

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### FREE CONFERENCE COMMITTEE ON SENATE BILL 374

Call to Order: By CHAIRMAN DON HARGROVE, on April 21, 1997, at 4:10 p.m., in Room 331.

#### ROLL CALL

**Members Present:**

Sen. Don Hargrove (R)  
Sen. Daryl Toews (R)  
Sen. Mignon Waterman (D)  
Rep. William E. Boharski (R)  
Rep. Daniel W. McGee (R)  
Rep. Diana E. Wyatt (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Greg Petesch, Legislative Services Division  
Jodi Jones, Committee Secretary

#### HEARING ON SB 374

SENATOR DON HARGROVE discussed the amendments (EXHIBIT 1).

REP. DAN MCGEE said he would like to recognize that Congressman Rick Hill is here and this shows how important this bill is.

Greg Petesch, Legislative Services Division, discussed the amendments (EXHIBIT 1).

SENATOR HARGROVE asked what new section A was for? Greg Petesch said it is to show that the federal government is in good faith. It also will give the employment notice of the new hirer information. It puts the burden on the dead-beat dad to give that notice rather than the employer.

SENATOR HARGROVE asked who gives out the notice that these people are delinquent now? Mary Ann Wellbank, Department of Public Health and Human Services, said if the obligated parent is delinquent in their system then they notify him of this. She said in the court system, usually nobody is monitoring this.

Greg Petesch said these amendments would be included in the prior Free Conference Committee report and he discussed this Conference Committee report (EXHIBIT 2).

**SENATOR MIGNON WATERMAN** asked if the idea of the new section A was to replace new hirer and the obligor who is delinquent would notify the department. **SENATOR HARGROVE** said that was correct.

**SENATOR WATERMAN** said she doesn't know of many delinquent obligers who will notify somebody and is this going to be a problem. **Mary Ann Wellbank** said it is already a problem because obligers don't step forward to say they are delinquent. The other problem is the county attorney won't prosecute because they have better things to do than this.

**SENATOR HARGROVE** asked if they can prosecute right now. **Mary Ann Wellbank** said they can but they don't.

**REP. BILL BOHARSKI** discussed the amendments (**EXHIBIT 1**). He used the example of getting a job at ABC construction and the worker was delinquent and then the worker goes to a new job and he has to notify the department that he is working for a new employer.

**SENATOR HARGROVE** said right now the department informs the obligor that he is delinquent and is the intent of this amendment to make him a misdemeanor criminal? **REP. BOHARSKI** said if the obligor doesn't notify the department and they can't find him, then the misdemeanor is not informing the department of where the obligor is working.

#### Discussion on Whereas #1:

**REP. BOHARSKI** said on the first whereas, he would insert after "395" the words "sub-section (c)".

**REP. DIANA WYATT** asked if the first paragraph of the amendments are Constitutional Amendments (**EXHIBIT 1**). **Greg Petesch** said the first whereas is a statement of fact of what PRWORA does.

#### Discussion on Whereas #2:

**SENATOR WATERMAN** asked if there are other situations in Montana where they require other new hires to notify someone. **Greg Petesch** said withholding is done on certain tax provisions upon being hired.

**SENATOR HARGROVE** said this is an issue of privacy and are we talking about the new hirer reporting specifically in the whereas statement #2. **REP. BOHARSKI** said he would suggest the social security requirements be included in this section also.

**SENATOR HARGROVE** asked in order to address social security numbers and new higher reporting, how would the wording be addressed. **Greg Petesch** said if the legislature chose to amend the Constitution then it would be limited as closely as possible to the requirements. We don't want to invade the right of privacy anymore than we are required to.

**SENATOR WATERMAN** asked if the new hirer reporting requirement or the social security requirement violates Article 2, Section 10, of the Constitution. And do we need to amend the Constitution to enact this legislation? **Greg Petesch** said he did not think the new hirer requirement would require a Constitutional Amendment. The social security issue is different, but he still didn't think it would require a Constitutional Amendment.

**REP. BOHARSKI** said one concern he has is the difference between this bill and the Attorney General's opinion is that private employees are working for the state. Where the parallel falls apart is that John Q. public as a private citizen of this state does not have to be associated with any programs being run by the state. He said he has a choice as a private contractor not to share his information with the state if he doesn't take that contract. If he works for someone else then he has to register his number in the federal system.

**Discussion on Whereas #3:**

**SENATOR WATERMAN** asked if there are other instances where people don't have a right to trial by jury. **Greg Petesch** said our Constitution is very broad in jury trials. There are instances where we restrict a jury trial, but we don't prohibit them.

**SENATOR WATERMAN** asked if we allow them for abuse and neglect cases. **Greg Petesch** said he thought there was a restriction and those are considered confidential in nature. **Amy Pfeifer, Department of Public Health and Human Services**, said abuse cases are usually confidential and there is a statutory limit on the right to jury trials in those actions.

**Discussion on New Section A:**

**REP. BOHARSKI** discussed new section A of the amendments (**EXHIBIT 1**).

**Mary Ann Wellbank** said one of the other new provisions of the bill requires the central registry of all support orders in Montana to have the parties promptly file with the courts and to update as necessary. This is stated on page 29 of the bill, lines 3-5.

**REP. MCGEE** said in sub-section (3), the wording is not right. It should read "an obligor is notified of a delinquency in the payment of support, the obligor shall notify the child support division within 10 days". The idea being that if an obligor is delinquent that they be notified and the imposition should be on the obligor and not the employer.

{Tape: 1; Side: A; Approx. Time Count: 4:39 p.m.; Comments: .}

**SENATOR HARGROVE** said we have five amendments: one is strip out the new hirer, strip out jury trial, strip out social security numbers, the whereas', and the new section A.

**CONGRESSMAN RICK HILL** said whatever the legislature does here, they will try to do their part on the federal level also. This wasn't a mistake by Congress as they wanted to establish a national mechanism for child support enforcement and setting up the national registry was one mechanism that would work. The idea that Congress will go back and change this is an unrealistic expectation at least in the short term. He said one area that needs to be accomplished is to give the Child Support Enforcement Division access to databases that are currently on file on the federal level. Social Security numbers are already on file because these numbers come from the federal government to begin with. The timing of reporting this information is important on the part of the employer and employee. He said much of this information already exists that is being required in this bill. This is not an easy legislative solution because Congress was confused when they passed it. They believe that they can dramatically improve child enforcement and it is an essential part of welfare reform and restoring individual responsibility. The big part of the problem is people are escaping the child support responsibilities because they are moving from job to job and state to state.

**SENATOR WATERMAN** said we have discussed numerous times that there are several provisions in this bill that we didn't like. We have language in the last Conference Committee that says if a federal court finds any of these provisions invalid that they will no longer be enforced. If any of these sections are repealed then none of those sections apply. If the federal government granted us a waiver and we require the department to seek waivers then these provision no longer apply and all of them have been sunseted. She said she didn't know what was accomplished by having these amendments. Sub-section A gives dead beat dads a chance to challenge this in court.

**REP. MCGEE** said there are about 44,000 cases that the department is working on in the state. There are approximately 20,000 individuals that are paying child support. There are 39,000 employers in the state of Montana and over 26,000 employers that have fewer than four employees. His concern is for those people because they are being asked to do this work. He said his objection to this bill is that the entire obligation falls on the payor not on the obligor. If the payor screws up, then they are blamed rather than the obligor. He said the whereas' are very important statements that send a message back to the federal government and the people who are reviewing this plan. He said we can pass this out of the House with the whereas', make the obligor responsible, strip out the new hirer registry, trial by jury, and the social security requirements.

**SENATOR WATERMAN** said she sits on the State Chamber Board and they did not object to this bill nor did the business people because they understand the obligation they are assuming and they understand what it is doing to taxes in this state. She did not think we need the 'whereas' because then it is a Constitutional issue.

**SENATOR DARYL TOEWS** said we are creating another underground economy if we put the 'whereas' in.

**REP. WYATT** said she has some problems with the 'whereas' because if you take away the privacy, some of the people that voted for this bill will not support it now. She asked if this language would require a Constitutional Amendment and if so what kind of vote are we asking for? She said in the new section you are asking dead-beat dads who are already not responsible and not ethical about their children to begin being ethical and responsible and report themselves. **Greg Petesch** said this is not asking for a Constitutional Amendment, however it is placing some obligation on the next legislature to propose some Constitutional Amendments based on this legislation.

*{Tape: 1; Side: B; Approx. Time Count: 4:57 p.m.; Comments: .}*

**REP. BOHARSKI** said we are willing to sit up here and vote to give people's names, address, phone numbers etc. all into a new database at the federal level accessible by anybody. He said he takes very seriously the privacy part of the Constitution. He said if we put an amendment on the Constitution concerning privacy you can guarantee it will be voted down. He said it is more efficient to catch criminals if they required everyone who owned a gun to register it and enter it into a national database, but nobody is going to vote for that.

**SENATOR HARGROVE** said social security numbers are being used everyday. He said almost all of the things that are being suggested in this bill are already done. Children and single parents are very important. If anything happens on the federal level or we get waivers, these laws will be repealed. The 'whereas' are important, but when they are dependant on stripping out other things, then they will crash the program. Congressman Hill said this is a substantial gamble if we want to hang our hat on section 395.

#### Motion:

**REP. MCGEE** MOVED TO ADOPT THE 3 WHEREAS'.

#### Discussion:

**REP. MCGEE** said on the first 'whereas', "sub-section (c)" should be inserted after "section 395." The second 'whereas', insert "and social security number" after the word "hire."

Vote:

MOTION TO ADOPT THE THREE WHEREAS' PASSED 4-2 WITH SENATOR WATERMAN AND REP. WYATT voting no.

Motion:

REP. MCGEE MOVED TO ADOPT NEW SECTION A WITH THE LANGUAGE BEING FURTHER REFINED IN SUB-SECTION 3. MOTION CARRIED 4-2 WITH SENATOR WATERMAN AND REP. WYATT voting no.

*{Tape: 1; Side: B; Approx. Time Count: 5:09 p.m.; Comments: The committee took a 10 minute break for Senate floor action. Tape is garbled for a short period after the break.}*

Motion/Vote:

REP. BOHARSKI MOVED TO STRIP HIGHER REPORTING. MOTION FAILED 3-3 WITH SENATOR HARGROVE, SENATOR WATERMAN AND REP. WYATT voting no.

Discussion:

SENATOR WATERMAN wanted to know what happened to the First Free Conference Committee and if it is included or are they back to the bill as it came out of the House. **Greg Petesch** said they are back to the bill as it came out of the House.

Motion/Vote:

REP. MCGEE MOVED TO STRIP OUT THE JURY TRIAL PORTION OF THE AMENDMENTS. MOTION FAILED 4-2 WITH SENATOR HARGROVE AND SENATOR WATERMAN voting no.

Motion/Vote:

REP. BOHARSKI MOVED TO STRIP OUT THE SOCIAL SECURITY REQUIREMENTS. MOTION FAILED 3-3 WITH SENATOR HARGROVE, SENATOR WATERMAN AND REP. WYATT voting no.

Motion:

SENATOR WATERMAN MOVED TO ADOPT ALL OF THE OTHER PROVISIONS NOT DEALING WITH SOCIAL SECURITY, NEW HIRER REPORTING AND JURY TRIAL.

Discussion:

SENATOR WATERMAN asked if they adopt the last Conference Committee report into this Conference Committee the only thing that will have to be added is the two amendments this committee agreed upon. **Greg Petesch** said that was correct.

SENATOR WATERMAN said if they cannot reach a positive agreement, there is no reason to send it back to the floor. **Greg Petesch**

said the first conference report is done and if they adopt the other two amendments then there is some additional work.

REP. BOHARSKI said we have adopted three whereas clauses but we have not voted to take those other provisions out of the bill and this accomplishes nothing.

Vote:

MOTION TO ADOPT ALL OF THE OTHER PROVISIONS NOT DEALING WITH SOCIAL SECURITY, NEW HIRER REPORTING AND JURY TRIAL FAILED 4-2 WITH REP. BOHARSKI AND REP. MCGEE voting no.

Motion:

SENATOR WATERMAN MOVED TO ACCEPT THE PREVIOUS FREE CONFERENCE COMMITTEE REPORT AS AMENDED. MOTION FAILED 2-4 WITH SENATOR WATERMAN, REP. BOHARSKI, REP. MCGEE, AND REP. WYATT voting no.

ADJOURNMENT

Adjournment: 5:33 p.m.

  
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SEN. DON HARGROVE, Chairman

  
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JODI JONES, Secretary

DH/jj