

MINUTES

MONTANA SENATE 53rd LEGISLATURE - SPECIAL SESSION

FREE CONFERENCE COMMITTEE ON HOUSE BILL 057

Call to Order: By Senator Mike Halligan, Chair, on December 18, 1993, at 9:58 a.m.

ROLL CALL

Members Present:

Sen. Mike Halligan, Chair (D)
Sen. Bill Yellowtail (D)
Sen. Lorents Grosfield (R)
Rep. Chase Hibbard, Chair (R)
Rep. Betty Lou Kasten (R)
Rep. Dave Wanzonried (D)

Members Excused: None.

Members Absent: None.

Staff Present: Jeff Martin, Legislative Council
Beth Satre, Committee Secretary

Discussion:

Chair Halligan asked that the House committee indicate its objections to the Senate amendments so discussion could begin.

Representative Hibbard stated the House had two primary objections to the Senate amendments: one, they did not provide for cash refunds to federal retirees, and two, they would delay any payments until the next biennium. He stated providing only tax credits would satisfy neither federal retirees nor the lawsuit. He noted that many retirees did not pay any income tax in Montana and hated to see payment pushed so far into the future because some were dying of cancer and none were "getting any younger". He stated the House majority's opinion was that the state should immediately resolve the issue if there was money to be found. He noted the House majority felt the Legislature might be able to resolve the issue if federal retirees could be made an offer that would satisfy the lawsuit.

Chair Halligan said the Senate Taxation Committee had discussed the fact that the lawsuit had not yet been classified as a class action along with the possible practical effects of that uncertainty. He asked **Representative Hibbard** how he anticipated reaching a final settlement if there were no class action designation.

Representative Hibbard noted the Hose version of HB 57 had contained the new section five which would require the Director of the Department of Revenue (DOR) "to certify to the governor that the group of federal retirees has been certified as a class for purposes of litigation and a full and final compromise and the release of all claims, actual or contingent or unknown including attorney fees has been entered into between the state and the class". He suggested that section be reinserted into HB 57, which, he added, would make the resolution contingent upon language to that effect.

Chair Halligan noted that the \$1.4 million in attorneys fees requested by the federal retirees' lawyer had also been an issue in the Senate Taxation Committee. He asked **Representative Hibbard** whether he would have the state pay the full amount of those attorneys fees.

Representative Hibbard said he would be open to suggestions about handling the issue of attorneys fees. He noted the amendment which the federal retirees had presented during the process had been unacceptable because it would have made the state the collector of those attorneys fees. He stated, however, the attorney still had some remedy through the district court.

Chair Halligan noted DOR had always opposed the class action determination. He asked **Dave Woodgerd, Chief Counsel, DOR**, where that determination was in the process and how he would handle the payment of attorneys fees if the new section five were still included in HB 57. **Dave Woodgerd** replied the question as to whether or not the class should be certified, how, and who should be included was back in district court. He noted that the question of attorneys fees would also be handled by the district court. He stated DOR had opposed the class action primarily because it would unnecessarily take that amount away from the refund the taxpayers would receive. He said his preference would be to remove the language specifically concerning attorneys fees so that DOR would have more leeway to work out a compromise on that issue.

Chair Halligan stated **Ed Sheehy, Jr.** had testified in front of Senate Taxation Committee that the lawsuit would not be settled as long as that language was not in HB 57. He said both Republicans and Democrats in the Senate Taxation Committee had indicated that the attorneys fee should come out of the federal retirees' refunds not from the state.

Senator Yellowtail stated it was not the Legislature's role to negotiate a settlement in litigation which was still pending. He said DOR had indicated in testimony before the Senate Taxation Committee that they had some confidence that, on the basis of the pre-deprivation remedy argument, the state might prevail in court. Given that, he said, he and the majority of the Senate considered it premature to offer a cash settlement for this case. He noted that the potential existed, at this point, that the

state could win the case and be faced with the "grave difficulty" of recovery the cash outlay if the Legislature ordered immediate cash payments to claimants. He emphasized that everyone wanted to treat federal retirees fairly and, should they prevail in the case, the state needed to follow through. He stated the Senate version of HB 57 offered a prospective mechanism to address the federal retirees' claims which could be examined and adjusted by the 1995 Legislature if it proved necessary.

Representative Wanzenried said most of the debate in the House had centered on the issue raised by **Senator Yellowtail**. He asked **Representative Hibbard** where the money could be found to make the cash outlay in the House version of HB 57 if the free conference committee did decide there was no merit to that concern. He noted the Legislature had emasculated human services and taken money out of education, and asked whether a funding plan existed which would not jeopardize an adequate ending fund balance.

Representative Hibbard replied that **Representative Wanzenried's** was a very valid question and one that he personally "did not have a very good handle on". He noted the ending fund balance was currently projected to be somewhere between \$22 and \$25 million and said some cash might be available from that source. He stated, however, that unless some cash was found somewhere, the Senate amendments would not be satisfactory to the House.

Representative Wanzenried asked whether the House majority would reject a tax credit notion in any form, even if the Legislature did not have the money to make cash payments. **Representative Hibbard** replied it could be tried. He added, however, he knew that a tax credit was unacceptable to federal retirees and might well be unacceptable to the House since the majority there did not like the idea of "creating a hole for the future as well".

Representative Wanzenried asked **Dave Woodgerd** what DOR's position on the lawsuit exactly was. **Dave Woodgerd** replied DOR was vigorously defending the lawsuit and thought it had good grounds for its arguments. He explained that the courts had already determined that those taxes had been illegally collected but had not yet determined whether the state was required to issue refunds as a result. He stated DOR's defense in court was based upon Montana's pre-deprivation remedies. He noted the administration, however, had taken the position that the state ought to be make those payments out of fairness regardless of DOR's legal arguments.

Chair Halligan asked **John Milodragovich**, Chair, Income Tax Refund Committee, Northern Rocky Mountain Forestry Association (NRMFA) whether his group was part of the lawsuit. **Mr. Milodragovich** said yes. **Chair Halligan** asked whether NRMFA would oppose any legislation if it did not contain a provision for the payment of attorneys fees. **Mr. Milodragovich** replied the attorney had, at one time, indicated that his fees needed to be included in order to end the litigation through legislation. He added, however, he

did not know what the attorney's last stated position was. He said the consensus in NRMFA was that tax credits would not be in the best interests of federal retirees since many had no tax liability and they would not receive any reimbursement if they died before the four year period. He stated NRMFA members found that some sort of a cash settlement would be the most equitable solution.

Chair Halligan noted that an individual could file a tax return whether or not there was any tax liability and get a credit. He stated the Senate version of HB 57 provided that upon a retiree's death, the spouse or estate could immediately receive 100 percent of the credit owed.

Representative Kasten stated that suggestions which were very close in essence to what the House had settled for in HB 57 had been offered in 1989 when the Davis v. Michigan case first came forward. She stated many legislators who had wanted to do something in 1989 now felt a very real obligation to federal retirees. She stated those legislators wanted the interest stopped and did not think that offering a tax credit was the right approach.

Senator Grosfield stated the vote was not unanimous in the Senate. He noted that the Senate minority caucus felt very strongly that federal retirees should be paid cash up front. He said the question was not whether the taxes were collected illegally, but how quick the state should repay. He stated Senate Republicans view it as a fairness issue; the refunds should be repaid and should be repaid now.

Representative Wanzenried asked where the state would get the money.

Chair Halligan stated the funding source was the major issue for the Senate majority. He asked if the House proponents of HB 57 advocated cutting education by an additional \$4 million in order to pay cash to federal retirees. He asked whether an identifiable source existed that he and **Senator Yellowtail** could bring to their caucus to discuss other than the education, ending fund balance or the local government personal property reimbursement. He stated he knew there would be no support for cutting education to pay for this refund, and expressed doubt that his caucus would agree to pass any more costs down to local government by reducing the personal property reimbursement. He noted the options for funding had narrowed to the ending fund balance, which was reaching the point where it could go no lower and still be effectively managed. He stated there would most likely not be as much movement from the Senate amendments as **Representative Hibbard** had indicated was necessary.

Senator Grosfield asked whether the Senate majority's position was that credits were the only option. **Chair Halligan** replied that given the available cash balance and the budgets that had

already been cut, the Senate Democrats felt that credits were the only solution that would help the retirees while protecting critical services.

Representative Wanzenried said, as a member of the House minority, he would be interested in entertaining the notion of cash refunds if there were some way to identify a funding source other than the ending fund balance.

Senator Yellowtail echoed **Representative Wanzenried's** statement. He stated if the House majority or Senate minority were willing to come forth with a concrete proposal for funding cash refunds, there might be some potential for resolution. He noted, however, that until such time, he saw no progress.

Chair Halligan said the House's recent acceptance of HB 22 with the \$19 million instead of \$26 million reduction had foreclosed a potential funding option.

Representative Hibbard asked what the ending fund balance was currently. **Chair Halligan** noted that **Terry Johnson, Legislative Fiscal Analyst (LFA)**, had indicated that the ending fund balance was at \$20 million.

Representative Hibbard said the \$20 million ending fund balance had been the only funding source of which he was aware. He offered to go back to the House majority caucus to review the Committee's discussion and determine whether there were suggestions possible funding sources.

Chair Halligan stated the free conference committee on HB 29 had also been looking at the ending fund balance as a potential source for movement on property tax rebates. He noted he was not sure how those negotiations would go, but added, that source had been discussed.

Senator Grosfield agreed that it might be necessary for committee members to discuss possible funding with their respective caucuses. He disagreed, however, that no funding source existed; he stated HB 2 was not yet closed yet, the personal property tax reimbursement was also still open, and the funding mechanism in HB 45 was still available.

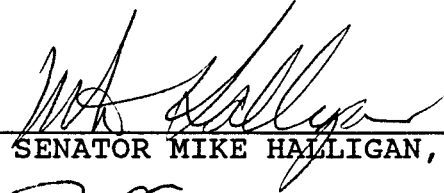
Senator Yellowtail stated **Senator Grosfield** had placed the discussion in exactly the right context; all of the issues he mentioned needed to be balanced and needed to be balanced that day. He said it seemed prudent to take a broad look at all the implications that arise in that context; if the Legislature were to spend more money in HB 57, it would have to spend less money somewhere else.

Chair Halligan stated the discussion had given committee members an idea of each others' positions. He noted he would talk with **Representative Hibbard** as the Chair of the House Committee to

ascertain whether another meeting was necessary after committee members had gone to their caucus and discussed possible revenue sources.

ADJOURNMENT

Adjournment: 10:22 a.m.



SENATOR MIKE HALLIGAN, Chair



BETH E. SATRE, Secretary

MH/bs

ROLL CALL

FREE CONFERENCE COMMITTEE HB 57 DATE _____

12/18/93

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