

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### FREE CONFERENCE COMMITTEE ON SENATE BILL 374

Call to Order: By **CHAIRMAN DON HARGROVE**, on April 22, 1997, at 9:10 a.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:** John MacMaster, Legislative Services Division  
Jodi Jones, Committee Secretary

#### HEARING ON SB 374

**REP. DAN MCGEE** asked what the new higher registry is trying to accomplish. **Mary Ann Wellbank, Department of Health and Human Services**, said what is expected is every state will report their new hirers to a state system which is uploaded to the federal system. She said if there is a custodial parent that has a case in Arizona, they can go directly to the new hirer registry and find where that person is working. If the person is working in Montana they can refer the case to Montana or send an income withholding order to Montana.

**REP. MCGEE** said if you put in all of your child support enforcement cases and put in all of the court orders the federal system will have the Montana version of the new hirers. Can somebody in Arizona find this person by accessing the database? **Mary Ann Wellbank** said they can find out through the national system beginning in 1998 whether that person has an order or not.

**REP. MCGEE** said can they find someone through the Department of Labor? **Mary Ann Wellbank** said yes if they know what state that person is employed in.

**REP. MCGEE** asked if employers are currently providing new hirer information to the Department of Labor but not in a timely fashion. **Mary Ann Wellbank** stated that was true.

**Mary Ann Wellbank** said they had a proposed amendment that read "information provided by an employer to the Department of Revenue for administration of the unemployment insurance program may be used by the Department of Human Services to comply with section 313."

**SENATOR DON HARGROVE** asked if the time was really the only important thing in this system. **Mary Ann Wellbank** said they could at least have some information for other states to check for, but it will likely be out-of-date because it is reported on a quarterly basis.

**REP. MCGEE** asked if they are only accomplishing one goal by getting the database, but it is not done in a timely matter. **Mary Ann Wellbank** said that was correct.

**REP. MCGEE** said he has to provide information on his employees every quarter to the Department of Labor.

**SENATOR HARGROVE** asked when you hire someone, how long before you have to report them. **REP. MCGEE** said you can wait till the next quarter. If you hire in the beginning of January you don't have to report them until March.

**REP. MCGEE** said once any of this information is in any database it is accessible by anybody so the privacy issue is not the key problem here. He said there is a Constitutional issue of the trial by jury and this needs to be eliminated from the bill.

**SENATOR HARGROVE** said he agreed.

**REP. MCGEE** said he also thought the whereas' number 1 and 3 need to be put in the bill. **(EXHIBIT 1)** This would allow them some time to get an exemption from the federal government. **Mary Ann Wellbank** said to apply for the exemption they would have to show the steps of how they were going to amend the Constitution.

**SENATOR MIGNON WATERMAN** said in the first Free Conference Committee we asked the Department to seek an exemption on this and that is in the bill. This part is null and void if they are granted that exemption. The whereas says we need to amend our Constitution and she thought they were stronger without that whereas in there. They already have the language asking for an exemption. **SENATOR HARGROVE** said he agreed and that it shouldn't be a whereas, but part of the law as to what we are going to do.

**REP. MCGEE** said he also agreed but what kind of language can be put in there to address this? **SENATOR WATERMAN** said in amendment 68, page 119, line 5, this language addresses this. **Mary Ann Wellbank** said the only question that would arise is how far would they have to go before the denial is final. She said it might have to be pursued in court or after the hearing before an exemption would go into effect.

SENATOR DARYL TOEWS said he had a problem with that because they should refuse to do it period, rather than going halfway and then trying to get the exemption.

REP. BILL BOHARSKI said Congress wrote the law and if the state needs to amend its Constitution they have five years to comply.

SENATOR HARGROVE said we want to avoid amending our Constitution.

REP. MCGEE said what we need to say to the federal government is that section 395 has been provided and the Montana Legislature finds this conflicts with our Constitution and the Legislature does not intend to change its Constitution to conform with this and the state will seek an exemption based on this language.

Mary Ann Wellbank said all they have to do is research case laws and show that in the past there has been no trial by jury.

SENATOR WATERMAN said she didn't feel comfortable passing this conceptually and would like some amendments.

REP. MCGEE said he felt comfortable with the social security issue because they already have that information out there.

SENATOR TOEWS asked if they were still leaving the new hire in?

REP. MCGEE said they might as well have it because they are already doing it.

*{Tape: 1; Side: A; Approx. Time Count: 9:35 a.m.; Comments: Committee recessed to do amendments, they reconvened at 10:20 a.m..}*

SENATOR HARGROVE explained the amendments (EXHIBIT 2).

Motion:

SENATOR TOEWS MOVED TO ADOPT THE AMENDMENT (EXHIBIT 2).

Discussion:

SENATOR WATERMAN asked if this replaced the whereas'. SENATOR HARGROVE said they would not be there.

SENATOR WATERMAN asked if new section A would be there. SENATOR HARGROVE stated no.

SENATOR HARGROVE said they would adopt the first Free Conference Committee report plus this amendment minus the trial by jury sections.

SENATOR TOEWS said he would like to leave new section A in there.

REP. MCGEE discussed the amendment and some suggested changed language in the amendment (EXHIBIT 2).

Vote:

MOTION TO ADOPT THE AMENDMENT PASSED UNANIMOUSLY.

Motion:

SENATOR WATERMAN MOVED TO ADOPT THE FIRST CONFERENCE COMMITTEE REPORT WITH THE AMENDMENT THAT WAS JUST ADOPTED.

Discussion:

REP. MCGEE said amendment 35 and 52 of the previous Conference Committee report deal with the trial by jury issues and they should be stricken (EXHIBIT 3).

SENATOR WATERMAN said she would include that in her motion.

Motion:

REP. BOHARSKI MADE A SUBSTITUTE MOTION TO ADOPT A CONCEPTUAL AMENDMENT THAT ADDRESSES THE NEW HIRER REPORTING AND SOCIAL SECURITY NUMBER REQUIREMENTS OF THE ACT AND THAT WE CITE ARTICLE 2, SECTION 10, OF THE MONTANA CONSTITUTION. MOTION FAILED 3-3 WITH SENATOR HARGROVE, SENATOR WATERMAN, AND REP. WYATT voting no.

Discussion:

REP. MCGEE said he is trying to figure out how this will be challenged in court if necessary and who does what to whom. If we did not have certain sections like the new hirer in there, then the federal government could come back and say we are out of compliance and then the Attorney General would have to defend us based on our Constitution. If we put everything in the way the federal government wants it, how it goes to court is important. REP. BOHARSKI said just because we agreed to comply doesn't mean it still can't be challenged on the basis of the Constitution.

Vote:

MOTION TO ADOPT THE FIRST FREE CONFERENCE COMMITTEE WITH THE NEW AMENDMENT AND THE STRIKING OF THE JURY TRIAL FAILED 3-3 WITH SENATOR TOEWS, REP. BOHARSKI AND REP. MCGEE voting no.

Discussion:

REP. MCGEE said the main concern he has is all of this information going into a federal database, rather than having it be administered by the State of Montana. Mary Ann Wellbank said they will upload the Montana database to the federal level.

SENATOR WATERMAN said her problem with the new hirer is the 20 day period is hard for businesses to comply with.

**REP. MCGEE** said he is reluctant to go back to the House with almost the same amendments that they had before. He asked what the Senate would do if the bill went back to the form it was in when it came out of House Judiciary. **SENATOR TOEWS** said he didn't think it would pass.

**SENATOR WATERMAN** said if we are not going to comply, why have the bill?

**SENATOR TOEWS** said they have to come up with something and he suggested taking out the new hire. He said right now they are not negotiating with the federal government because they have not offered them any plan. If they want to negotiate, they need to put something out there.

**REP. BOHARSKI** said hypothetically, if we pass this without the provisions that we don't like because they are objectional, the federal government is now forced to take affirmative action. They will go through the hearing process and the minute they make their first move, the Attorney General will file for an injunction in federal court. He is going to look at section 395 of this bill and tell the judge that the federal government cannot withhold this funding from us. Our local federal judge will rule in favor of this because he lives here. The federal government is forced to appeal and if the judge doesn't grant the injunction the worse case scenario is the Governor will call us in for a special session and 51 people can vote this bill in and we never lost a dime of federal money.

**SENATOR HARGROVE** said that is a possible scenario.

**SENATOR WATERMAN** said the other scenario is we have asked the department to seek exemptions and those section will be null and void if those exemptions are granted. If they get waivers those sections are null and void. If the federal government overturns these sections as being unconstitutional, they are null and void. If Congress amends these provisions they are null and void. And all of these provisions sunset in two years. It is fine for us to argue this on the merits of philosophy, but there are 17,000 kids out there who are dependant on these funds for food and shelter and she is not willing to put them at risk or put the state at the cost of a special session.

**SENATOR HARGROVE** said the word Congressman Rick Hill used was "realistically" and these provision cannot become any stronger.

**REP. MCGEE** said he would change his vote to a yes to adopt this Conference Committee.

**Motion:**

**SENATOR WATERMAN MOVED TO ADOPT THE AMENDMENTS FROM THE FIRST FREE CONFERENCE COMMITTEE REPORT AND ADD THE AMENDMENT THAT WAS**

VOTED UPON EARLIER. MOTION PASSED 5-1 WITH REP. BOHARSKI voting  
no.

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ADJOURNMENT

Adjournment: 10:50 a.m.



SEN. DON HARGROVE, Chairman



JODI JONES, Secretary

DH/jj