

MINUTES

MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By VICE CHAIRMAN KEN MESAROS, on February 13,  
1995, at 10:05 A.M.

ROLL CALL

**Members Present:**

Sen. Ethel M. Harding, Chairman (R)  
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)  
Sen. Mack Cole (R)  
Sen. Mike Foster (R)  
Sen. Don Hargrove (R)  
Sen. Vivian M. Brooke (D)  
Sen. Bob Pipinich (D)  
Sen. Jeff Weldon (D)

**Members Excused:** N/A

**Members Absent:** N/A

**Staff Present:** David Niss, Legislative Council  
Gail Moser, Committee Secretary

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

**Committee Business Summary:**

Hearing: N/A  
Executive Action: SB 295, SB 301, SB 193

{Tape: 1; Side: A; Approx. Counter: 49.2}

EXECUTIVE ACTION ON SB 295

SENATOR BOB PIPINICH presented amendments to SB 295 (EXHIBIT 1).

Motion: SENATOR JEFF WELDON moved that SB 295 DO PASS.

Motion: SENATOR PIPINICH moved TO ACCEPT AMENDMENTS TO  
SB 295.

**Discussion:** SENATOR PIPINICH said his request for amendments was based on testimony from the Hearing on SB 295 from Dawn Sliva who has a rare disease that makes her use of handicapped parking space necessary. David Niss added that Senator Pipinich's amendments are combined with the sponsor's amendments.

SENATOR VIVIAN BROOKE commented that she has a constituent who has that same disease and Senator Brooke is glad their needs have been addressed.

SENATOR MIKE FOSTER asked for clarification on amendments 9 and 10 and adding the word "licensed" before "physician."

SENATOR BROOKE said it had been an issue that one part of the bill referred to "licensed physician" and another part of the bill did not.

**Vote:** The MOTION TO ACCEPT AMENDMENTS TO SB 295 CARRIED UNANIMOUSLY on oral vote.

**Motion/Vote:** SENATOR WELDON moved that SB 295 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY on oral vote.

#### EXECUTIVE ACTION ON SB 301

**Motion:** SENATOR MACK COLE moved that SB 301 DO PASS.

**Motion:** SENATOR FOSTER moved TO ACCEPT AMENDMENTS TO SB 301 (EXHIBIT 2).

**Discussion:** SENATOR FOSTER noted his amendment would clarify language on page 1, line 16 by stating "in such a way as to directly necessitate additional..." SENATOR FOSTER asked that Laurie Ekanger respond to the proposed amendment. Laurie Ekanger replied that the Governor preferred the language as originally written rather than the amendment. The amendment was prepared by David Niss who commented that the language provided in the amendments is based on language in the Drake Amendment and its interpretation by the Legislative Council staff.

SENATOR BROOKE asked Senator Foster if, based on the Governor's response, he planned to move forward with his amendments.

SENATOR FOSTER said he did not intend to offend the Governor and said the decision would be up to the Committee.

SENATOR KEN MESAROS said he believes adding the word "significant" raises many questions as to the determination of what is significant.

**Motion:** SENATOR FOSTER WITHDREW THE MOTION TO AMEND SB 301.

**Discussion:** SENATOR BROOKE commented that other bills have included language which leaves determinations or definitions somewhat discretionary, but she added that in some cases, sound public policy needs to move forward that may be interpreted as a mandate.

**Motion:** SENATOR MESAROS moved TO ACCEPT AMENDMENT, BUT SEGREGATE IT INTO TWO SEPARATE AMENDMENTS:

- (1) INSERTING "DIRECTLY", AND
- (2) INSERTING "SIGNIFICANT".

**Discussion:** SENATOR WELDON said while he appreciates the effort to tighten the language, he doesn't believe adding either of the amendments will help to avoid any litigation that would arise from this legislation.

SENATOR FOSTER asked David Niss to explain what the difference would be between "directly" and "indirectly" necessitating additional expenditure by the local entity. SENATOR WELDON commented that the bill regarding mailing of voter information pamphlets and the increased postage it would cause could be viewed as "directly" causing additional expense. Mr. Niss said the creation of new offenses could be an example of the state taking a general policy position that may or may not have ramifications at the county level. The use of the word "preventing an indirect expense" would actually have an opposite effect of allowing mandates which cause direct expenses. Laurie Ekanger commented that the issue of the creation of new crimes had been discussed with New Hampshire, and added that it has never been a problem in New Hampshire. Ms. Ekanger said Judy Browning's feeling was that it would not become an issue in this state because law enforcement officers have discretion regarding enforcement, prosecution, and priorities assigned to crimes.

SENATOR DON HARGROVE agreed with Laurie Ekanger, but he added that the "Brady Bill" is an example of an indirect mandate.

SENATOR FOSTER said the discussion would indicate that the word "directly" should not be included. SENATOR HARGROVE agreed that perhaps "directly" or "indirectly" should not be included.

SENATOR WELDON said obviously, it is a direct expense when a county's postage expense is increased by mandating them to send out voter information pamphlets, but it is not as clear in cases of criminal prosecution. SENATOR WELDON said he would hate to see a county being able to sue the state to not enforce a crime in their county.

**Vote:** The MOTION TO ACCEPT AMENDMENT (1) FAILED 6-2 on roll call vote. (INSERTING "DIRECTLY" FOLLOWING "AS TO" ON PAGE 1, LINE 16.)

**Vote:** The MOTION TO ACCEPT AMENDMENT (2) FAILED 6-2 on roll call vote. (INSERTING "SIGNIFICANT" FOLLOWING "NECESSITATE" ON PAGE 1, LINE 16.)

**Motion:** SENATOR COLE moved that SB 301 DO PASS.

**Discussion:** SENATOR WELDON described a possible outcome of having non-uniform prosecution of crimes. He said that county attorneys are prosecuting on behalf of the state, and if a county, then, does not prosecute a crime because it is an unfunded mandate, the state could go into that county and prosecute. He said a logical extreme to this scenario would be the state reassuming prosecution of crimes, and therefore, the Department of Justice would be trying all cases in counties.

SENATOR BROOKE asked Senator Cole how SB 301 impacts the realm of school equalization. SENATOR COLE said he believes this and many other questions will be dealt with individually if SB 301 passes.

SENATOR BROOKE said it appears to her that a local school board not funded entirely by state funds for equalization, could refuse to increase any taxes to meet the equalization requirement because it is an unfunded mandate. SENATOR BROOKE said she believes SB 301 contains too many holes and gaps and would have a negative impact.

**Vote:** The MOTION CARRIED 5-3 on roll call vote.

#### **EXECUTIVE ACTION ON SB 300**

Amendments to SB 300 were distributed to Committee members (EXHIBIT 3).

**Motion:** SENATOR COLE moved that SB 300 DO PASS.  
SENATOR COLE moved TO ACCEPT AMENDMENTS TO SB 300.

**Discussion:** SENATOR KEN MILLER noted the amendment would address concerns expressed by Senator Brooke on the need for an appeals process.

**SENATOR WELDON** expressed concerns about the language delineating the appeals process. He said the process for a *hearing* is not addressed, only the complaint, the action by the Commission, and an appeal.

**SENATOR MILLER** said his intent was that the hearing be an unofficial process which would be done through documentation submitted by the candidates, and questions from the Commissioner could be answered by contacting the candidates involved. **SENATOR MILLER** submitted a reference to SB 300 clarifying the original fiscal note (**EXHIBIT 4**).

**Motion:** **SENATOR FOSTER** moved TO DELAY ACTION ON SB 300 TO ALLOW TIME FOR MORE CONSIDERATION OF THE BILL.

**Motion:** **SENATOR COLE** WITHDREW HIS MOTIONS ON SB 300.

*{Tape: 1; Side: B; Approx. Counter: 11.8}*

**EXECUTIVE ACTION ON SB 193**

David Niss handed out amendments to SB 193 (**EXHIBIT 5**).

**Motion:** **SENATOR HARGROVE** moved TO ACCEPT AMENDMENTS TO SB 193.

**Discussion:** **SENATOR BROOKE** said she doesn't see that leaving the section regarding schools in SB 193 would be harmful, but she will support the amendment.

**SENATOR FOSTER** said he thinks Senator Brooke is referring to page 45, line 28 regarding the language "whenever possible." He agrees with her that it gives local decision-makers flexibility, and he doesn't see a problem, but he will support the amendment.

**CHAIRMAN HARDING** commented that there has always been a rivalry between the election administrators and the schools wanting total control of their elections. She stated she supports the amendments.

**SENATOR BROOKE** commented she favors schools having elections at standard times.

**Joe Kerwin** explained for the Committee that polling times varied in different sections of the bill.

**SENATOR HARGROVE** asked for clarification regarding the effect of the amendments relating to title 20 issues Joe Kerwin addressed.

**Mr. Kerwin** said the issue is a discrepancy between the polling times for school elections and the irrigation district election held on the same day. **SENATOR HARGROVE** asked if the irrigation district falls under SB 193 and has to be held during a normal primary or general election and school elections are exempted by virtue of the amendment, do the standard polling times not apply. **Mr. Kerwin** said if they were held with a regular election that would be true, but he understands that SB 193 deals with special elections. He suggest section 65 be stricken or section 74 be amended.

**SENATOR WELDON** said he understands that if section 65 is stricken, then state law would indicate polls shall be open and closed at the same time set for the school election.

**SENATOR WELDON** suggested that amendment 2 be changed to include striking section 65 through 78 (rather than 66 through 78).

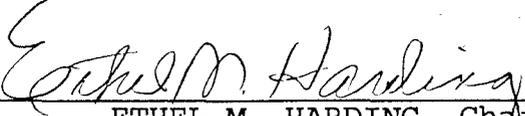
**SENATOR BROOKE** said for clarification on which elections are affected if section 65 is stricken. **SENATOR WELDON** asked Joe Kerwin to clarify that when an election is held under 13-1-104, it is the irrigation district election. **Mr. Kerwin** said yes, and added that those are annual elections held in conjunction with special school elections in April. **SENATOR WELDON** then said that is the only exception that would be put back into state law by striking section 65.

**Vote:** The MOTION TO ACCEPT AMENDMENTS CARRIED UNANIMOUSLY on oral vote.

**Motion/Vote:** **SENATOR WELDON** moved that SB 193 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY on oral vote.

ADJOURNMENT

Adjournment: The meeting was adjourned at 12:00 P.M.

  
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ETHEL M. HARDING, Chairman

  
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GAIL MOSER, Secretary

  
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GAYLE CARPENTER, Transcriber

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SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
February 13, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration SB 295 (first reading copy -- white), respectfully report that SB 295 be amended as follows and as so amended do pass.

Signed:   
Senator Ethel M. Harding, Chair

That such amendments read:

1. Title, lines 4 through 7.  
Strike: "CLARIFYING" on line 4 through "ACT" on line 7  
Insert: "ESTABLISHING CRITERIA FOR THE ISSUANCE OF SPECIAL PARKING PERMITS; LIMITING THE USE OF SPECIAL PARKING PLACES"
2. Title, lines 8 through 11.  
Strike: "ALLOWING" on line 8 through "DISABILITY;" on line 11
3. Title, line 11.  
Strike: "49-4-303"
4. Page 1, line 26.  
Strike: "ability to walk"  
Insert: "person's mobility"
5. Page 1, lines 26 through 28.  
Strike: second "licensed" on line 26 through "determination," on line 28
6. Page 2, line 11.  
Following: "emissions"  
Insert: "or from another disease or physical condition"
7. Page 2, line 12.  
Strike: "ability to walk"  
Insert: "person's mobility"  
Strike: "or licensed physical therapist"
8. Page 4, lines 4 through 19.  
Strike: section 3 in its entirety  
Renumber: subsequent section
9. Page 4, line 28.  
Following: "a"  
Insert: "licensed"

 Amd. Coord.  
Sec. of Senate

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10. Page 5, line 2.  
Following: "a"  
Insert: "licensed"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 13, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration SB 301 (first reading copy -- white), respectfully report that SB 301 do pass.

Signed: Ethel M. Harding  
Senator Ethel M. Harding, Chair

SA Amd. Coord.  
Sec. of Senate

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 13, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration SB 193 (first reading copy -- white), respectfully report that SB 193 be amended as follows and as so amended do pass.

Signed: Ethel M. Harding  
Senator Ethel M. Harding, Chair

That such amendments read:

1. Title, lines 14 and 15.

Strike: "13-1-106" on line 14 through 20-20-204," on line 15

2. Page 35, line 27 through page 48, line 16.

Strike: sections 65 through 78 in their entirety

Renumber: subsequent sections.

-END-



Amd. Coord.  
Sec. of Senate

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Amendments to Senate Bill No. 295  
First Reading CopyRequested by Sen. Pipinich  
For the Committee on State AdministrationPrepared by David S. Niss  
February 11, 1995

1. Title, lines 4 through 7.

Strike: "CLARIFYING" on line 4 through "ACT" on line 7

Insert: "ESTABLISHING CRITERIA FOR THE ISSUANCE OF SPECIAL  
PARKING PERMITS; LIMITING THE USE OF SPECIAL PARKING PLACES"

2. Title, lines 8 through 11.

Strike: "ALLOWING" on line 8 through "DISABILITY;" on line 11

3. Title, line 11.

Strike: "49-4-303"

4. Page 1, line 26.

Strike: "ability to walk"

Insert: "person's mobility"

5. Page 1, lines 26 through 28.

Strike: second "licensed" on line 26 through "determination," on  
line 28

6. Page 2, line 11.

Following: "emissions"

Insert: "or from another disease or physical condition"

7. Page 2, line 12.

Strike: "ability to walk"

Insert: "person's mobility"

Strike: "or licensed physical therapist"

8. Page 4, lines 4 through 19.

Strike: section 3 in its entirety

Renumber: subsequent section

9. Page 4, line 28.

Following: "a"

Insert: "licensed"

10. Page 5, line 2.

Following: "a"

Insert: "licensed"

SENATE STATE ADMIN.

EXHIBIT NO. 2

Amendments to Senate Bill No. 301  
First Reading Copy

DATE 02-13-95

BILL NO. SB301

Requested by Sen. Foster  
For the Committee on State Administration

Prepared by David S. Niss  
February 10, 1995

1. Page 1, line 16.

Following: "as to"

Insert: "directly"

Following: "necessitate"

Insert: "significant"

SEPARATE into  
2 Amendments

Amendments to Senate Bill No. 300  
First Reading Copy

Requested by Senator Miller  
For the Committee on State Administration

Prepared by Greg Petesch  
February 10, 1995

SENATE STATE ADMIN.

EXHIBIT NO. 3

DATE 02-13-95

BILL NO. SB300

1. Page 1, line 23.

Following: "."

Insert: "The commissioner's decision may be appealed as provided  
in Title 2, chapter 4, part 7."

2. Page 2, line 27.

Insert: "(5) The commissioner's decision may be appealed as  
provided in Title 2, chapter 4, part 7."

SENATE STATE ADMIN.

EXHIBIT NO. 4

DATE 02-13-95

BILL NO. SB300

For the Committee on State Administration  
Prepared by Senator Miller  
February 10, 1995

Reference to Senate Bill No. 300

The original Fiscal Note for SB 300 has not been signed by the primary sponsor and is in the process of being reanalyzed. There are several assumptions in the original fiscal note that are incorrect:

1) The re-writing of the Code of Fair Campaign is minimal and would not require an additional FTE. Legislative council is capable of accomplishing this in 2-3 hours.

2) Upon passage and implementation, SB 300 will be an effective deterrent against future campaigns violating the Fair Campaign Code. Investigation requirements will be reduced dramatically with the candidates having the responsibility of furnishing the necessary documentation to validate their claims.

The actual workload will be reduced for the Commissioner of Political Practices.

3) The statements under "Technical Notes" has been addressed with an amendment prepared by Greg Petesch.

SENATE STATE ADMIN.

EXHIBIT NO. 5

DATE 02-13-95

BILL NO. SB193

Amendments to Senate Bill No. 193  
First Reading Copy

For the Committee on State Administration

Prepared by David S. Niss  
February 9, 1995

1. Title, lines 14 and 15.  
Strike: "20-6-203" on line 14 through 20-20-204," on line 15
  2. Page 36, line 6 through page 48, line 16.  
Strike: sections ~~66~~<sup>65</sup> through 78 in their entirety
- Renumber: subsequent sections

Strike 65