S vote.

REP. BIRD asked REP. SMITH if she had any objection to adding the word "working" before "knowledge of mediation process?" REP. BIRD believes that REP. SMITH'S amendment is too vague without the word "working," and REP. SMITH agreed. Being in agreement with each other, REP. BIRD changed her vote on REP. SMITH'S amendment. Therefore, only REP. VOGEL voted against the amendment.

Vote: SB 117 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 11:00 a.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-5-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen		✓	
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

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CS-09

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 193 (third reading copy -- blue) be concurred in .

Signed: _____
Russ Fagg, Chair

Carried by: Rep. Brooke

Committee Vote:
Yes 17, No 1.

501158SC.Rpf

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 125 (third reading copy -- blue) be concurred in as
amended.

Signed: Russ Fagg
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Fagg

1. Title, line 21.
Strike: "46-16-107,"

2. Page 9, line 7.
Strike: "All"
Insert: "Each"
Strike: "costs"
Insert: "cost"

3. Page 9, line 9.
Strike: "INITIATING the investigation"
Insert: "whose action created the cost, unless another
governmental entity agrees to or by law is required to bear
the cost"

4. Page 29, line 11.
Strike: "48"
Insert: "47"

5. Page 45, lines 8 through 12.
Strike: section 36 in its entirety
Renumber: subsequent sections

6. Page 62, lines 14 and 16.
Strike: "48"
Insert: "47"

-END-

Committee Vote:
Yes ☒, No ☐.


501548SC.Hpf

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 117 (third reading copy -- blue) be concurred in as amended .

Signed: 
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Toole

1. Page 3, lines 15 and 16.

Strike: "If" on line 15 through end of line 16

2. Page 3, lines 17 and 18.

Strike: "SHALL" on line 17 through "court" on line 18.

3. Page 3, lines 19 and 20.

Strike: "to assist" on line 19 through "controversy" on line 20

Strike: "." on line 20

4. Page 4, line 22.

Strike: "AND"

5. Page 5, line 1.

Following: "and"

Insert: "; and

(4) knowledge of the mediation process"

-END-

Committee Vote:
Yes 11, No 2.

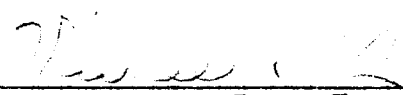
501553SC.Hpf

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 194 (third reading copy -- blue) be concurred in as
amended .

Signed: 

Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Brooke

1. Page 2, line 16.

Following: "~~department.~~"

Insert: "The department may adopt rules allowing it to order part
of a person's employment income to be used to pay
restitution, fines, and child or spousal support."

-END-

Committee Vote:
Yes 17, No 1.

501532SC.Hpf

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3-5-93 BILL NO. JB194 NUMBER 18

MOTION: JB194 Be Concurred as amended 17-1

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3-5-93 BILL NO. DB 194 NUMBER 18

MOTION: Rep. Rice's amendment passes 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3-5-93 BILL NO. SB 125 NUMBER 18MOTION: SB 125 Be Concurred as amended 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3-5-93 BILL NO. SB 117 NUMBER 18

MOTION: SB 117 Be Concurred 18-0

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3-5-93 BILL NO. SB 193 NUMBER 18MOTION: SB 193 Be Concurred 17-1

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

TESTIMONY - SB 173
Teachers' Retirement Board

Presented by: David L. Senn, Executive Director

"AN ACT PROVIDING FOR THE PAYMENT OF PUBLIC RETIREMENT BENEFITS TO ALTERNATE PAYEES PURSUANT TO FAMILY LAW ORDERS."

Currently a member's retirement benefits and contributions are unassignable either in law or equity and are not subject to execution, garnishment, attachment, or any other legal process. However, courts in domestic relations cases, such as divorces consider these benefits marital assets and income of the member and often try to make distribution of the retirement benefits.

Senate bill 173 will allow the Teachers' and Public Employees' Retirement Boards to recognize and implement a family law order directing the retirement system, on behalf of its member, to split future benefit payments for child support, indigent parent support, and spousal support.

A family law order may direct payment to an alternate payee as a percentage of the amount paid to a participant or as a fixed monthly amount, or the member may be directed to provide for payment of benefits to the alternate payee through the selection of a specific retirement option.

A family law order may not require a type or form of benefit, option or payment not available to the retirement system participant or for an amount or duration greater than that available to a participant. Payments cannot be made available to an alternate payee until the system member submits a valid application for a benefit and the benefit becomes payable.

This legislation was designed by the boards to have no actuarial cost to the retirement systems. It is anticipated that any administrative cost can be absorbed within existing budgets and staffing levels. While there will be some cost to review, approve, and implement the family law orders, these cost are not expected to be any greater than the current administrative effort required to explain to members, attorneys and the courts that we cannot make distributions to alternate payees.

We believe that this legislation will help safeguard the benefits and assets of our members and their families and ask for your support.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB. 173
DATE March 5, 1993 SPONSOR(S) J. Bartlett
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
David Sporn	TPS	✓	
TOM BILOWEATY	MEA	X	
MARK CRESS	PERD	X	
LINDA KING	PERD	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 117
DATE March 5, 1993 SPONSOR (S) M. Halligan
PLEASE PRINT PLEASE PRINT PLEASE PRINT

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.