MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN BILL THOMAS**, on March 2, 2001 at 3 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:
Rep. Bill Thomas, Chairman (R)
Rep. Roy Brown, Vice Chairman (R)
Rep. Trudi Schmidt, Vice Chairman (D)
Rep. Tom Dell (D)
Rep. John Esp (R)
Rep. Tom Facey (D)
Rep. Dennis Himmelberger (R)
Rep. Larry Jent (D)
Rep. Michelle Lee (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Clarice Schrumpf (R)
Rep. Jim Shockley (R)
Rep. James Whitaker (R)

Members Excused: Rep. Daniel Fuchs (R)

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Pati O'Reilly, Committee Secretary

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 34, SB 38, SB 28, 2/27/2001
Executive Action: SB 34

HEARING ON SB 34

Sponsor: SEN. ROYAL JOHNSON, SD 5, Billings

Proponents: Gayle Carpenter, Mt. Health Facility Authority
Jerry Hoover, Ex. Dir., Mt. Health Facility Authority
John Flink, MHA

Opponents: None

Opening Statement by Sponsor:

SEN. ROYAL JOHNSON, SD 5, Billings, said the bill is trying to get a couple of exempt positions so we can keep the people who are in place doing a really good job and give them exempt positions to keep them there. That part was amended out of the bill. The bill was requested by the Dept. of Commerce, which was the old DOC that was there last year, not the new DOC, who testified against the bill. All that the bill does now is to change the name of the Health Care Facility Finance Authority to the Montana Facility Finance Authority. ***{Tape : 1; Side : A; Approx. Time Counter : 0.5 - 1.5}***

Proponents' Testimony:

Gayle Carpenter, Mt. Health Facility Authority, presented written testimony. **EXHIBIT(huh48a01)**

Jerry Hoover, Ex. Dir., Mt. Health Facility Authority, presented written information describing what the authority is, how it issues bonds, who it issues bonds for, locations of the financings, names of the borrowers and amounts they have borrowed over the last 15 years. He believes that the success of this program has largely been because of the relationship the seven members of the Authority board have had with the legislature in meeting needs identified by the legislators' constituencies. It is a proprietary-funded organization, funded solely by fees that are charged to the facilities who use the programs, with no tax monies, no general fund monies, and no appropriations of any kind. The reason for the proposed change in the Authority's title is because now they issue bonds for facilities other than health care facilities, including group homes for persons with developmental disabilities, work activity centers, felons who are transferring from the prison into pre-release centers and mental health centers. **EXHIBIT(huh48a02)**

John Flink, MHA, said that his organization represents hospitals, nursing homes and other health care providers. Capital financing is a critically important issue for Montana's rural hospitals, nursing homes and other health care providers; and MHA has long been

advocates of the work that the Health Financing Authority has done. One provision of the bill will enable the Authority to make grants to some of these small facilities for the purpose of evaluating their future participation in the Critical Access Hospital Program and other special governmental programs. They think this is a significant step for the Authority and for this and other reasons would urge support of the bill. ***{Tape : 1; Side : A; Approx. Time Counter : 1.8 - 7.2}***

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

the requirement that an appraisal be obtained when financing an eligible facility. **Sen. Johnson** said the authority has issued over $800,000 worth of bonds and they do the due diligence on the bonds extremely well and have never had a delinquency. They want to keep the process simple, and they do the things that have to be done to make loans. **Rep. Dell** asked if this is just a streamlining process so they won't have to do some of the extraneous things they've done before. **Mr. Hoover** said the way it is written now, they are required to conduct an appraisal on every financing, which is redundant to the financing and duplicates the expenses for the borrower.

Rep. Esp asked **Mr. Hoover** about the reference to "eligible" facilities in the bill and his mention of pre-release centers. **Mr. Hoover** said that pre-release centers were added as eligible facilities by the legislature two sessions ago.

Rep. Schmidt asked **Mr. Hoover** to explain more about this process. **Mr. Hoover** said that in 1983 the Mt. Hospital Assn. asked the legislature to create the Authority to issue bonds on behalf of health care facilities. Federal tax regulations require that the legislature give that authority to a certain public instrumentality so that it can access the tax-exempt financing market. That's what was done 18 years ago. Since then, it's been the Health Facility Authority Board and staff's responsibility to educate all of the eligible borrowers, which they do by going to conferences, writing letters and personally visiting with them. They now have seven different financing programs.

Rep. Facey asked **Mr. Hoover** how the Authority interacts with the Mt. coal tax trust fund, as mentioned on about page 5, line 15 of the bill. Mr. Hoover said that the last session of the legislature provided for $15 million of the coal trust to be allocated to the Authority for the purposes of making direct loans to health care

facilities. **Rep. Facey** asked what would happen if the coal tax was gone in 15 years. **Mr. Hoover** said if that happened, there would be no funds to allocate to the Authority. **Rep. Facey** asked if it is correct that right now some Montana hospitals borrow and use the coal trust for collateral for loans. **Mr. Hoover** said it is a direct loan, it's not collateral. **Rep. Facey** asked if the loans couldn't be made at all if the coal trust were gone in 10 to 15 years. **Mr. Hoover** said that is correct.***{Tape : 1; Side : A; Approx. Time Counter : 7.5 - 17.1}***

Closing by Sponsor:

Sen. Johnson said that earlier this week the House had a public purpose bond bill, and maybe some committee members didn't know what public purpose bonds are. The Health Care Authority uses part of the public purpose bonds, which are bonds that are allowed by the federal government. They put a maximum on those bonds that can be issued in each state. Montana's maximum has been $150 million, and the bill passed in the House would raise that to a higher figure, such as $175 million to $210 million. That is because the federal government has said that Montana could issue more bonds. Part of the bonds issued by the Authority come out of this public purpose fund. The reason the federal government limits such bonds is because we take away taxing money from them. When these bonds are issued, it's tax free, both state and federal taxes. Those bonds really help the people who buy them and the people they're issued for, because the cost is less to them than the regular way of financing. It's a great way to bring some capital into the state, and it makes a lot of sense to have this kind of an organization in the state. ***{Tape : 1; Side : A; Approx. Time Counter : 17.1 - 20.6}***

EXECUTIVE ACTION ON SB 34

Motion/Vote: REP. DELL moved that **SB 34 BE CONCURRED IN. Motion carried unanimously.** Rep. Shockley will carry the bill.***{Tape : 1; Side : A; Approx. Time Counter : 21.7 - 22.9}***

HEARING ON SB 38

Sponsor: SEN. DUANE GRIMES, SD 20, Clancy

Proponents: Mary Ann Wellbank, Admin., Child Support Enforcement Division, DPHHS
Mike Barrett, Helena

Opponents: None

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, Clancy, said this bill is a request of the Child Support Enforcement Division. It makes changes to the Medical Support Reform Act regarding the issuance of a notice of intent to enroll a child in a health care benefit plan. Recent attention at the federal level on this has resulted in legislation contained in an act called the Child Support Performance and Incentive Act. Its purpose was to eliminate the barriers to the effective establishment and enforcement of medical support obligations. This bill adopts the provisions of that federal act and proposed regulations issued as a result of that act. ***{Tape : 1; Side : A; Approx. Time Counter : 23.8 - 26.1}***

Proponents' Testimony:

Mary Ann Wellbank, Administrator, Child Support Enforcement Division, DPHHS, said that in addition to collecting financial support, the division also deals with insurance coverage for children. The Mt. CSE program is authorized and funded under Title IV-D of the Social Security Act. This title sets forth the responsibilities of states in order to qualify for federal funding of the child support program. That funding is 66 percent federal and 34 percent state special revenue. One of the services they provide as a condition of federal funding is medical support enforcement, and they have the responsibility of enforcing medical support coverage of children when insurance is reasonably available to the obligated parent. The division has been actively enforcing medical insurance coverage since 1995, and they save the state about $1.5 million annually in medicaid money when they identify parents who can provide medical insurance for their children. This bill is the result of changes made to the federal law in the Child Support Performance and Incentive Act of 1998. The pertinent sections of the act were intended to identify and eliminate barriers to establishing medical insurance coverage for children. It also required the secretaries of the federal Department of Health and Human Service and Department of Labor to promulgate a national medical support notice, similar to the income withholding notices that are sent by CSED to employers. The medical support notice will be used by all states as a means of enforcing a parent's obligation to enroll his or her child in available health insurance. The basic purpose of SB 38 is to comply with the federal act. **EXHIBIT(huh48a03)** ***{Tape : 1; Side : A; Approx. Time Counter : 26.2 - 31.3}***

The testimony of **Mike Barrett, Helena,** was cut off by the ending of the tape.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Brown asked **Mary Ann Wellbank** exactly what she meant by enforcing enrollment for health insurance and how it works, and if it means that parents don't want to enroll their children in health insurance but the CSED is telling them they have to. **Ms. Wellbank** said that CSED deals with separated parents, so one of the parents has the children and the other parent doesn't. In a court order, the court or CSED will order the parent to provide not only financial support but medical support if it is available through his or her employer at a reasonable cost.

Rep. Lee asked **Ms. Wellbank** about the section of the bill that stated that CSED would adopt rules establishing guidelines to determine whether a health insurance plan is presumed to be available at a reasonable cost, and how that would be done. **Ms. Wellbank** said that the current rule of thumb is that if insurance is available through an employer and its cost does not exceed 25 percent of the parent's financial obligation, as stated in the support order, that is considered reasonable cost. The federal medical work group is thinking more along the line of 5 percent of the obligated parent's gross income. **Ms. Wellbank** deferred to **April Armstrong**, who said that the present rule of thumb given to the state by the federal government is that they look at the employer-provided coverage, and if the employer pays part of the premium, that is presumed reasonable under federal law and under current state law. For some debtors, even though the employer pays for a portion of it, that's inadequate. The employer may pay for such a small portion that the obligated parent's portion of the premium is fairly large. So the second step is the 25 percent rule, and that is a second presumption that the state has established by law that they want to incorporate into the rule, which would allow somebody to basically have a hardship exemption. **Rep. Lee** asked if there was any concern towards deductibles and if they were figured into the administrative rule. **Ms. Armstrong** said that deductibles are not presently part of the law. Most support orders do not specify plan requirements or that they have to meet certain deductibles. When CSED looks at the cost of insurance, they look at the out-of-pocket expenses for the obligated parent. **Rep. Lee** asked if insurance isn't available at a reasonable cost, would these people go into the CHIP program. **Ms. Armstrong** said there is no specific connection between whether they qualify for insurance or whether they qualify for CHIP. They'd have to apply for CHIP and see if they met the criteria. The hardship the state looks at to determine whether somebody should have employer-related health insurance is not based on CHIP qualifications.

Rep. Shockley asked **Ms. Wellbank** if the current statute allows CSED to issue orders. **Ms. Wellbank** said they do issue medical and financial support orders, and they enforce court orders and administrative orders issued by CSED that order insurance. **Rep. Shockley** asked about the plan administrator referred to on page 6, line 8, and **Ms. Wellbank** explained that the plan administrator is usually an insurance company, or Blue Cross/Blue Shield, which is the State of Montana's administrator.

Rep. Noennig asked **Ms. Wellbank** to explain how this changes current law, and if the agency currently can require enrollment of a child in a medical insurance plan when a court order has not been issued to require it. **Ms. Wellbank** said that if a court order has not been issued and there is no support order for either financial or medical support, then CSED has the authority to establish both a financial order and the order for insurance coverage. If a district court has established the order, CSED only enforces it. **Rep. Noennig** asked under what circumstances the original support determination is made by CSED when there hasn't been a divorce or other proceeding already pending. **Ms. Wellbank** said many people go to CSED to apply for services. They could be parents with children born out of wedlock; many are low-income parents who don't go to district court; some of them are separated families that don't have a legal divorce. They ask CSED to establish a financial support order and a medical support order, and CSED does that through their administrative process. **Rep. Noennig** referred to page 6, line 8, and asked if it is correct that under current law, when the plan administrator is given the medical support order, they enroll the child. **Ms. Wellbank** said yes. **Rep. Noennig** asked if the idea of the bill is to provide some notice provisions before that happens to give whoever it is who'll be financially responsible for that an opportunity to contest that procedure. **Ms. Wellbank** said that is true. Originally when CSED issues the support order as well, if they issue it rather than the district court, the person would also have the opportunity at that time to contest it. But many people find out when they change jobs that insurance is not reasonably available, and at that point they would also have the opportunity to contest it through an administrative process. In current law and in this bill, the same process would be used to establish an order for a parent to provide medical insurance. In this bill, there is already an existing order, and at that point, when CSED wants to send the notice to the parents to enroll the child in the insurance, that would provide another opportunity for a hearing in most cases. **Rep. Noennig** asked if this would allow CSED to enroll a child without the parent doing so and then charge that back to the parent. **Ms. Wellbank** said they do that. When a parent has insurance available and has a court order or an administrative support order to enroll the child in insurance, under this bill CSED issues an order directly to the insurer to enroll the child.

The order to enroll is new. Currently CSED sends the parent's order to provide medical coverage to the insurance company, and they are required to enroll the child. **Rep. Noennig** asked if this bill would give CSED the right to order the insurance company to do something that they can't do now. **Ms. Wellbank** said under current law the insurance company still has to enroll the child, but they don't receive a direct notice from CSED to enroll. Either the parent or CSED provides the insurance company a copy of the support order between the parents that tells them they have to get medical coverage for the children, and the insurance company is required to enroll the children. This bill formalizes the process and implements all the informational requirements of the federal law.

Rep. Lee asked **Ms. Wellbank** if a judicial review would stall child support being withheld. **Ms. Wellbank** said no, this bill only concerns medical support. On the child support side, when someone is paying child support and they decide to contest it and go to the judicial review, that could stop it; but this is just insurance.

Rep. Shockley asked if it is correct that if there is a court order, then CSED can't add anything to that order to include an order to pay health insurance for the child. **Ms. Wellbank** said yes. **Rep. Shockley** asked if it is correct that if there is no court order in existence related to the child or the parents, then CSED, upon application by one parent, may order (a) support, and (b) other things, such as that the one parent pay the health insurance of the child. **Ms. Wellbank** said if there is no order in existence and the parents are separated and apply for CSED services, yes, that is true. **Rep. Shockley** asked what remedy the parent has who has to pay the child support or the insurance if he or she disagrees with CSED's order. **Ms. Wellbank** said it first goes to an administrative hearing, then can go to judicial review at the district court level. **Rep. Shockley** asked if a parent could go directly to district court, simply by filing for divorce or injunctive relief. **Ms. Wellbank** said that the only way CSED ever gets involved with cases is if someone either applies for their services, or has applied in another state and that state refers them to CSED, or if a parent is on public assistance, in which case CSED automatically has the case. If they're already doing something in district court, the court has jurisdiction. **Rep. Shockley** clarified his question, saying that if there is no court order but an agency order, and the person doesn't want to go through the administrative hearing, could they file in district court, such as for a divorce, immediately, without going through the administrative process. **Amy Pfeifer**, attorney for CSED, said if there is an administrative order and then the parties want to get divorced or go to district court, perhaps for a parenting plan or custody determination, they can do that. CSED doesn't have the authority to determine custody and visitation; but the support

order would already be in effect, and perhaps the medical insurance order. **Rep. Shockley** asked if there is an existing administrative order and the person elects to go to district court for any reason regarding the child, does the jurisdiction over the entire matter go to court with the issue. **Ms. Pfeifer** said the person has the ability to go to district court to have matters adjudicated that have not already been adjudicated. Regarding the support order, and perhaps health insurance if CSED had already adjudicated those, no, a person could not go to district court and ignore the prior established order. Federal law states that an administrative order is entitled to full faith and credit, just as a district court order is. The district court could modify an administrative order, but the litigants couldn't just ignore the prior determination and start anew in district court on the matters of child support and health insurance.

Rep. Ripley asked **Ms. Wellbank** if she had said CSED had no control over the type of insurance to be provided. **Ms. Wellbank** said they don't have control, because the first standard for determining whether insurance is reasonably available to a parent is if that parent can obtain it through its employer, so they don't order a parent to go outside an employer if none is available. **Rep. Ripley** asked about page 3, lines 1 through 7, where it talked about minimum required policy limits and minimum required coverage. **Ms. Wellbank** said that deals with what is required to be in a medical support order. If CSED or the court issues a support order, it would state the minimum coverage and minimum limits.

Rep. Esp asked **Ms. Wellbank** about the costs of the program. She said this bill is included in the governor's budget request. It doesn't generate revenue. Right now CSED has a process that obtains medical insurance for children. Through this process they are able to recoup money from medicaid, to the tune of about $1.5 million each year. This bill changes the process but doesn't change the end result. This is a federally-required piece of legislation so the state is required to enact it in order to comply with the federal law. Other than not passing it, the bill doesn't have any fiscal implications.

Rep. Dell asked **Ms. Wellbank** about the involvement of employers in this process. She said that employers are and have been involved, and they also have had a voice in the requirements of this new notice. The bill doesn't add anything to what the employers are presently doing; it just changes what the notice looks like.***{Tape : 1; Side : B; Approx. Time Counter : 0 - 29.8}***

Closing by Sponsor:

Sen. Grimes asked the committee to not get bogged down in any problems they feel are existing in the administrative process or the whole child support enforcement area. This bill doesn't change what employers currently do. It just puts in our code some things that allow for some notice requirements that they came up with at the federal level, and that actually put some protections in place. The whole issue here is if they didn't have remedy before, they won't after this bill; if it was there before, it will be there after this bill. The federal law makes sense. There are reasons that they did that. The bill doesn't indicate any additional onerous implications on employers, and it will allow for the establishment of some medical support orders in parenting plans. It is inherently fair and just to do that so the deadbeat dads don't ignore their parental responsibilities and shovel off medical issues onto the rest of us, because that is already happening. This bill just makes some adjustments in our current law. ***{Tape : 2; Side : A; Approx. Time Counter : 0 - 3.8}***

HEARING ON SB 28

Sponsor: SEN. MIKE HALLIGAN, SD 34, Missoula

Proponents: Amy Pfeifer, CSED staff attorney, DPHHS

Opponents: Jim Marron, Helena

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, Missoula, said that the Child Support Enforcement Division plays an extremely important role in the State of Montana in helping families and children, whether through the administrative process or the court process, in establishing both child support orders and medical insurance orders. Federal law dictates much of the issues there, although we have certainly sanctioned those in the statutes we have passed over the years. This bill attempts to do something with a recent Supreme Court decision, the *Seubert* decision. It establishes in the new sections the separate processes, the administrative process and the modification process, that now are combined in one statute. The *Seubert* decision said there was a separation of powers issue with respect to the administrative orders that the CSED was issuing that attempted to modify a district court order. When the CSED was establishing its administrative support order when there was already a district court proceeding in process and there was no opportunity for judicial review of that administrative order, the court viewed that as a violation of the separation of powers. On

page 17, lines 16 through 29 of the bill, it talks about how to rectify that administrative problem and allow for judicial review of the court orders. ***{Tape : 2; Side : A; Approx. Time Counter : 4.3 - 8.1}***

Proponents' Testimony:

Amy Pfeifer, CSED staff attorney, DPHHS, said that this bill mainly addresses the recent Montana Supreme Court decision, *Seubert vs. Seubert*. Based on that decision, it is necessary for the state to make changes to their existing administrative process to comply with that case but still comply with federal law that requires CSED to provide a process to review and modify support orders. Review of orders and modification of orders, of any order that CSED is enforcing, is another federal requirement. That service must be provided to anyone who applies for CSED services or is required to have their services as a result of their receipt of TANF and federal IV-D foster care funds. Both the district court and the CSED have authority to establish child support orders, and both those tribunals also have authority to modify child support orders. In the *Seubert* case, the Montana Supreme Court determined that Montana's existing process to modify an administrative order, when CSED is modifying a Montana district court order, is a violation of the separation of powers clause of the Montana constitution if the process doesn't provide for a mandatory and automatic review by the district court of the proposed order. The district court has the final say on the modification. That's what CSED did with their current administrative modification process, and that is what is included in this bill. It's an attempt to maintain the efficiencies in the current process that allow CSED to gather financial information from the parties when one of them has requested a review of a support order, make a determination under the Montana child support guidelines that both the division and the district court use, and come up with a proposed child support order. In the current process, under existing law, CSED would come up with a proposed child support order, send it to the parties; they would have an opportunity to request a hearing, and at the end of the process, CSED would come out with a final order that was subject to judicial review. The distinction in this bill is that much of the process would be the same, and if CSED is modifying their own order, they would be able to enter a final order and it would be subject to judicial review as it is now. But, they broke down the existing statute to clearly delineate a review process that applies to all of the cases CSED has. They would review it and get the financial information to come up with a proposal. From that point, if it is a CSED order, they can go forward to a hearing and enter a final order. If it is a Montana district court order, they will go forward with a proposal, send the proposed order to the district court that issued the underlying support order; the parties would

get notice that CSED had sent the proposal to the court, and they would have 20 days to file an objection with the court. The district court then would have free rein with that proposal, and if either party objected, the court would have a hearing and make a determination whether to go with the proposal, amend it, deny the modification, or remand it to CSED. Ultimately, the district court would enter the final order. New section 7, on page 18, is not related to the *Seubert* decision. It provides a limited review of the support order. Sometimes circumstances change in the course of the minority of the child that may lead one of the parties to want to have a modification, but this is a more limited one. This section provides a limited review, not a full financial review, but would allow the parties to get a limited modification in a quicker fashion. An example of this would be the day care expenses that were included in the initial order, but as the children grew older, there was no longer a day care expense. Since that was factored into the equation, often having a substantial impact on the child support, the parties might want the order modified to take out the day care expense. Again, if the original order was a district court order, the modification would have to be finalized by the district court. If this bill didn't pass, the only option CSED would have to comply with the federal requirement that they have a review and modification process for all the orders they enforce, and they have approximately 38,000 cases, would be to initiate all of the modification actions in the district courts of the state, which would involve travel expenses for attorneys and caseworkers and additional cost to the state. CSED thinks this bill is a good resolution to the issues presented in the *Seubert* case and will allow them to provide the services the public wants within the required federal time lines. ***{Tape : 2; Side : A; Approx. Time Counter : 8.4 - 18.4}***

Opponents' Testimony:

Jim Marron, Helena, said he is a single father who has been attending school in Helena since the mill he worked at in Whitefish shut down. He wanted to give the committee a real life example of what is going on here. He has dealt with child support over the years with the administrative hearing. In 1997 when he was laid off at the mill for the first time, he had three different hearings over the course of a year. His gross income that year was $6,900 and his child support went from $200 a month to $612 a month plus an additional retroactive payment and administrative fees. Last spring when the mill closed, he requested another hearing. The letter he received in response said that just because he was laid off, it wasn't necessarily a change of circumstances, and they would still base his income on imputed income based on his recent work history. He finally got a hearing afer being told that it might be up to six months before he would get a hearing. He thinks

that child support needs to be out of the hearing process completely. They have one goal in mind, and that's to bring in as much money as they can because their federal funding depends on that. He thinks this is a bad bill. Hearings need to be held by the court where a fair and impartial hearing can be had. ***{Tape : 2; Side : A; Approx. Time Counter : 18.6 - 22.2}***

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Jent asked **Mary Ann Wellbank** how long it would take her to get Mr. Marron's complete file to him, and if Mr. Marron would request his own file, how long would it take him to get it. **Ms. Wellbank** said it would probably take a couple of days, depending on where the file is. They could release, with his written authorization, all the information that is considered non-confidential that he is entitled to. **Rep. Jent** asked why anything in Mr. Marron's file, or any other person's file, would be considered confidential. **Ms. Wellbank** said there are some pieces of information that they get from certain sources that are confidential at the source. **Rep. Jent** asked if there are administrative rules that say what's confidential and what isn't. **Ms. Wellbank** said there are rules at the federal level that give guidelines to that.

Rep. Noennig asked **Amy Pfeifer** several questions about the procedure involved that concerned him. It appeared to him that the current procedure had been changed not only in the way that she had discussed but to be an additional review by the department rather than by a hearings officer. **Ms. Pfeifer** said that ultimately the reviews are subject to a hearings officer if the parties request a hearing. When the law was first drafted, review included the whole process, but now the review refers to the initial looking at the order, determining whether CSED has jurisdiction to modify, and gathering the financial information. **Rep. Noennig** said the criteria for sufficient grounds for review are changed to be a substantial change in circumstances as defined by administrative rules or a lapse of 36 months, and that seemed like a significant change. He asked if that is required by the federal government. **Ms. Pfeifer** said federal law stated that inconsistency with the guidelines in and of itself was a criteria. With the Personal Responsibility and Work Opportunity Act, the federal requirement changed and now it says "if there is a substantial change in circumstances." The state always did have the obligation to review them every three years, but now federal law says the substantial change in circumstances is the reason, or three years since the last order. So those criteria are included in the statute. They've had rulemaking authority for this and have existing rules, and substantial change in circumstances is already defined in existing administrative rules.

Rep. Noennig asked about the wording in section 4 of the process of requesting financial information with the original notice with the information to be returned within 20 days after the notice was served. **Ms. Pfeifer** said she would look at the language of the proposed changes. ***{Tape : 2; Side : A; Approx. Time Counter : 22.4 - 30.4}***

Rep. Noennig asked about telephonic hearings for the initial review as stated on page 15. **Ms. Pfeifer** explained the precise procedure that is followed. **Rep. Noennig** asked about the administrative hearing procedure on page 16, where there is a hearings officer but it appears that the department gets to identify the issues and would that be fair. **Ms. Pfeifer** said that each party has a review session in which they're questioned on the financial information they have submitted and their proposed worksheet that was sent out by the department so they can look at the other party's information. The issues the parties are contesting are what is identified at the review session. The department is a neutral party, providing a forum but not representing one side or the other. **Rep. Noennig** asked about procedures on page 17 and 18, and **Ms. Pfeifer** explained details of the processes used.

Rep. Shockley asked how many times they would have to go to district court a year if this bill didn't pass. **Ms. Pfeifer** said in the past six years it has varied, but from January to August of 2000 there were 300 orders that they registered, which were orders issued by district courts or by other states. In the preceding years, the figures ranged from 400 to 600. If *Seubert* had been in effect in 1999 so that CSED didn't have the authority to modify a Montana district court order, they would have had to go to court approximately 397 times. **Rep. Shockley** asked for clarification of a previous response regarding CSED being a neutral party in proceedings. **Ms. Pfeifer** said the department does not represent either party in any of their proceedings, but represents the state's interest in providing the service and seeing that child support is collected. They gather information from both parties and they don't advocate on behalf of one or the other. **Rep. Shockley** and **Ms. Pfeifer** continued discussion on various aspects of the proceedings and CSED's role in them.

Rep. Brown asked about page 11, section 4, line 8 and the production of financial records, and whether CSED had needed a subpoena to do this in the past. **Ms. Pfeifer** said they do have subpoena powers for many of their administrative processes so could subpoena this information. Current law contemplates them sending a notice of the review and then the order to provide the financial information. The new language just says that the notice of review will go out with the order to get the financial information;

they're going out at the same time, in the same document. ***{Tape : 2; Side : B; Approx. Time Counter : 0 - 28.3}***

Rep. Esp and **Ms. Pfeifer** discussed specifics of the proposed procedure and the forms that would be used, as well as current CSED procedures and forms. ***{Tape : 3; Side : A; Approx. Time Counter : 0 - 4.2}***

Closing by Sponsor:

Sen. Halligan said that clearly we have to have the administrative process. It helps families. We have to do this bill because of the *Seubert* decision. The bill was drafted to be as efficient as possible while maintaining the tremendous concern we have to have for the due process issues that the court looked at, and then with other issues when you have an administrative agency making decisions about what people are going to pay for child support or health insurance that may go on for 16 to 18 years. It's a very serious process, and it needs to be looked at very seriously. Some of the concerns that were raised by the committee might be addressed in a subcommittee. You have to really understand what the review process is and how they're trying to make that a lot more clear, and what the hearing process is, and what the department's authority is in each one of those segments, and how the district court plays into that whole mix. This bill tries to make those changes so practitioners out there, after this bill hopefully passes, will be able to understand the process. He has seen administrative orders issued by CSED, and they are very clear. The department has done a good job trying to make it understandable for lay people, because they know that in probably 80 or 90 percent of the cases, they're not going to be proceeding with attorneys, and they should not have to use attorneys in this process. They're paying enough, and they want the money to go directly to their kids and their families and not to attorneys. So the more we can make the process more understandable and more efficient, while recognizing the due process issues, we should do that. He will work with the committee and a subcommittee to address any concerns. ***{Tape : 3; Side : A; Approx. Time Counter : 4.3 - 7.5}***

Chairman Thomas appointed the following subcommittee for SB 28: **Rep. Noennig, Chair; Rep. Shockley, Rep. Jent, Rep. Esp** and **Rep. Newman**. ***{Tape : 3; Side : A; Approx. Time Counter : 7.9 - 9.8}***

ADJOURNMENT

Adjournment: 5:30 P.M.

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REP. BILL THOMAS, Chairman

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PATI O'REILLY, Secretary

BT/PO/JB
Jan Brown transcribed these minutes

EXHIBIT(huh48aad)