

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - 2nd SPECIAL SESSION**

COMMITTEE ON APPROPRIATIONS

Call to Order: By Chair Bardanouve, on July 8, 1992, at 1:20 pm

ROLL CALL

Members Present:

Francis Bardanouve, Chairman (D)
Ray Peck, Vice-Chairman (D)
Dorothy Bradley (D)
John Cobb (R)
Dorothy Cody (D)
Mary Ellen Connelly (D)
Ed Grady (R)
Larry Grinde (R)
Mike Kadas (D)
Berv Kimberley (D)
Wm. "Red" Menahan (D)
Jerry Nisbet (D)
Mary Lou Peterson (R)
Joe Quilici (D)
Chuck Swysgood (R)
Bob Thoft (R)
Tom Zook (R)

Members Excused: John Johnson (D)

Staff Present: Terry Cohea, Legislative Fiscal Analyst
Sylvia Kinsey, Committee Secretary

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

HEARING ON HOUSE BILL 7

Presentation and Opening Statement by Sponsor:

REP THOFT explained the bill which changes the date from August 1st to 45 days after adjournment of the special session to have state agencies have their operating budgets submitted. This bill also addresses paper work reduction in management, plus the requirement among all state agencies to not exceed first level transfers by more than 5% is deleted and the amount allowed for program transfers is increased from 5% to 10%. He said this would give management some flexibility in the ability to make decisions.

Proponents' Testimony:

Rod Sundsted, Montana University System, said he was in support of this bill. Given the reductions the University System will be implementing as a result of the first special session and the potential reductions we will see coming out of this special session, they would appreciate any flexibility given in dealing with those reductions.

Questions From Committee Members:

REP SWYSGOOD said this bill eliminates the boilerplate language in House Bill 2 that relates to transferring money out of personal services. **Mrs. Cohea** said in HB 2, as introduced, that language is stricken, so this language would be statutory language for FY '93 only allowing transfers, but she understood that if the language was left in HB 2 and did this, it could be that would be held valid as a proper appropriation restriction. If you want to achieve making it so you can do it, but you would need to take it out in both places as the Governor's people have submitted the bills. **REP THOFT** said he should have emphasized this is affecting FY '93 only.

REP PECK asked **Mrs. Cohea**, if we have 5% and we go to 10% will that also be for FY '93, and will it then be restored too. **Mrs. Cohea** answered yes, this is tentative and both section 1 and section 2 will be effective for fiscal '93 only, so at the end of '93 the original statute, setting a 5% limit on program transfers would resume.

REP QUILICI said he was glad to see this bill come in and was thought it was a good idea to have the sunset clause. In the general government's budget we made some pretty good cuts and one of the things the committee spoke to was to give them the flexibility to transfer some of these funds with a shortfall like that. In some cases, in a tight budget like in '93, there should be some flexibility, but am glad to see it sunset too.

CHAIR BARDANOUVE asked if this will cover the session this fall and was told that FY '93 would be over June 30, 1993. The regular fund budget will affect the '94-'95 biennium.

REP CODY referred to the fiscal note which says the proposal should have a minimum impact on the general fund balance. Does that mean it will have a minus or a positive impact? **CHAIR BARDANOUVE** said it would be more likely to be a minus. **REP PECK** said he thought because of the freedom of the transfer there would be less reversions. **REP PECK** said we had already taken away most of the money available for reversions so it is not a big issue.

REP KADAS asked in regard to the stricken language in the first section, how is that different from the language that is in the second section that applies to transfers? **Mrs. Cohea** said section one deals with appropriations within a program and it is saying you would have unlimited transfers within a program.

Section 2 deals with transfers between programs. Currently you cannot transfer more than 5% of the total agency appropriation by fund type from one program to another. This would expand that to 10%.

REP MENAHAN said if the subcommittees have made some cuts and recommendations, then this in turn is going to give the agency the right to move monies back even where we took them out. Basically we are losing legislative control over 5% more, and are undoing what some of the committees have done.

Jane Hammond, OBPP, said they think for a number of reasons that a little flexibility is important, especially for someone with a small agency. Also, agencies are presenting the best possible plan they can. Many of them have problems with what was put together in such a small time frame, and it is difficult to come up with a first level operating budget within the first few days after this session that says "that is where we are going to be and that is where we are going to stay for this next year". Too many circumstances and situations change or new things occur that, given the tightness of the budget, based upon the reductions that have already been made and the additional ones that are inevitable, some flexibility will be required so the agencies can meet their statutory responsibilities and manage with what they have left in the best possible way.

REP COBB said some of these agencies didn't get any of these cuts this time, why give them the flexibility? **Ms. Hammond** said in the majority of the agencies the funds will be tighter in FY '93 than they were in FY '92 because the amount of pay plan underfunding increases and that will be a major factor in a lot of agencies. This is a law that applies to all operating budgets regardless of the approving authority. If there was some way in which you wanted to make some exceptions, they would be happy to work with him.

CHAIR PECK said the State has always had transfer authority because of the two year appropriation in place. Now we are into this year and say we want to increase that 5% to 10% and increase all this flexibility within a one year period. He said he agreed with **REP MENAHAN** that we are really losing legislative appropriation authority under this bill, even though it is only for one year.

REP SWYSGOOD said he thought everyone was uneasy over this bill for various reasons. He gave an example of what was done through motions and actions in subcommittee and said it has really "whammied" the department the subcommittee was concerned with. He said he was a little nervous about the ability to transfer this much, but was always concerned that if they don't get that ability, how are they going to come up with the necessary monies we cut from them.

CHAIR BARDANOUE said one report said that on vacancy savings the

budget office said they need more flexibility since the agencies are filling the vacancies before the six months is up. The budget office, however, has approved 90 some percent of all these vacancies and they have the power to say no and still want more flexibility. Only 6% or 7% has been refused. The budget office has been very liberal.

REP QUILICI said he also had some concerns about this bill. After going through some of the budgets and given the cuts made in various agencies, if some of the agencies don't have some flexibility, they might not be able to run their departments as efficiently as they could with something like this bill.

REP MENAHAN said if we leave it as is they have 5%. As it is in the bill we are giving them a blanket. If we have an agency we are concerned with we could put that in the wording of the bill to cover those agencies we feel need that flexibility and otherwise they have had 5% all along, they would still have the 5% and we could do it on an agency by agency basis.

REP QUILICI said that was one of the things they discussed in subcommittee as to whether this kind of language could be put in a motion and if it would prevail in the committee.

REP ZOOK said in their subcommittee they had some very small agencies and rather than reduce programs, they felt if they had the flexibility they would be able to continue to serve some of these programs that people supposedly want and need. He thought the flexibility should be tried.

REP COBB said in the long term we are giving more flexibility. We have the '94 session coming up and regardless of what bills get passed for revenue, we have a problem for FY '94. He said he was willing to give them more flexibility, but would like to get a lot of these vacant positions permanently eliminated or out of the base so they had to come in for modifieds. The more positions we permanently get rid of, there are that many less we have to find the money for in the next session.

Ms. Hammond said it is true that the great majority of the vacant requests that have come into the budget office to be restored have been resumed, but there are also a tremendous number of vacant positions out there where the request has not even been submitted and those positions are remaining vacant. All the agencies are aware of the fiscal situation we are in and they are doing what they can.

REP COBB said this was no criticism to the budget office, but agencies have been allowed to do more things on their own without consent and control of the budget office.

Ms. Hammond said when you look at that base which is developed off FY '92 plus the increases in any modifications that were approved for '93, the base is primarily off this year of '92.

She said one of the things they will be looking at is at the number of FTEs that are recommended for the next biennium.

REP GRADY asked if the 5% referred to now in this special is all that is requested. He is hearing that what is in the bill may be as far as the cuts will go in this special session. He had the question in his mind that some would not be too willing to vote for more taxes until we cut deeper into our budget.

REP CODY said if existing law allows them the 5% flexibility, how many have taken advantage of that? **Ms. Hammond** said she was not aware of any agencies that had exceeded it, but was aware of a couple agencies that have come very close to reaching the 5% toward fiscal year end.

REP CODY said the larger agencies like SRS, that 5% for the small ones may be all right, but there are a lot of bucks in those bigger agencies. She asked if they had done the 5% and **Ms. Hammond** said no. The largest agencies like SRS don't come close to acquiring the 5%, but as we look at some of the things that happened in subcommittee, it may be some of them will come close.

REP BRADLEY said while speaking for herself, their committee spent a fair amount of time examining this. We did ask the agencies to bring in some memos as to why someone like herself should be an advocate for this kind of flexibility. She told the committee she would be an advocate and those who were not should come to this meeting. We had the understanding that two agencies we dealt with that this flexibility might be quite important. The first is the Department of Health. In order to reach their 8% cuts on their operational budgets, we extracted another \$93,000. We had a choice and requested them either to bring specifics so we would know exactly which programs we were cutting back and it included everything from the legal counsel to family planning. The alternative is to give them the flexibility that is involved here, and the flexibility to go after some fee increases if they felt that was necessary to do the job we mandate them to do. She went on to explain and said the second was the Department of Family Services. She felt this was an example since they could not find ways to cut them because the real question is whether they are going to come in with a supplemental request of \$2.5 million versus \$1.5 million.

REP KADAS said in the second subsection on the first page, he was concerned about the way it is worded. If they can't make any expenditures until after the approving authority approves the budget, how do they make any expenditures between now and then? You have a month or two window in this fiscal year where it looks like they can't spend any money. **Ms. Hammond** said that is a good question, she did not know how people had spent money from July 1 to Aug 1 up to this point when you read the print carefully. She said when she talked to Greg Petesch about this, they were simply trying to get around the problem of balancing the approach, balancing back to the general appropriation act that will be

approved here, hopefully sometime in July. The budget office does not set up the appropriations and balance back to the bill until we get the enrolled copy from the Secretary of State.

Closing by Sponsor: REP THOFT said he thought the agencies needed the flexibility allowed by this bill.

HEARING ON HOUSE BILL 6

Presentation and Opening Statement by Sponsor:

REP THOFT said this bill takes the action the subcommittee took in cutting funding for the University buildings and transfers that money to the general fund.

After discussion it was decided to hold a new hearing on this bill after House Bill 2 was heard so committee members would know whether the full committee will accept the Long Range Planning Subcommittee recommendation.

HEARING ON HOUSE BILL 5

Presentation and Opening Statement by Sponsor:

REP RANEY said this bill does what the citizens want us to do and that is to not raise taxes but to cut government. We have been cutting government for several sessions, but have yet to address the size of management in Montana government and that is what this bill would do. He said this would require the committee as a whole to take a look at management. He believed they could learn other ways to delegate authorities. This would eliminate the positions of deputy director and assistant administrator and the elimination of one of these jobs would give us the opportunity to save two or three at the lower end.

Proponents' Testimony:

REP MARY ELLEN CONNELLY said she wanted to be on record as a proponent of House Bill 5 and had an amendment she wanted added to the bill in executive action.

Opponents' Testimony:

REP BERV KIMBERLEY said he agreed with everything that the sponsor had told the committee and has been highly critical of the dollars gobbled up in administrative costs. He said this is what they hear in government, in education and in the business world, that the money is gobbled up by the gluttonous administrative bureaucracy and he agreed. The other side of the ledger is the size covered by some departments, and pointed to the Department of Fish, Wildlife and Parks as an example. He did not feel it was good judgment to do something like this bill

provides on a blanket basis.

Testimony in opposition to HB 5 was given to the secretary and is attached as **EXHIBIT 1**.

Laurie Ekanger, Personnel Division, Dept. of Administration, said the agencies in state government have deputy directors and assistant administrators for a number of reasons. She mentioned central span of control, the nature of the work load and some of the agencies have the kinds of issues or crises that percolate up to the head office that need to be extracted out of the routine organization and handled quickly. She said a director or assistant may need an administrator to handle the work load that is impossible for one person to handle or manage alone.

Questions from Committee:

REP MENAHAN asked if **REP RANEY** knew how many lawsuits have been brought and how much we had to pay out because of the administrators' actions. **REP RANEY** said he had no idea. **REP MENAHAN** said he felt that was one of the things that happen with these people who have a lot of authority. They make mistakes but are not responsible for the financial part of it and these mistakes come out of the taxpayers pockets.

REP GRINDE said this bill would apply to all departments, agencies or divisions of state government, and asked if the University System is not considered in this? **REP RANEY** said no, it is not, this is only the executive departments.

REP GRINDE said he thought the words "division of state government" left it pretty broad and suggested taking that language out. **REP RANEY** said it could be done and added that he would have liked to have done this for the Universities, school districts and everywhere our tax dollars are going. He said he did not know how to do that, but felt this was a place to start.

REP CODY asked if in the research, are the bureau chiefs considered administrative positions? **REP RANEY** said he did not go to bureaus. **REP CODY** asked the nature of a bureau chief versus an administrative assistant or a deputy director. **REP RANEY** said there is the problem of how each department titled their people. A bureau comes under a division, a division comes under the department and he took the two top levels of management. He did not see any reason to drop down to the level of bureau chiefs, and felt that is where we get our production and what we really want to get done. Above that is the administrative level and you start eating up the funds and take away from providing service. Less administration means more service.

REP MENAHAN said action was taken in his subcommittee with **REP SWYSGOOD** getting this information, and there are 38 or 40 some jobs on this list that we froze. The highest paid one is \$24,000

and there is not a "big shot" position open in the Department of Corrections, but where the work is done there are vacancies. When we apply vacancy savings it is always done where the services of delivery are at. It is never at the top end.

REP QUILICI asked **Ms. Ekanger** if under the job classification system, what is the main difference between an assistant administrator and a bureau chief? **Ms. Ekanger** said they have a classification called career executive assignment that addresses management positions whether they are management or executive based on how many people they supervise, how much authority they have over programs, etc. These are working titles that don't show up in job classifications in assistant administrator. As a practical matter you will have a department and under that a division. Between the director and the administrator there is a deputy position. Then you have the administrators and the bureau chiefs, so between the administrator and the bureau chief there would be an assistant position. That is how it would show up on an organizational chart.

REP QUILICI asked if she had any idea how many assistant administrators you might have that have started at the bottom and worked their way up to that position? He said those are the ones he was concerned about, that as employees of state government have worked up to assistant administrator and then all of a sudden their career gets chopped out from under them. **Ms. Ekanger** said she did not get time to get a count of administrators and assistant administrators, but sort of went through the phone book herself and, just the ones she knew, most of them are people who started somewhere in the program level and moved up into management. She thought this was also true of most of the administrators.

REP GRINDE asked if the Universities are excluded from this and, also OPI and K through 12? He was told that was correct and then asked about the statement that was made in regard to being willing to do this at the University System, K through 12, etc. but found it hard to find out how. He asked what the stumbling blocks were in this and **REP RANEY** said there were two. First as a legislator and as a citizen he had never been involved in University administration or with people who work in the University, other than having gone there and this was also true in K through 12. In state government, and all the agencies, after eight years in the Legislature he had worked with them. He said the University System is bloated with administration, but it will take somebody familiar with the University System to recommend similar cuts.

REP GRINDE asked if he were to do the research or had someone do the research if **REP RANEY** would have any problem in an amendment to put Universities and K through 12 in this bill. **REP RANEY** said no, if he could find a way to bring down administration costs and continue to supply services, that is exactly what we need to do.

REP PECK said he thought REP GRINDE and REP RANEY were right on K through 12, but wrong on OPI, as they are a state agency and would be subject to this bill.

REP CONNELLY said she did not think the bill goes far enough and plans to have an amendment that would include administrators. She said bureau chiefs could pick up the jobs the administrators are doing and it would take out another level. She had done enough research that she felt it would be very effective, those are the people that are doing the work and did not feel we needed the administrators in there as well.

Closing by Sponsor:

REP RANEY said he felt he was giving the committee a challenge. You work with these people and you know significantly more about state government and how these departments work than he did. The people who work in the department never come to testify and the only people you hear are the administrators themselves, and felt it was a very tainted view of how we provide government that was given to Legislature. He felt if we had the workers who are providing the services parade before you for 60 days and tell you about government, the view would be incredibly different. He hoped the committee would look at those positions that are truly necessary to provide services not those that are only there to provide information, public pampering, political assistance to a governor, those positions should go.

CHAIR BARDANOUE said this is a serious bill that would change policy. He appointed a subcommittee to study the bill further and report back on Friday consisting of REPS. CODY, ZOOK, PETERSON and PECK.

REP RANEY passed around a copy of the fiscal note, EXHIBIT 2.

HEARING ON HOUSE BILL 3

Presentation and Opening Statement by Sponsor:

SPEAKER HAL HARPER, sponsor of House Bill 3, said local governments across the state are in the same kind of trouble the state is in. This is a bill that deals with an equal number of allocation dollars to both the state and counties. He said during the strike this was one of the things state employees could not understand. We hand out \$5 speeding fines when it costs our officers over \$15 to stop the speeder. He said he felt \$20 would at least cover the cost of the service. It raises over \$.5 million and, according to the fiscal note, that money is divided half and half with the state portion being allocated to a number of different programs. He said the \$20 should bring the fine up to about the value it had when the \$5 was put on. This is not big money, but is real money and is self imposed.

Proponents' Testimony:

Tom Schneider, Montana Public Employees Association, spoke on behalf of the Highway Patrol. He said there are only two things Highway Patrolmen talked to him about. One is a pay raise and the other is to increase the \$5 speeding ticket. The \$5 was imposed in 1974 and it has not changed since that time. It does make sense to raise it up to where we are not losing money by writing a ticket.

Questions From Committee Members:

REP QUILICI commented that a current violation under Title 61-8304 is not considered a misdemeanor--it does not go on your record. He asked if that would still be the case with a \$20 fine. SPEAKER HARPER said it does not go on your record, the insurance company doesn't see it and that is where the real cost would be.

Closing by Sponsor:

SPEAKER HARPER said he felt \$.5 million was real conservative. This bill will contribute some valuable money to go toward the state's budget and to county government and probably, at the same time, save lives.

CHAIR BARDANOUE said final action on this bill would be taken on Friday also.

HEARING ON HOUSE BILL 8**Presentation and Opening Statement by Sponsor:**

REP BARDANOUE bill has been in this chamber before. It was passed by a large majority, went to the Senate and it was killed. He said some members were wishing they had not killed it last time so he had introduced it again. This bill would give the Governor the ability to reduce appropriations between sessions. The court ruled the law we had on the book was unconstitutional and gave the Governor power that belonged to the Legislature. There were no guidelines in the law as to how it should be administered. The court opinion was very closely parallel to the decision in Florida. In both cases the reasoning was that there were no guidelines in the law to show how the Governor should reduce the budget. He listed the requirements put into the bill and felt that would meet the objections of the court.

Opponents' Testimony:

LeRoy Schramm, University System, spoke against House Bill 8. His testimony is attached as EXHIBIT 3.

Questions From Committee Members:

REP COBB asked Mr. Schramm about the last page of his testimony, second paragraph, the statement: "the constitutionality of such a diversion might be of question even if done by the Legislature". He asked if he was saying if we come back and try to cut some money that you have already appropriated we can't touch it? Mr. Schramm said he thought that was taking it too far. He felt the Legislature had the authority to come back and revise their appropriation but did not think they had the power to let the Governor do it.

REP COBB asked if the University would be in favor of a Constitutional amendment to put them under those powers and Mr. Schramm said they felt the Constitution was fine right now.

REP SWYSGOOD said this bill says reduce spending, it doesn't deal with the appropriation. It just tells you that you have to reduce spending. He asked Mr. Schramm if he was saying that is a play on words and in violation of the inviolate part of the Constitution? Mr. Schramm said it could be either way. It is either a play on words or if in fact you are not cutting our appropriation but saying the Governor can order you not to spend but you still have the appropriation, then you run into very serious problems. The Governor isn't the one who can tell the Board of Regents to spend or not to spend. Our ability to spend is determined by your appropriation.

REP SWYSGOOD said this has been used in the past when Governor Schwinden made some reductions. What did the University System do then? Mr. Schramm said they did like everyone else, grinned and bore it. REP SWYSGOOD asked why they did not approach it at that time if there was a constitutional question involved with the authority. Mr. Schramm said they don't pick fights every time there is an issue that could be fought over. He said they don't have any problem with the idea that when times get tough the University System should be a part of the solution. The fact that it wasn't challenged was a policy decision and doesn't go to the legal question at all.

REP ZOOK asked if one of the comments the Judge made in taking action against this authority, that there wasn't enough direction in the bill by the Legislature? Mr. Schramm said yes, and he thought this bill moves in some direction toward correcting that. He thought on a spectrum of whether this bill more likely to be upheld than the old law, he felt the answer was yes. No matter how you structure it, so long as you give final authority to the Governor and take it out of hands of the entire Legislature you will inevitably have some problem with that exclusive appropriation authority. There is no sure fire method of drafting a bill like this.

REP ZOOK said in regard to the Legislature setting the foundation program and the Governor being able to touch that, there is a certain amount of direction involved in that and isn't it possible that is a legislative priority? Mr. Schramm said yes,

but there is also a constitutional priority about non-diversion and that is what you run into. **REP ZOOK** said he meant in the foundation program. **Mr. Schramm** said that is right, it is a priority, but the legislative priority has to be expressed consistent with the constitution and obviously the constitution is the higher law, so he did not think the Legislature could let the Governor re-appropriate money from the University System to the foundation program, and that in effect, is what this bill would allow to be done. He felt the Legislature could do that, but some of the college attorneys would not agree.

REP ZOOK said, from his viewpoint, the difference is that the Governor is elected and the Regents are not and he thought that had a bearing on the question. **Mr. Schramm** said he did not think it had a bearing on it in this state the way the Constitution is constructed.

CHAIR PECK asked **REP BARDANOUVE** if this bill was passed and, considering the newly proposed stabilization account, would there be any conflict? **REP BARDANOUVE** said no, that is a new concept and it never occurred to him there would be a conflict if it is adopted. He suggested there should perhaps be some research done. **CHAIR PECK** said he could not see any real direct conflict, but if that is established, it is a first priority.

Mrs. Cohea said in the language in the executive budget it states the rainy day fund could not be used until the Governor had exercised his authority so this bill would come into play first. Then money would be triggered that would be placed in the general fund.

Closing by Sponsor:

REP BARDANOUVE closed by saying when the Governor recognizes there is a shortfall he shall report to the Revenue Oversight Committee. They will look at the revenue and give him approval if there is a shortfall. We involved not only the bi-partisan Finance Committee but also the Revenue Oversight Committee. He said **Mr. Schramm** had a point in saying the school equalization program should be included in the bill and if the committee wished to include it he would support it even though it would make it more difficult to pass the bill.

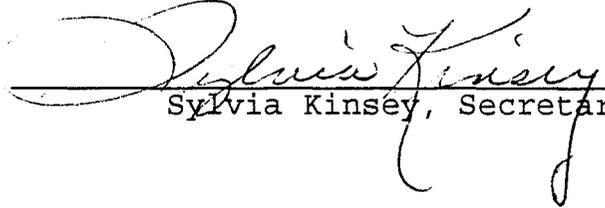
REP BARDANOUVE said he would like to point out that **Mr. Schramm** was somewhat in error when he said we got along without this bill for a lot of years, but he lived with a far worse situation for 9 years. You lived with the power of the Governor to cut budgets without any revenue oversight, and survived that in the University System.

ADJOURNMENT

Adjournment: 3:00 p.m.



REP FRANCIS BARDANOUVE, Chair



Sylvia Kinsey, Secretary

FB/sk

HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE

ROLL CALL

DATE July 8 92

NAME	PRESENT	ABSENT	EXCUSED
REP. FRANCIS BARDANOUVE, CHAIRMAN	✓		
REP. RAY PECK, VICE-CHAIRMAN	✓		
REP. DOROTHY BRADLEY	✓		
REP. JOHN COBB	✓		
REP. DOROTHY CODY	✓		
REP. MARY ELLEN CONNELLY	✓		
REP. ED GRADY	✓		
REP. LARRY GRINDE	✓		
REP. JOHN JOHNSON			✓
REP. MIKE KADAS	✓		
REP. BERV KIMBERLEY	✓		
REP. WM. "RED" MENAHAN	✓		
REP. JERRY NISBET	✓		
REP. MARY LOU PETERSON	✓		
REP. JOE QUILICI	✓		
REP. CHUCK SWYSGOOD	✓		
REP. BOB THOFT	✓		
REP. TOM ZOOK	✓		

TESTIMONY OPPOSING HB 5
DEPARTMENT OF ADMINISTRATION

The Department of Administration opposes this bill.

There are deputy directors and assistant administrators for the following reasons:

Span of Control: In departments with a number of divisions or divisions with a number of bureaus or programs (8 - 10) the span of control can be too much for one person. The solution is to share the management of these units with a deputy/assistant. This is the case in some agencies where deputies and assistants are assigned to help manage an agency by being assigned direct line responsibility over one to several units within the agency.

Sharing the Workload: In some agencies deputy/assistant positions are assigned responsibility of managing the day to day internal affairs of the department/division because of the public/external demands placed on some directors/administrators. Or because of the number of divisions or bureaus there is a large workload in dealing with problems/issues that percolate to the head office. So the deputy/assistant is assigned the authority and responsibility to deal with these problems/issues.

Management Style, Executive Branch Prerogative: Directors/administrators need latitude to organize their offices to best carry out their management responsibility. They are the closest to the functions and programs of an agency and have the best view of how it should be staffed and managed. If the legislature believes that a particular department or division is spending too much money for management they can cut the budget rather than substituting their judgement for that of a director/administrator in how to organize, staff and manage an agency.

For these reasons, the Department of Administration urges *do not pass HB5*.

For more information call Laurie Ekanger or John McEwen, State Personnel Division, Room 130 Mitchell Building, Helena, phone 444-3871.

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0005, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring a department, agency, or division of state government to eliminate the positions of deputy director and assistant administrator; and providing an immediate effective date.

ASSUMPTIONS:

1. Assume that the 1992 Montana State Government Telephone Directory contains the correct working titles of positions within each state government agency, by program and division.
2. All salaries are based on the budgeted FTE information as contained in the FY93 start-up of the Position Control/Payroll/Personnel system turnaround documents.

FISCAL IMPACT:

[The figures noted below reflect the full FY93 budgeted amounts for the positions. Actual savings cannot be specifically determined at this time because 1) date of implementation impacts level of savings, 2) termination pay for the affected employees is unknown, 3) additional savings could be realized due to reduced operating costs such as telephone, travel, etc.]

Expenditures:

	<u>FY93</u>
Personal Services	(\$3,525,015)
<u>Funding:</u>	
General Fund	(\$1,706,669)
Other Funds	(\$1,818,346)

Note: There are 64 positions/FTE involved. 28.77 of those are funded by the general fund and 35.23 are funded by other funds.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The total savings would be realized in future fiscal years due to the positions being eliminated.

Steve Yeakel _____ DATE 7/8/92
 STEVE YEAKEL, BUDGET DIRECTOR
 Office of Budget and Program Planning

Bob Raney _____ DATE 7/8/92
 ROBERT H. RANEY, PRIMARY SPONSOR



THE MONTANA UNIVERSITY SYSTEM

33 SOUTH LAST CHANCE GULCH
HELENA, MONTANA 59620-2602
(406) 444-6570

Exhibit # 3 HB 8
7/8/92

COMMISSIONER OF HIGHER EDUCATION

OFFICE OF LEGAL COUNSEL

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TO: House Appropriations Committee
FROM: LeRoy H. Schramm
Chief Legal Counsel
DATE: July 8, 1992
RE: House Bill 8 (Gubernatorial Rescission Bill)

This bill has serious constitutional infirmities. The first problem stems directly from the primary object of the bill. The state constitution gives the legislature the power of appropriation. Article V, Section III. The constitution also states the familiar maxim derived from Montesquieu that "[n]o person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others . . ." Article III, Section 1. Relying on these sections our Supreme Court has made clear that only the legislature has the authority to adjust budgets and make final appropriation decisions.

[T]he budget in Montana is a *legislative* budget not an *executive* budget . . . [The] 1972 Montana Constitution, vest[s] the power to approve appropriation bills and a budget in the legislative branch. . . . In other words the legislature has the power to adjust and finalize the budget.

State ex rel Judge v. Legislative Finance Committee, 168 Mont. 470, 480 (1975) (emphasis in original).

The essence of this bill is to relieve the legislature of its constitutional responsibility to establish budgets and appropriate monies by giving that authority to the governor. This approach may occasionally take the legislature off the political hot seat and it may avoid the need for a special session now and then. However, these reasons of convenience cannot mask the fact that it amounts to an unconstitutional delegation of legislative authority.

The second constitutional problem is no less serious. Not only does the bill exalt the authority of the executive at the expense of the legislature, it totally ignores the

constitutional role the Board of Regents must play in determining budget priorities for the Montana University System. The bill treats the University System as if it were a state department under the direct authority of the Governor. The bill specifies that the Governor is the one who is to determine what reductions would have the "least adverse impact" on the educational mission of the university system and to modify the budget downward accordingly (p. 2, lines 15-22). It is hard to conceive of a sequence of events more at odds with the constitutional framework for higher education governance than are the procedures of this bill. The constitution specifies that the legislature is to decide the amount of money higher education receives, and the Board of Regents is to determine the educational priorities for which the money will be used. This bill scraps those respective roles and places the Governor in charge of both higher education finances and higher education priorities whenever a deficit occurs.

Finally, this bill runs afoul of the constitution's non-diversion clause. Article X, Section 10 says that "[t]he funds of the Montana University System . . . from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they are dedicated." Funds appropriated to the university system cannot be used for non-higher education purposes. This bill would allow the Governor to reduce higher education expenditures and use the money for totally unrelated purposes. For example, a shortage in the state school equalization account could trigger a budget reduction under this bill. However, because the school foundation program is excluded in the bill from any gubernatorial budget rescission, the higher education money recouped in a reduction would be used for a non-higher education purpose; that is, to keep the state equalization account solvent. The constitutionality of such a diversion might be open to question even if done directly by the legislature, but the unilateral executive initiated diversion contemplated by this bill is even more constitutionally dubious.

When a serious fiscal problem develops, it is tempting for the legislature to say: "Let the Governor fix it." Fortunately, our constitution requires that the people's elected representatives must be involved when such important decisions on public finance are made. The legislature should acknowledge its role as the pre-eminent public budget authority in this state and should abandon the unconstitutional abdication of power that this bill contemplates.