

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

23/2

2001 SENATE JUDICIARY

SB 2312

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2312

Senate Judiciary Committee

Conference Committee

Hearing Date January 29th, 2001

| Tape Number | Side A | Side B | Meter # |
|---------------------------|--------|--------|----------|
| 1 | | X | 46.2-end |
| 2 | X | | 0-51.0 |
| Committee Clerk Signature | | | |

Minutes: **Senator Traynor** opened the hearing on SB 2312: A BILL FOR AN ACT TO AMEND AND REENACT SUBSECTION 2 OF SECTION 14-09-08.5, SECTION 14-09-08.6, SUBSECTION 2 OF SECTION 14-09-08.8, SUBSECTION 1 OF SECTION 14-09-09.7, AND SECTION 14-09-09.10 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO CHILD SUPPORT GUIDELINES AND OBLIGEEES AND OBLIGORS.

Senator Kelsh, representing district 26. Bill has two issues. One has to do with how an income is used to determine child support. The other issue is how overtime pay is used to determine child support. This consideration should not be used because it is not a part of a permanent income.

Senator Traynor, all your asking for is the guidelines for overtime pay be considered?

Senator Kelsh, yes. The judge would not consider it.

Senator Traynor, this would look at both obligor and obligee.

Senator Watne, look at income. Are you including the question of income?

Senator Kelsch, yes.

Sue Beehler, representing R-Kids. (testimony attached) SB 2312.

Senator Traynor, amend to make create another commission to add 13 members. Are you suggesting a study resolution.

Sue Beehler, no I don't think a study resolution is needed the governor would appoint that. We are the only state that doesn't allow custodial parents income to be considered.

Margaret Kottre, (testimony attached) supports SB 2312.

Ellary Burkland, from Starkweather, not opposed to child support. Explains position of child custody and how process works from a layman's view.

Senator Traynor, do you think area is complicated and a study needs to be made?

Ellary Burkland, I think it needs to be addressed.

Senator Traynor, so Senator Kelsch's bill would be beneficial?

Ellary Burkland, the change needs to be made. I think right now everyone needs to go to court. We need to look at it wholelistically. I think the problem is simple, that could be my problem.

Senator Trenbeath, I understand your position. I don't understand how a yearly arbitrator would help. But their acting as another judge. Reasonable people won't be reasonable, they'll come to do battle.

Ellary Burkland, I disagree. Why don't you have a catch in there.

Senator Trenbeath, human nature will dictate methodology.

Ellary Burkland, I agree Senator. Talk about emotion when you get a letter from your ex-wife's lawyer.

Tape 2 side A

Karen Smith, mother testifies in support of SB 2312.

Page 3
Senate Judiciary Committee
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Sherry Moore, appears on behalf of State Bar Association. (testimony attached)

Senator Trenbeath, is it the case in the 35 states that use this?

Senator Traynor, would the adoption of the income sharers model involve litigation's for present situations.

Sherry Moore, certainly they would.

Brad Davis, Administrator Southwest Area Child Support Enforcement Unit. (testimony attached)

Mike Schwindt, representing Child Support Enforcement Director for the Department of Human Services. Recommends a do not pass. (Testimony Attached)

Senator Traynor, Law already pertains to changing. What is the mechanism of increased/decreaded income?

Mike Schwindt, under contempt of court the judge can say circumstances have changed.

Senator Traynor, gives obligor opportunity to look at the situation.

Mellisa Hauer, Director of the Legal Advisory Unit for the Department of Human Services. (testimony attached)

Senator Traynor, this is useful. What is the impact on the counties.

Mike Schwindt, in 1997 it switched the administrative costs to the counties. The counties traded grants.

Senator Traynor, closed the hearing on SB 2312.

Discussion followed.

SENATOR TRENBEATH MOTIONED TO DO NOT PASS, SECONDED BY SENATOR

WATNE. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING.

SENATOR TRENBEATH VOLUNTEERED TO CARRY THE BILL.

FISCAL NOTE
 Requested by Legislative Council
 01/23/2001

Bill/Resolution No.: SB 2312

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 1999-2001 Biennium | | 2001-2003 Biennium | | 2003-2005 Biennium | |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$717,113 | | \$704,704 |
| Expenditures | | | | \$70,000 | | |
| Appropriations | | | (\$647,113) | \$70,000 | (\$704,704) | |

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

| 1999-2001 Biennium | | | 2001-2003 Biennium | | | 2003-2005 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | \$1,016,535 | | | \$1,067,733 | | |

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill would change the guidelines used to determine the expected contribution of child support by a parent to an income shares child support guidelines model, and would also include consideration of temporary periods of increased and decreased income. If this model is used, it is estimated the RCSEUs would incur costs for an additional 9 FTEs and operating costs (currently about 18% of salary costs), resulting in additional retained funds for the Department of Human Services. Costs would also be incurred by DHS to re-program FACSES.

The Supreme Court anticipates they would incur costs for the consideration of temporary changes in income, but were not able to determine the fiscal impact. These costs stem from the necessity of court involvement in proceedings to modify orders.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The RCSEUs increase in expenditures would cause the Department of Human Services to realize an increase in retained dollars based upon the SWAP legislation passed in the 1997 Legislative Session. The amount would be 66% of the increased county costs for the RCSEUs.

The Department of Human Services would also receive federal funds of \$46,200 which is 66% of the \$70,000 of expenditures they would incur.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Department of Human Services would incur \$70,000 in operating costs to re-program FACSES to support the income shares child support guidelines model.

The Supreme Court anticipates they would incur costs for the consideration of temporary changes in income, but were not able to determine the fiscal impact. These costs stem from the necessity of court involvement in proceedings to modify orders.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The Department of Human Services would need an additional \$70,000 of appropriation authority in the 01-03 biennium for the expenditures in 3B. above.

The increase in retained dollars of \$647,113 for the 01-03 biennium and \$704,704 for the 03-05 biennium would replace General Funds.

| | | | |
|----------------------|-----------------|-----------------------|-------------------------|
| Name: | Brenda M. Weisz | Agency: | Dept. of Human Services |
| Phone Number: | 701-328-2397 | Date Prepared: | 01/26/2001 |

REPORT OF STANDING COMMITTEE (410)
January 30, 2001 11:28 a.m.

Module No: SR-16-1904
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2312: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2312 was placed on the
Eleventh order on the calendar.

2001 TESTIMONY

SB 2312

gr stands for gross income, nt stands for net income
NA figures were not available

This chart shows child support comparisons at one specific income level. 35 (it was 33 in 1997) states now have income shares guidelines, Virginia changed to the income shares model recently, our state is the only state that absolutely does not allow the obligee's income to be looked at when determining child support. The other states that have the obligor method or the hybrid method do allow the obligee's income to be used when deciding child support. It is used when relevant to the case and to be sure child support is determined fairly. Our century code states each parent has a mutual duty to support their children. An income shares model is consistent with our century code. The obligor model is outdated and bias. The chart above shows that at the first and second rows that 23 states are lower than we are and 6 higher. The third row which a majority of women non-custodial parents could fall, shows that all 20 states looked at are lower. Everyone seems to know our state is one of the lowest paying states so why would our guidelines not reflect that reality. I contend our state is unfair in determining child support and it is time to make a change. South Dakota in 1997 updated their child support guidelines and are still lower than North Dakota. The department has not been willing to work with R-KIDS in listening and trying to work out more fair guidelines. Recently the legislature told the department to include a deviation for parents that have extended visitation. The department came up with a very complicated formula that in essence does not allow for any deviation from child support. I put the figure in of a parent having 212 days with their child, and there was less than a \$30 deduction in support. Give me a break the child would spend the majority of time there and yet no allowance. This has been typically what the department does, they complicate any issue that might add some equity to the guidelines. Other states have been more receptive to change. Our state has done little to remedy problems that we have had with the department. It seems they will make little change unless the legislators tell them to or the supreme court tells them to. R-KIDS had to get a attorney general ruling before we could even sit in on the child support commission that reviewed the guidelines, we could not give input until the public hearings and then little was done to acknowledge our complaints. I believe the only way child support laws and guidelines can be progressive is to form a commission much like South Dakota and

the guidelines no longer be decided by administrative rule. The guidelines effect too many children's lives to leave them in the hands of a department that is unwilling, unreceptive to the parents.

I chose the figures above because I believe they are realistic figures as to what a majority of North Dakotans make. The last column has a difference of about 70% which would be consistent with what a woman who is a non-custodial parent would make in comparison to a male custodial parent. Our guidelines were developed at time when the assumption was that moms get the children and dad pays the support. Times have changed there are moms who now pay support, but yet women have not closed the gap in pay differences, the last figure I heard for the majority North Dakotan women they earn only 68 cents to every dollar a man earns. Our guidelines besides not being fair to the non-custodial parent, they hurt women.

On page 2 lines 28 & 29 in place of the department we would prefer it to say :

The governor will establish a child support commission which will review the child support guidelines during the 2001 interim and make recommendations to the 2003 legislature. The commission will include 13 members consisting of one child support employee, 2 legislators, 3 people in the judicial field of family law, 4 parents either custodial or non-custodial or both, one representative of each parental group ACES and R-KIDS, two other interested citizens.

HB 1280 failed 1999 Income shares bill
41 to 52
The deviation is at the discretion of the state
Multiple Family Calculation R-KIDS
have never approved they are
complicated really do not reflect
the reality of family.
All other states do address
multiple family and ~~visit~~ visitation
They just do it different than the obligor
method

