

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### FINANCE & CLAIMS SUBCOMMITTEE ON SB 374

Call to Order: By CHAIRMAN TOM KEATING, on March 13, 1997, at 8:12 a.m., in Room 108.

#### ROLL CALL

**Members Present:**

Sen. Thomas F. Keating, Chairman (R)  
Sen. Larry Baer (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Greg Jergeson (D)  
Sen. Dale Mahlum (R)  
Sen. Mignon Waterman (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Taryn Purdy, Legislative Fiscal Division  
Sharon Cummings, Committee Secretary

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

CHAIRMAN KEATING explained what happened at the last subcommittee meeting.

SEN. RIC HOLDEN We adopted an amendment for page 17, I'd like to introduce a different amendment dealing with the same subject.

SEN. KEATING I believe this is one of the issues the bankers were concerned with.

Amy Pfeifer, Department of Public Health and Human Services (DPHHS) (EXHIBIT #1) handed out and explained.

SEN. LARRY BAER Why should Montanans be mandated to an order of another state without the opportunity to bring it before one of our state courts to see if it is valid? This would preclude that. SEN. HOLDEN I understand your concern with that, under federal statute we have to honor those determinations.

SEN. KEATING How would the department determine that the order was issued by an appropriate authority? Mary Ann Wellbank, DPHHS We would talk with the issuing authority. It would probably be a clerk of court or a child support agency in another state.

**SEN. BAER** The point I'm trying to make is that a Montanan has to comply with an order from an out-of-state court without having the opportunity to challenge that order in a Montana court.

**SEN. KEATING** I don't see how the language here would preclude someone from going to a Montana court with an order from a foreign court and asking for the validity of it or whether compliance is required under the law.

**SEN. MIGNON WATERMAN** Before there were federal regulations we had Montanans looking for an out-of-state court that wouldn't honor Montana child support orders. This is also protecting Montana residents.

**SEN. BAER** It's not why they are doing it, it is what they are doing.

**SEN. MIKE HALLIGAN** Does the agency get a certified copy of the order? **Ms. Wellbank** When another state refers the full case to us they are required to send us a certified copy of the order. In this type of case the employer will receive the original withholding order and the obligor will get a copy of it. Many states have a county by county system, this allows states to bypass the state child support agency and go directly to the employer.

**Motion/Vote:** **SEN. HOLDEN MOVES TO AMEND SB 374 WITH (EXHIBIT #1). THE MOTION CARRIED WITH SEN. BAER & HALLIGAN VOTING NO.**

**Taryn Purdy, Legislative Fiscal Division (LFD) (EXHIBIT #2)** handed out and explained. **(EXHIBIT #3)** handed out.

**SEN. KEATING (EXHIBIT #4)** shows the non-mandated sections of the bill.

*{Tape: 1; Side: A; Approx. Time Count: 8:33; Comments: None.}*

**SEN. HOLDEN** Can you recap what the non-mandated changes are on page 49? **Ms. Pfeifer** This is Section 46 on the non-mandated list.

**SEN. HALLIGAN** What if neither party has access to health insurance? **Ms. Pfeifer** 40-5-801 is the provision of the code that deals with medical support orders. We are bound by that scheme.

**SEN. KEATING** Please explain the non-mandated change in Section 47. **Ms. Pfeifer** This is our provision regarding administrative hearings.

**SEN. HALLIGAN** What is the timing issue for someone requesting an in-person hearing because the case was substantially prejudiced by the telephonic hearing? **Ms. Pfeifer** Usually the hearings officer asks at the end of the hearing if they are interested in

an in-person hearing. No one has requested this after a decision has been made.

SEN. HALLIGAN You may want to put a time limit in your rules.

Ms. Pfeifer I suggest it be put in statute.

SEN. KEATING Can a person request an in-person hearing in lieu of the telephonic hearing? Ms. Pfeiffer Yes, with the amendment you approved. We had over 600 hearing by telephone and 20 in-person hearings last year.

Ms. Purdy The amendment that was passed dealt with page 80, line 28. This section has not been amended.

Motion/Vote: SEN. BAER MOVES TO AMEND SB 374 BY CHANGING THE SECOND "AND" TO "OR" ON PAGE 52, LINE 10. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. BAER MOVES TO RECONSIDER OUR ACTION ON AMENDING PAGE 53, LINE 22. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. BAER MOVES TO AMEND SB 374 BY ADDING ", ANY POST HEARING BRIEFS ARE RECEIVED" AFTER "CONCLUDED" ON PAGE 53, LINE 22. THE MOTION CARRIED UNANIMOUSLY.

*{Tape: 1; Side: A; Approx. Time Count: 8:52; Comments: None.}*

SEN. HOLDEN (EXHIBIT #5) explained.

Motion/Vote: SEN. HOLDEN MOVES TO AMEND SB 374 WITH (EXHIBIT #5). THE MOTION CARRIED UNANIMOUSLY.

SEN. KEATING Section 48, people had concern about not filing liens and docketing the order in the district court. This is language addressing that concern. Ms. Pfeifer (EXHIBIT #6) explained.

SEN. KEATING What is an administrative order, could it include a lien? Ms. Pfeifer Yes.

*{Tape: 1; Side: B; Approx. Time Count: 9:01; Comments: None.}*

SEN. KEATING If an administrative order includes a lien, before the lien is enforceable does it have to be filed? Ms. Pfeifer This is one way to do it.

SEN. KEATING Is a lien in an administrative order enforceable without being docketed or filed? Ms. Pfeifer No.

SEN. KEATING This language says an administrative order is effective and enforceable without filing, if it contains a lien is that lien effective and enforceable without filing it? How do we know the answer is no? Ms. Pfeifer This is in 40-5-248.

**SEN. HOLDEN** We directed people to statute in an earlier amendment, should we do that now?

Motion/Vote: **SEN. WATERMAN** MOVES TO AMEND SB 374 WITH (EXHIBIT #6) ADDING ", INCLUDING 40-5-248" AT THE END OF ITEM #2. THE MOTION CARRIED UNANIMOUSLY.

*{Tape: 1; Side: B; Approx. Time Count: 9:18; Comments: None.}*

**Ms. Pfeifer** Section 61 deals with income withholding orders.

**SEN. KEATING** I've had calls from fathers who were current with their payments and were garnished. The explanation was that they had been delinquent at one time and the feds required they have mandatory withholding. **Ms. Wellbank** It is a federal and state requirement that once someone is delinquent they stay in income withholding even if they make things up. **Ms. Pfeifer** That has been in force since 1984.

**SEN. HALLIGAN** What about seasonal employees or someone who changes jobs every 3-4 months? **Ms. Pfeifer** You could ask the judge to modify the support order to eliminate the immediate withholding language.

**SEN. KEATING** An employer complained that having discharged a delinquent obligor and then rehiring that person and not automatically withholding the employer became responsible for the payment. **Ms. Pfeifer** That is existing law. The law says the withholding order is valid until terminated by the department. An employer should not throw away the withholding order when they fire that employee. **Ms. Wellbank** The employer has the right to a hearing, we would present evidence of how many times we contacted him. This would never be an automatic fine. We're very sensitive about going after employers. This has to be a blatant violation of the provision before we go forward with anything.

**SEN. HOLDEN** If an order is sent to an employer and that employee quits for 4-5 months, would the department send another notice when he was rehired or would you hold him to the original notice. **Ms. Wellbank** We match with Department of Labor and Industry records when they are 90-120 days late. In the example you gave we wouldn't know for many months if he was rehired. Usually we haven't terminated the order in the first place.

**SEN. HOLDEN** I think you need to reiterate to department personnel that if the caseworker discovers the employee quits and is rehired, you need to be sure to get another notice out to the employer to resolve these possible problems. **Ms. Pfeifer** Many employers are very good at contacting us.

**SEN. BAER** This seems to be a problem, do we need to address statute on this subject? **SEN. KEATING** We can make a recommendation to the full committee on this. There is a lot of

concern on the amount of workload we are putting on the employer with regards to notification, much of that is already in statute. If we want to do anything in that area, we would have to go back and address all of the statute dealing with notification by employers.

**SEN. BAER** I'd like to make a suggestion that this be looked at sometime in the future.

**SEN. KEATING** There are 400,000 wage earners in Montana, how many child support obligors are there in Montana? **Ms. Wellbank** Our caseload is about 44,000 and 27,000 are Montanan's subject to withholding. **Ms. Pfeifer** There are also private cases through the courts that we are not involved in. **Ms. Wellbank** The centralized system will help with this.

**SEN. KEATING** 12½% of the workers are driving these obligations on employers. I hope the department understands the employers frustration. **Ms. Wellbank** We've heard employers complaints and are sensitive to them. We send out a quarterly newsletter to employers and hired an employer liaison to solve these problems. I recently sent a letter to my supervisory staff reminding them that employers are a key part of the system and we need to treat them with kid gloves unless they are blatantly out of compliance.

**Ms. Purdy** Items #5,6,7, & 8 of Amendment #sb037403.a35 (EXHIBIT #7) explained.

*{Tape: 2; Side: A; Approx. Time Count: 9:45; Comments: None.}*

**SEN. HOLDEN** Please explain the last sentence on (EXHIBIT #8). **Ms. Pfeifer** (EXHIBIT #8) explained. **Ms. Wellbank** The department just lost a major Supreme Court decision that dealt with a hearing that lasted years and years. The custodial parent in this case maintains she is owed \$20,000-\$78,000 and because we didn't get the income withholding part done in a timely manner she is unable to collect that money. This is to help with this type of problem.

**SEN. BAER** This is a due process requirement, if we allow this additional language there are no consequences for the department not complying with this due process requirement.

**SEN. GREG JERGESON** That additional sentence negates the intent that it be concluded within 60 days. The hearings officer should be able to make a decision within 60 days.

**SEN. HALLIGAN** Who determines the good cause? **Ms. Pfeifer** The hearings officer would determine good cause.

**Ms. Wellbank** I understand the concerns about this. The reason we took the timelines out of the language in the first place was because we never put them in to be intended as a due process requirement. They were originally in statute to conform with

federal regulations that require us to close a certain percentage of our cases within a certain number of days. It has recently been interpreted as a due process requirement which is why we wanted to remove those timeframes. We don't want to preclude the custodial parent from being able to collect because of our mistakes.

**SEN. JERGESON** This should not drag on forever and the department should get these resolved quickly, 60 days seems reasonably.

**SEN. BAER** I was under the assumption that good cause would have to be determined by an independent tribunal, i.e. district court judge. If you allow the good cause to be determined by the department's hearing officer it leave it wide open for an arbitrary and capricious decision favoring the department. **Ms. Pfeifer** The orders are subject to judicial review. This would initially be done by the hearing officer.

**SEN. BAER** I'd be happy if the ultimate decision is within the jurisdiction of the court but I want to be assured of that.

**SEN. DALE MAHLUM** It bothers me that parties may not know how to go to the next step if they don't like their hearing. I feel the hearing officer is like a God.

**SEN. HALLIGAN** The issue of when income withholding should occur needs to be addressed.

**SEN. JERGESON** Income withholding is the way to make sure child support gets paid, why should that take more than 60 days.

*{Tape: 2; Side: A; Approx. Time Count: 9:59; Comments: None.}*

**Ms. Pfeifer** The federal requirement is 45 days and 75-95% of our cases have to be done in that timeframe. There are a few cases that might go beyond this. Our hearing officers are very good at drawing out information from the parties involved and make sure everyone gets an opportunity to say whatever might be remotely relevant to the action.

**Motion/Vote:** SEN. HOLDEN MOVES TO AMEND SB 374 WITH AMENDMENT #SB037403.A35 (EXHIBIT #7) ITEMS #5,6,7 & 8. THE MOTION CARRIED WITH SEN. HALLIGAN VOTING NO.

**Ms. Pfeifer** Non-mandated section 72 explained. Section 83 deals with license suspension. This is an existing process in Montana, adopted in 1993. The federal law requires the state to have a license suspension process and includes hunting licenses. We aren't suspending all hunting and fishing licenses, only centrally sold FWP licenses.

**SEN. MAHLUM** What if a person needs game for food to support his family? **Ms. Pfeifer** There is a hardship provision in our existing license suspension process.

**SEN. WATERMAN** How far behind is a person before their license is suspended? **Ms. Pfeifer** 6 months or more.

**SEN. MAHLUM** Why do we take a person's license? **SEN. HOLDEN** Hunting is a good way to address this issue in Montana. I think this is effective.

**SEN. JERGESON** I believe a person who bids \$100,000 on a special goat hunt should be current on their child support. Is there an age cutoff on license suspension? **Ms. Pfeifer** This enforcement remedy applies to obligors who are 6 months behind in payments.

**SEN. BAER** This is a Title IV-D amendment, a requirement. We've been told IV-D mandates are all or nothing, how can we modify this? **Ms. Pfeifer** This gives us a process to suspend recreational licenses. **Ms. Wellbank** It is a matter of interpretation and given our current state system there wasn't a way to enforce all the federal requirements.

*{Tape: 2; Side: B; Approx. Time Count: 10:37; Comments: None.}*

**SEN. HOLDEN** Section 99, page 107 talks about social security numbers for hunting licenses. I think the general public would accept a deadbeat dad losing his hunting privileges but I don't think they want to give FWP their social security numbers. **Ms. Pfeifer** This was worked out with FWP because they keep a lot of records and they want to make sure they are suspending the correct person's licenses. The drivers license number is currently on the application.

**SEN. HOLDEN** My social security number is not on my drivers license. With this everyone would have their social security number on their hunting license.

**Motion:** **SEN. HOLDEN MOVES TO AMEND SB 374 BY REMOVING SOCIAL SECURITY NUMBERS FROM RECREATIONAL LICENSE APPLICATIONS THROUGHOUT THE BILL.**

**Robin Hein, Department of Fish, Wildlife and Parks (FWP)** Social security number information will be kept confidential. We asked for it as a way to insure a proper match is made. In the past we've matched on name and date of birth and pulled two names from the drawing that should not have been pulled. Currently, social security numbers are optional on applications.

**SEN. HOLDEN** That was an honest mistake, if FWP wants social security numbers on their applications they should come to the legislature for this.

**SEN. HALLIGAN** What are the ways you give out information? Don't you have a connection with the Department of Revenue for checking residency requirements? **Ms. Hein** We are prohibited from giving any of our electronic information for purposes of mailing lists.

I don't believe we are checking residency requirements for DOR. Our database information is confidential.

**SEN. JERGESON** I'm not sure why this is such a big issue, people are always putting their social security number on applications.

**SEN. WATERMAN** I don't want to jeopardize this bill.

**Ms. Wellbank** This is not mandatory. We compared our 16,000 records on people delinquent 6 months or more with FWP's 300,000 records. Only two-thirds of their database has drivers license the same as social security numbers, we would have gotten 1,100 more matches to make a total of 4,446 matches. Each average delinquency is \$1,000, so \$4.4 million could have been leveraged instead of \$3 million. We routinely intercept FWP refunds through the State Auditor's office, the social security number would help to match that.

**Motion/Vote:** SEN. HOLDEN MAKES A SUBSTITUTE MOTION TO AMEND SB 374 BY STRIKING SECTIONS 99 & 100. THE MOTION CARRIED WITH SEN. JERGESON VOTING NO.

**Ms. Purdy** Item #1 on (EXHIBIT #7) addresses Judge Larson's concern. (EXHIBIT #9) is the department amendment on the case registry advisory board. **Ms. Purdy** explained both amendments.

**Ms. Wellbank** Item (v) of Item #1 in (EXHIBIT #7) states "a representative of the data processing division of Missoula County; and". I don't know if they would be a good representative for all the counties so we did not include that in our amendment (EXHIBIT #9)

**SEN. WATERMAN** Is there a county representative on this board?

**Ms. Pfeifer** There is a representative from the supreme court administrator, those are the people working with the counties.

**SEN. MAHLUM** If I remember right, Judge Larson was emphatic on having Missoula County on this board. **SEN. KEATING** Is Missoula County where we are beginning this automated process? **Ms. Wellbank** This is an issue between Judge Larson and myself. Missoula County is one of the larger counties in the state but Yellowstone and other counties are also large. The department has no objection to this but Missoula County may not be representative of the counties in Montana.

**SEN. HALLIGAN** I don't believe we should have Missoula County mentioned in statute. Could they be named as an ex officio member of the board?

**SEN. HOLDEN** Couldn't we change (v) to a county representative.

**SEN. WATERMAN** (ii) could name 2 clerks of court and Judge Larson could lobby for this position.



Ms. Wellbank You could state the supreme court administrator and another data processing representative.

SEN. JERGESON You need someone who understands data processing, perhaps it should be a representative from the information technology advisory council.

Motion: SEN. JERGESON MOVES TO AMEND ITEM #1 IN AMENDMENT #SB037403.A35 BY STRIKING SECTION (V) AND INSERTING "(V) A REPRESENTATIVE OF A COUNTY DATA PROCESSING DIVISION NOMINATED BY THE MONTANA ASSOCIATION OF COUNTIES."

SEN. BAER I don't think it is appropriate to name a private organization to make that determination in statute SEN. KEATING We've done that with other associations in this amendment. SEN. BAER There is too much controversy over MACO.

Vote: THE MOTION CARRIED WITH 4 AYE AND 3 NO.

Motion/Vote: SEN. JERGESON MOVES TO AMEND ITEM #1 IN AMENDMENT #SB037403.A35 BY INSERTING ", " AFTER "POLICY". THE MOTION CARRIED UNANIMOUSLY.

*{Tape: 2; Side: B; Approx. Time Count: 11:09; Comments: None.}*

Motion/Vote: SEN. WATERMAN MOVES TO AMEND SB 374 WITH AMENDMENT #SB037403.A35, ITEM #1. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. HOLDEN MOVES TO AMEND SB 374 WITH (EXHIBIT #10), ITEM #1. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. HOLDEN MOVES TO AMEND SB 374 WITH (EXHIBIT #11). THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. WATERMAN MOVES TO AMEND SB 374 WITH (EXHIBIT #10), ITEM #2. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. WATERMAN MOVES TO AMEND SB 374 WITH (EXHIBIT #10), ITEMS #3 & 6. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. WATERMAN MOVES TO AMEND SB 374 WITH (EXHIBIT #10), ITEMS #4 & 5. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. WATERMAN MOVES TO AMEND SB 374 WITH (EXHIBIT #10), ITEMS 7,8 & 9. THE MOTION CARRIED UNANIMOUSLY.

*{Tape: 3; Side: A; Approx. Time Count: 11:20; Comments: None.}*

Ms. Purdy Judge Larson suggested language that the supreme court administrator shall coordinate development of federal grant guidelines and coordinate applications for grants by Montana judicial districts. This should probably be put in HB 2. He also requested a policy change to adopt the Wisconsin language

for determining child support. **SEN. KEATING** The Wisconsin language should go to the whole committee.

**SEN. JERGESON** The Wisconsin model may be wonderful but I hesitate to adopt it in a bill like this without a full blown hearing and understanding of the topic.

**SEN. HOLDEN** Before we take action on this, is there any issue you want us to handle before it goes to the House? **Ms. Wellbank** We need to make sure that everything that has been done with these amendments conform with the federal requirements. I can't identify any amendments we would take before the House. We do not plan to amend it, but we are concerned with the low fines for the employer new hire reporting.

**SEN. HOLDEN** Are your concerns valid enough that you want to pursue amendments in the House? **Ms. Wellbank** I can't think of any right now. **SEN. HOLDEN** Assuming this gets out of the Senate, I will assist you with the House hearing. If you plan on coming in with a bunch of amendments in the House and make policy changes, I won't assist you.

**SEN. WATERMAN** I suggest you consider bringing issues to us when we take executive action on this bill in Finance and Claims.

(EXHIBIT #12 & 13) handed out.

Motion/Vote: **SEN. HOLDEN MOVES SB 374 DO PASS AS AMENDED TO THE WHOLE COMMITTEE. THE MOTION CARRIED WITH SEN. BAER VOTING NO.**

ADJOURNMENT

Adjournment: 11:30 a.m.

  
SEN. TOM KEATING, Chairman

  
SHARON CUMMINGS, Secretary

TK/SC