

MINUTES OF THE MEETING
SENATE STATE ADMINISTRATION COMMITTEE
FEBRUARY 12, 1977

The meeting was called to order by Senator Towe, Chairman, at 11:00 a.m. in Room 410 of the Capitol Building. Committee members present were Senators Towe, Story, Brown, Rasmussen, Roskie, Jergeson, Blaylock, and Devine.

The following bills were discussed: SB 372
SB 377
SB 382
SB 380
SB 379

SENATE BILL 372

Senator Rasmussen, District 16, sponsor of the bill, stated the purpose of the bill is to attack the problems in the Fraud Control Division of the Employment Security Division. He stated the number of cases prosecuted has been steadily declining. It is hoped the bill will free the investigators from upper level restriction.

PROPOSERS

Charles Gravely, Deputy County Attorney, Lewis and Clark County, presented his statement to the committee (attached #1).

Ellen Feaver, with the Legislative Auditor's Office, stated they had conducted an audit of the Fraud Control Division and a 1/4 cross match was all that had been done. In 1975 the Governor's Office had investigated the Division and had recommended a complete cross match, addition of one post audit clerk, have claims reviewed by an attorney, and physically separate the Fraud Control Division from the rest of the department.

Tom Schneider, Executive Director of the Montana Public Employees Association, suggested the bill be amended to put the Division into the Department of Revenue as they have Welfare Fraud and child payment abuse investigators there already. MPEA feels there is a problem and support the bill with the proposed amendment.

John Bell, representing himself, reviewed the past history of the Unemployment Compensation Committee.

Bill Baer, representing himself, presented his written testimony to the committee (attached #2).

OPPOSERS

Dave Fuller, Commissioner of the Department of Labor and Industry, stated he opposed the bill as written and would like to see it

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moved into the Department of Justice.

Jim Murry, Executive Director of the AFL-CIO, and also a member of the Employment Security Division Board of Appeals, presented his written testimony to the committee (attached #3).

Fred Barrett, Administrator, Employment Security Division, reviewed procedures for dealing with claims and possible fraud. He stated opposition to transfer of the Division to the Department of Justice. He said there is a serious problem with funding as any changes in the work or composition of the Division must be approved by the Denver office of Employment Security. He stated the Montana fraud program is the best in prosecution and follow-through in the western region.

Moody Brickett, attorney for the Employment Security Division, stated he supports the bill but opposes the proposed amendments. He defended the investigators in the Division and stated the Montana fraud program is far ahead of other states in the West. He stated a concern about making criminals out of 17-18 year olds and grandfathers because of a mistake in a time card.

There were no further proponents or opponents and the hearing was opened to questions by members of the committee.

Senator Story asked if it is a federal requirement that federal approval be given before any changes are made in the Division.

Mr. Barrett gave a copy of a directive from the federal office so stating (attached #4)

Senator Towe asked how soon such approval could be given.

Mr. Barrett stated very soon. He said he would request a reply by telegram, if necessary, to meet the transmittal deadline.

There being no further questions, the hearing was closed.

SENATE BILL 377

Senator Devine, District 18, sponsor of the bill, introduced Larry Nachtsheim, PERS, who stated the purpose of the bill is to establish a fund from which to make pension payments to members of volunteer fire departments in unincorporated areas. It only establishes an agency account for the purpose.

Joe Fisher, Montana Volunteer Firemen's Association and Montana Fire Chief's Association, stated his support of the bill.

Bill Fisher, Montana Volunteer Firemen's Association, stated his

support of the bill

There were no further proponents and no opponents to the bill. There being no further discussion the hearing was closed.

Senator Story moved SB 377 Do Pass. THE MOTION CARRIED UNANIMOUSLY.

SENATE BILL 382

Senator Towe, District 34, sponsor of the bill, stated the bill simply clarifies the roles of the Consumer Counsel and Public Service Commission to avoid a duplication of efforts.

PROPONENTS

Gordon Bollinger, Public Service Commissioner, stated his support of the bill.

Jeff Brazier, Consumer Counsel, stated his support of the bill.

There were no further proponents or opponents to the bill and the hearing was closed.

SENATE BILL 380

Senator Towe, District 34, sponsor of the bill, stated the bill addresses the problem of employees trying to appeal their job classifications and frustrations and the abuse of appeal procedures which result in changes during the appeal process negating the appeal. The bill was introduced at the request of the Montana Public Employees Association.

PROPONENTS

Tom Schneider, Executive Director of the MPEA, presented his written testimony to the committee (attached # 5).

Ross Cannon, Chief Legal Counsel for the MPEA, reviewed the procedures for appeal. He stated he felt the burden of proof needs to be put on the state.

Gary Bluett, Assistant Bureau Chief of the Maternal and Child Health Bureau, presented his written testimony to the committee (attached # 6).

Bob Stevens, staff member of MPEA, introduced some employees who have been affected by this situation in their classification appeals: Danella Capp, Anita Olson, Jo Ann Wonderlich, and Barbara Cloniger.

Don Judge, American Federation of County and Municipal Employees, AFL-CIO, presented his written remarks to the committee (attached #7).

George Losleben, staff attorney for the Department of Administration, stated he generally supports the bill with the exception of the

language on page 2, lines 20 through 25. He stated he felt the language was not necessary as the provision already exists.

Bob Jenson, Administrator of the Board of Personnel Appeals stated he generally supports the bill.

OPPONENTS

Steve Schmidt, analyst for the Classification Bureau of the State Personnel Division, stated he opposed the language on page 2, lines 20 through 25 and on page 3, line 1 as it would limit a favorable response and also limit reclassification and review capabilities.

He further stated they have tried to internally adjust situations where reclassification can occur during an appeal process.

Mr. Losleben stated about 1% of the appeals have been affected by a downgrade at step 5 of the review process and about 15% upgraded.

There were no further proponents or opponents to the bill and the hearing was closed.

SENATE BILL 379

Senator Towe, District 34, sponsor of the bill, stated the bill deals with the same problem as Senate Bill 380, only it differs in the approach to the problem. It creates an exception by permitting a decision by the Board of Personnel Appeals without having to go back through the appeal process. It basically is a housekeeping bill which implements the intention of the previous legislative session. He further stated the bill statutorily empowers the Budget Director to carry out the decision of the Board of Personnel Appeals.

PROPOSERS

Don Judge, representing the American Federation of County and Municipal Employees, AFL-CIO, stated his support and presented his written remarks to the committee (attached # 8).

Bob Jensen, Administrator of the Board of Personnel Appeals, stated his support of the bill. He stated the bill would allow them base a decision on appeal and adjudication on merit rather than budget consideration.

OPPONENTS

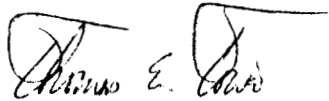
Joan Uda, Budget and Program Planning, presented her written testimony in opposition to the bill to the committee (attached #9).

Pete Byrns, Personnel Division, stated the bill goes so far beyond the Board's current authority and purpose it is frightening. He stated it was never intended to give authority over staffing patterns or number of employees.

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George Losleben, stated he agreed with Mr. Byrons and opposed the bill.
There being no further proponents or opponents, the hearing was closed.

There being no further business, the meeting was adjourned to reconvene
February 14, 1977.

A handwritten signature in cursive script, appearing to read "Thomas E. Towe", is written above a horizontal line.

Thomas E. Towe, Chairman

SB 379

SENATE ~~STATE~~ ADMINISTRATIVE COMMITTEE

380

372

BILL 377

372

VISITORS' REGISTER

DATE 3/13/77

NAME	REPRESENTING	BILL #	(check on) SUPPORT	OPT.
Don Judge	AFSCME, AFL-CIO	380	✓	
Pete Byrnes	State, Dept. Adm.	379	✓	✓
Bruce Brown	MYSELF	372	✓	
Lila Barr	"	372	✓	
Layne Roberts	"	372	✓	
James W. Roberts	"	372	✓	
Bruce B. Anderson	"	372	✓	
Barbara Cluminger	MP&A	380		
HENRY E. LEHR	Mont. State Vol. Fireworks Assn.	377	✓	
Bob Jensen	Board of Personnel Appeals	379	✓	
Jim Murray	Mont. State AFL-CIO	SP372		
Dave Fuller	Dept. of Labor & Ind.	372		X
Joan Uda	Office of Budget & Program Planning	379		X
Elaine Schmidt	State Personnel Division	380		
Jim Hiltbrager	State Personnel Division	380		
John Bell	self	372	✓	
Ellen Leaver	legislative Auditor	372		
Gary Blewett	Maternal & Child Health Bureau	380	✓	
W. Capps	Maternal & Child Health Bureau	380	✓	
Ray Saeman	Bo of personnel Appeals			

State Administration	COMMITTEE
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Date 3/2/21

[illegible]

RICHARD J. LLEWELLYN
COUNTY ATTORNEY

OFFICE OF THE
COUNTY ATTORNEY
JEFFERSON COUNTY
BOULDER, MONTANA 59632

TELEPHONE
(406) 225-3322

February 11, 1977

Honorable Thomas Towe
Chairman
State Administration Committee
State Capitol
Helena, Montana 59601

Re: Senate Bill #372

Dear Senator Towe:

I am writing this letter in support of Senate Bill #372, an act to make the position of Employment Security Division Claims Investigator independent of that Division.

Senate Bill #372 apparently results from the numerous irregularities and improprieties, in the operation of the Unemployment Compensation Fraud Detection Program, recently brought to the attention of the public.

As the so-called "Elison Report" prepared by Governor Judge's special legal counsel, Larry Elison, describes in great detail, the bureaucracy in the Employment Security Division has in the last several years intentionally downgraded and mismanaged the unemployment compensation fraud detection program. As the report showed, there was essentially no prosecution of unemployment compensation fraud because very few of the cases detected by the claims investigator were allowed to be forwarded to the various County Attorneys for prosecution. It is incredible to me, that such intentional mismanagement, involving fraudulent claims totaling many thousands of dollars, could occur at a time when the Unemployment Compensation Trust fund was going broke.

The problems, however, have not been corrected by the Elison Report and resulting scandal. Many of them still exist, and will continue to exist as a result of the present administrative structure of the Employment Security Division.

Presently, after the claims investigator completes his initial investigation, a case of suspected fraud is "filtered" through his supervisors who jealously claim the right to decide which cases will be referred to the various County Attorneys for prosecution. The County Attorneys therefore only get to see those cases which the Employment Security Division bureaucrats allow them to see. Regardless of whether the Division attorney is consulted in regard to such cases, this filtering process constitutes an overt usurpation of the prosecutorial discretion of the County Attorneys. A County Attorney may be willing to prosecute those "tough" or "questionable" cases which he will never even know exist because they are sidetracked before they ever reach him. I personally object to this, and I don't care to have some bureaucrat or staff attorney in the Employment

Security's Division making my decisions for me as to whether or not questionable cases are prosecutable. Every County Attorney with whom I have discussed the matter has agreed with me.

Further, under the present arrangement, local Employment Security Division office managers may be tempted to recover Unemployment Compensation payments, which have been fraudulently obtained, by threatening to bring criminal charges against the claimant or by offering "to dismiss" pending charges. Obviously, no notice of any such offer is ever made to the Claims Investigator, or to the County Attorney involved. Recently, such a situation allegedly occurred in Jefferson County and involved a case pending in the Justice Court in which the fraudulent claims had been filed through the local Employment Security Division office in an adjoining county.

Further, as the Elison Report illustrates, the present arrangement in the Employment Security Division allows vested bureaucracy the chance to hide serious problems, bungling, and mismanagement from the public view. It would also allow internal embezzlement to remain hidden and unprosecuted, as would have occurred in the 1950s but for some valiant effort on the part of the claims investigator.

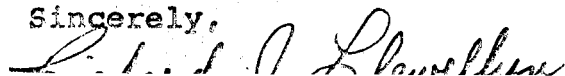
In addition, the claims investigator, who is an important asset to the County Attorney in cases which go to trial, can be made unavailable to a County Attorney through an imposition of administrative restrictions on his availability for pretrial meetings, investigations, and trials. This problem has arisen on several occasions recently when the claims investigator has been reprimanded by the Administrator of the Employment Security Division for appearing at trials to assist County Attorneys in Western Montana at the request of those County Attorneys. It will be a sad commentary on the operation of State government when we have to subpoena Claims Investigators to insure that they will appear at the trials of people accused of stealing directly from the State.

I would like to again emphasize that all of the foregoing problems still exist, even though these and many others were brought to the attention of the public over a year ago. Senate Bill #372 would go a long way towards solving them.

In its present form however, it might ultimately result in the Claims investigators' time being used for matters other than the investigation of Unemployment Compensation fraud as has sometimes been the case with other criminal investigators in the office of the Attorney General who have recently appeared to have spent all of their time on worker's compensation matters. I would therefore recommend that instead of transferring the position to the office of the Attorney General, that the position be instead placed directly in the Office of the Commissioner of Labor and Industry.

I would like to add in closing that the dozen or so other County Attorneys, with whom I have discussed these comments, have all agreed with me, including the Missoula County Attorney, the Lake County Attorney, the Deputy Lewis and Clark County Attorney, and the Beaverhead County Attorney, who assisted in drafting these comments.

Sincerely,



January 1, 1976 to Receipt of Letters from other Agencies - September or October, 1976

<u>STATE</u>	<u>FRAUD REFERRALS</u>	<u>CONVICTIONS</u>
Alabama	105	36
Arizona	54	32
Arkansas	18	12
California	2,242	1,616
Colorado	3	0
Connecticut	42	5
Delaware	1	0
District of Columbia	67	0
Florida	54	2
Georgia	4	3
Hawaii	6	0
Idaho	5	0
Indiana	68	21
Kansas	260	99 (Est.)
Kentucky	246	30
Lousiana	226	19
Maine	45	5
Maryland	620	346
Massachusetts	433	80
Michigan	35	11
Minnesota	11	3
Missippi	47	2
Missouri	715	42
Montana (thru Sept. 8)	234	70
Nebraska	120	37
Nevada	7	6

<u>STATE</u>	<u>FRAUD REFERRALS</u>	<u>CONVICTIONS</u>
New Hampshire		31
New Jersey	156	352
New York	601	278
North Carolina	28	13
North Dakota	1	0
Ohio	309	196
Oklahoma	18	2
Oregon	22	6
Pennsylvania	230	74
Rhode Island	51	0
South Carolina	27	12
South Dakota	14	3
Tennessee	29	7
Texas	880	130
Utah	0	0
Vermont	1	0
Washington	75	33
West Virginia	15	6
Wisconsin	6	3
Wyoming	8	0

From January 1, 1976 to September 8, 1976, Montana sent a total of 234 cases for recommended prosecution to County Attorneys - this was more than 17 other states and likewise, had more convictions than 36 other states (45 answering agencies - out of 51 inquiries).

STANDING COMMITTEE REPORT

February 12

19 77

MR. President

We, your committee on State Administration

having had under consideration Senate

Bill No. 377

Respectfully report as follows: That Senate Bill No. 377

DO PASS

NAME: Tom Schneider DATE: 2/12/77

ADDRESS: Box 5600

PHONE: 442-4600

REPRESENTING WHOM? MPEA

APPEARING ON WHICH PROPOSAL: SB-372

DO YOU: SUPPORT? ☒ as amended AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

NAME: John J. ... DATE: 9/1/1962

ADDRESS: 1000 17th St

PHONE: 1-516-466-1111

REPRESENTING WHOM? 1. Attorney at Law of H. S. H. 2. H.

APPEARING ON WHICH PROPOSAL: 614 2/10

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: MAYSON - COUNCIL TO COMMUNITIES

Testimony before the State Administration Senate Committee, 2/12/77

Thank you, Mr. Chairman, and members of the Committee. My name is Bill Baer. I come in support of Senate Bill 372. Employers of this State need full protection of the Employment Security Fund covering unemployment claims.

As has been pointed out in previous testimony, the fund is at an all-time low. There's no doubt the decrease in fraud detection over a six-year period had some impact on the fund sinking so low. How much was lost will never be known because of poor judgment of supervisory control over the Claims Investigator for the ESD.

It's because of this poor management that I became involved. As a citizen of Montana, I'm vitally interested in sound handling of matters concerning taxation and enforcement of laws of Montana.

In 1975, only 14 cases of suspected fraud were turned over to appropriate county attorneys.

In 1976, over 600 cases were turned over.

As a citizen's advocate, I spoke with the Governor's Executive Assistant, Keith Colbo, who promised the matter would be looked into. I also spoke with Great Falls Tribune Capitol Chief Frank Adams, who wrote several articles presenting both sides of the subject.

The results showed a conscious decision was made to emphasize claim payments and de-emphasize fraud control over a six-year period. This was concurred in by Administrator Fred Barrett. It was brought out in the Elison Report, written by the Governor's Special Counsel, Larry Elison.

The Administrator evidently attempted to cover-up this six-year lag, claiming increased work-load and purported Federal cutbacks. Mr. Barrett used as his justification a U.S. Department of Labor letter saying contingency funds would not be available in Fiscal Year 1974. Dr. Elison countered this statement by reporting, and I quote, "In fact, Montana's Employment Security Division de-emphasized the fraud control program beginning in 1972." Quoting again, "...the increased work load and employee availability do not coincide to justify the decreased emphasis on the fraud control program." End of quote.

It is hard to understand how the claims investigator was frustrated in his duties by having case after case turned down for prosecution. Dr. Elison said of the investigator's supervisor, quote, "Mr. Peterson failed to recommend a number of solid cases for prosecution that were

prosecution in some cases of obvious fraud and such laxity represents an abuse of his supervisory authority." End of quote.

Other statements concerning this supervisor and another who had jurisdiction over the claims investigator, were, I believe, very critical.

The Governor issued an Executive Order, which, among other things, placed the Claims Investigator under the direct supervision of the Administrator.

You would think the two men criticized in the Elison Report would have been in some sort of trouble. As a matter of fact, they were. The Governor ordered their firing but the Administrator said he'd rather quit.

Instead of being the hero, the Claims Investigator is being harassed by an endless stream of critical memos sent by the Administrator. Such important memos as how not to walk on the grass after parking in the lot behind the ESD Building. Conflicting memos such as saying in one that the investigator shouldn't work overtime so much when he is trying to save cases before the statute of limitations runs out, and then in another saying how the investigator has to stay at his desk because of the backlog of cases. What I call petty memos are already supplied to you at the request of one of the members of this Committee.

You wonder why it's suggested that the Claims Investigator be taken out of the control of this Administrator?

In honest candor, I believe the Administrator does not grasp the importance of the job. After the Elison Report, he told the Investigator he was sorry and didn't realize what the investigator had been going through. Mr. Barrett said he was going back to his office and talk it over with the parties concerned. Nothing ever came of that.

Nothing ever came of the direct supervision either that the Governor ordered. Mr. Barrett has spent no more than 20 minutes in the office of the Claims Investigator. The only time the Investigator has been in the Administrator's office was to be chewed out. No constructive criticism has ever been given.

I say the importance of the job. The Claims Investigator has been in his position for over 25 years. He wrote the only fraud control manual used throughout the State by ESD Office Managers. The manual is a step-by-step procedure of how to detect, determine and defend

suspected fraud cases. The Claims Investigator has been requested by county attorneys to assist in cases going to trial. The Claims Investigator has the expertise required to carry out such a program.

Yet the Administrator says a file clerk can do the job.

Is this the way the employment cheaters should be detected?

The same Administrator who said a file clerk can do the job also said, and I quote from a newspaper article in the Billings Gazette, "Detection is a combination of human ingenuity and computer scanning." End of quote.

A file clerk? The Claims Investigator, in the Administrator's own words has human ingenuity and the Claims Investigator is the one who programmed the computer. A file clerk?

The Administrator takes great pride in the news media for the increase of fraud cases being turned over to county attorneys. Over 600 last year...over 600 all done by the Claims Investigator. If the Administrator is so proud of that record, how does he feel about the 14 in all the year 1975, a drop of 95 percent from 1972 when only 272 cases were presented.

What was the Administrator doing all those years? I say he did not know the laxity that was taking place.

Isn't it time that the Claims Investigator be allowed to do his job without the pettiness and down-grading? Don't the businessmen of the State deserve better? How they feel is, or will be, covered in testimony to this Committee.

I have discussed this matter not only with the Governor's office but with the Administrator himself. He considers all this garbage. Those are his words to me, not mine.

The position is too important and a dedicated Claims Investigator deserves more than what he has been going through. You have received copies of what has happened over the years. I will be glad to answer any question to the best of my ability. All I ask is that just and due consideration to this matter be given and that affirmative action be taken to correct the situation and allow a vigorous fraud program continue unhampered by what has transpired.

Thank you for your courtesy. Copies of this testimony will be given you.



Box 1176, Helena, Montana

ZIP CODE 59601

JAMES W. MURRY
EXECUTIVE SECRETARY

FUNDY SHOPPING CENTER
MISSOULA HIGHWAY

REMARKS OF JAMES W. MURRY ON SENATE BILL 372, HEARINGS OF THE SENATE STATE
ADMINISTRATION COMMITTEE, FEBRUARY 12, 1977

On behalf of the Montana State AFL-CIO, I appear before you today in opposition to Senate Bill 372, which we regard as an offensive and totally unnecessary piece of legislation.

If this bill is aimed at improving the current system of detecting and investigating fraud against the unemployment insurance program, we think you're wasting your time. As a representative of workers in a time of high unemployment, I am more than generally familiar with the unemployment insurance program, and I can tell you, in all sincerity, that the attorney general would be hard put to improve the existing fraud control program now under the administrator of the Employment Security Division. Under the current leadership of the Division, wages and benefits are subject to a 100 per cent cross-match every quarter. I don't know how the Division could pursue fraud more diligently or more effectively. Of the \$26 million paid out of the state unemployment insurance fund last year, overpays due to fraud amounted to only \$52,000 to \$55,000. Of that amount, the Division already has collected \$27,000, or about one-half of the total. Among all the unemployment comp benefits paid out by the state, including state and federal programs, fraud accounts for less than one per cent. The unemployment compensation fund is broke not because of fraudulent claims, but because of a depressed economy that is beyond the control of Montana workers.

Fraud by claimants may irritate you, and that is understandable. No one can condone fraudulent practices by employees or employers. But all this talk about fraud is more than an irritation to the vast majority of unemployed workers, who comply honestly with the unemployment compensation program. Workers don't like to be laid off. They don't like to come home and tell their families that they don't know where the next paycheck is coming from. Workers are a proud lot, especially Montana workers, and they don't like to rely on what many regard a welfare program to keep up with the rent and to provide food and clothing for their kids. The average claimant receives benefits for only two weeks before he or she has found another job. I think that's as good an indication as any about how workers feel about adding their names to the unemployment comp rolls.

Add to that humiliation the resentment workers must feel when they read exaggerated and distorted publicity about fraud committed by workers against the state. As I mentioned earlier, all that fraud we're reading about amounts to less than one per cent of all the payments drawn on the fund. Montana has the best and most productive work force in the nation, and we regard this bill as an insult to the honest and hard-working members of that work force.

There is another reason behind our opposition to Senate Bill 372. We see this bill as nothing more than a cheap shot directed toward one of the most efficient and service-oriented state agencies we deal with. Through the years, labor has fought long and hard to build a strong and cohesive Department of Labor and Industry. Executive reorganization and the establishment of the Commissioner of Labor as a constitutional officer stand out as just two examples of our efforts to achieve that goal. On principle,

we don't like the idea of chipping away at a strong and effective agency, and we will oppose any move to fragment its operation.

The function of the claims investigator belongs logically in the Employment Security Division, and that's where it should stay. About all you would accomplish by passing this bill is a cosmetic change. Instead of reporting to the administrator of the Division, the claims investigator would report to the attorney general. The process by which the claims are investigated wouldn't change at all.

The State of Montana has a first-rate system right now for the detection and investigation of fraud against the Division. The fraud control program within the Employment Security Division is one of the most effective programs in the entire unemployment insurance system, and we support the continuation of this program. We would be foolish not to. We encourage stringent controls so that trust fund money available to pay eligible claimants their legitimate benefits, will not be jeopardized. These controls are in effect now, under the current system, and we hope you will uphold the integrity of this system by rejecting Senate Bill 572.

opera #2, afl-cio

U.S. DEPARTMENT OF LABOR
MANPOWER ADMINISTRATION

January 18, 1977

Denver, Colorado 80202

8TGB

STATE AGENCY LETTER NO. 20-77

SUBJECT: SESA Reorganization

- CONFIDENTIAL**
1. Purpose. To reiterate the need for submission of documented reorganization proposals and the requirement that regional office approval must be obtained before reorganizations are implemented.
 2. Reference. Employment and Training Manual, Chapter 5410 Review of State Agency Organization (revised 9/76).
 3. Background. Approval authority for proposed State Agency reorganization has been delegated within the Employment and Training Administration (ETA) to the Regional Administrator. In those instances when, in the judgement of the Regional Administrator, the State's proposal is considered not to be in conformity with Federal statutes and regulations, the proposal will be forwarded to Washington for final action. This letter frames the basic requirements for proposal submission.
 4. Definition. For purposes of this letter reorganization shall include, but not be limited to, legislative, judicial, or executive proposals or directives to expand, contract, or modify the accountability, budgeting, management, fiscal policies operations, mission, function, or reporting requirements of or concerning any principal executive, or component structure, or system of the agency, or of the agency itself.
 5. Philosophy. Region VIII's concept of the Federal-State relationship is one of full partnership. The Federal responsibility is to assure that State agencies provide a cost-effective full-functioning service to workers and employers. On that premise, this office holds the States accountable for successful performance, and draws a strong correlation between performance and budgeting. As an accompanying consideration, this office will give the States the very maximum flexibility possible to do their job, with de-emphasis of bureaucratic red tape wherever feasible.

DISTRIBUTION MADE TO THE FOLLOWING:

1	2
3	2
2	

6. Policy. Consistent with general ETA Guidelines and the premise above the policies stated below are designed to avoid cumbersome processes and extensive reviews.
- a. In reviewing State Agency reorganization proposals which are submitted properly and in advance of any unauthorized implementation, this office will limit its concerns to major concepts and design. Approval will be withheld only when and if the proposed structure will diminish the level of service to workers and employers or is mandated by court order or national directive.
 - b. When a State agency prematurely implements an unauthorized and as-yet-unapproved proposed reorganization, this office automatically will consider that the proposed structure is "not in conformity with Federal statutes and regulations". Please understand that while it is regional policy, desire and intent to give the States as much latitude as possible, the Regional Administrator is held personally accountable for assuring organizational compliance with national directives or court settlements and for overall performance. States are asked to help continue the regional policy of maximum flexibility by obtaining approval of proposed changes before they are enacted.
 - c. Regional office reorganization approval time will be as prompt as possible. Not counting the time required to obtain clarification (usually by telephone) and in discussion of the proposal with State officials, normal review time should approximate twenty days. At that point if final action has not been taken by the regional office, the head of the State Agency is requested to contact the Regional Administrator or the Deputy Regional Administrator directly.
 - d. The State is urged to submit ten copies of its proposal at least thirty days prior to the planned implementation date. Submissions should be directed to the attention of Michael J. Nastick, ARA for A&MS.

7. Format of Reorganization Proposal. The reorganization proposal from the State should contain the following:

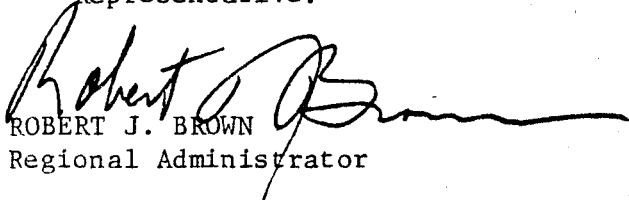
- A. A transmittal letter from the head of the Agency giving an overview of the proposed changes, the purpose of the changes, and a general assessment of what the changes are expected to accomplish.
- B. Organization charts showing:
 - 1. The organization as it presently exists, including the level immediately below the lowest level to be affected by the proposed reorganization.
 - 2. The proposed new organization, including the level noted above, with changes clearly indicated.
 - 3. The total number of full-time continuing positions in both the present and the proposed new organizations.
 - 4. The total number of professional positions and the total number of clerical and subprofessional positions in each component of both the present and proposed new organizations as requested above. NOTE: The sum of all positions in the components should be the same as the totals required by (B)(3) above.
 - 5. Local offices and how they are supervised by the central office.
 - 6. A description of major program/component inter-relationships, i.e., ES, UI, AS&T, Office of the Administrator, etc.
 - 7. The advisory council and its composition and functions.
- C. Mission and function statements for all components set out in the above-mentioned charts.
- D. List of positions, by classification and title, it is proposed to exempt from the State's merit system.

- E. Plans for disposition of funds and property (real and personal) obtained with granted or "Reed Act" funds if such disposition is involved.
- F. Proposed revised Employment Service plan of operations (Plan of Service) required by the Wagner-Payser Act.
- G. Copies of legislation and executive orders justifying or requiring the reorganization, if not already furnished.

The seven items listed above will constitute the proposal package and represent the minimum information required.

8. Fiscal and Legal Considerations. In developing any plan for reorganization, the State should be aware of the basic fundamentals inherent in financing State agencies, such as: (a) the need for safeguards protecting and preserving the integrity of funds budgeted and granted for the employment security and related Federal program activities; (b) the development of mutually satisfactory agreements, if necessary, for determining and distributing between the participating agencies within the state Department of Labor joint costs not specifically identified as employment security costs, such as overall administration, supervisory costs, State audits, legal counsel, etc.; and (c) the possible difference between State and Federal laws, rules, regulations and procedures affecting fiscal reporting and controls for such items as travel, building rentals and purchases, procurements, and similar items. In consideration of these matters, special attention is called to Part IV, Section 1080 through 1084 of the Employment Security Manual. These sections relate to expenditures from granted funds to reimburse divisions or departments of State government for certain direct and indirect costs -- it has special applicability to "umbrella" type reorganizations or those in which administrative functions are centralized.

9. Inquiries. Questions may be directed to your Federally Authorized Representative.


ROBERT J. BROWN
Regional Administrator

RECEIVED
FEB 21 1977

Department of
Social Services
Division

P.O. Box 17248 Helena, Montana 59617
Phone (406) 443-2511

February 15, 1977

Senator Thomas E. Towe
Chairman-State Administration Committee
State Capitol Building
Helena, Montana 59601

Dear Senator Towe:

Of interest to your Committee in considering Senate Bill No. 372 and the testimony presented might be the following observations. I inherited the administrative set-up wherein the Claims Investigator was under the supervision of the Benefit Section Supervisor. During those years where the fraud prosecutions dropped, never once was one word of warning, information, or communication of any kind given me by the Claims Investigator that anything was amiss. Instead of telling me or our Attorney that he felt suspected cases of fraud were not being forwarded for prosecution, he cubby-holed these files, 266 of them, and said nothing. The whole problem surfaced, as it certainly should have, only after the Claims Investigator failed to receive the classification grade he thought he deserved. Since then this whole problem has been aired before the press, the Board of Personnel Appeals, the Governor's Office and now the Legislature. The personnel problems of the Claims Investigator have now become completely intertwined with the very different and separate problem of proper fraud control.

It has become a case of confusing an individual holding a job with the job itself.

Ever since the Claims Investigator made public the situation as it had existed and I was given an opportunity to make the needed changes and corrections, we have had a smooth running and effective claims investigation and fraud control program, irrespective of previous personality clashes.

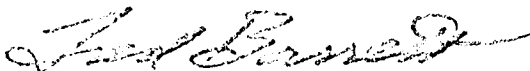
Senator Thomas F. Towe
February 15, 1977
Page two

For proof of this, I ask that the Committee examine the record we have compiled since I placed the Claims Investigator under my direct supervision and instituted the review process recommended by the Elison report. Attached are state by state comparisons we have compiled as a result of a questionnaire I sent to each Employment Security Agency in the country. 45 out of 51 responded and the comparisons speak for themselves. (The actual responses are on file and available for Committee inspection, as is every other file and document in the agency.)

I give full credit to the Claims Investigator for his part in achieving this commendable record. I think it merits the trust and support of the Legislature and the business community, and is one we can all be proud of. At the same time, we welcome any suggestions for improvement, and we are by no means complacent with our present arrangement, but rather stand ready to implement any new approach which might improve our benefit payment controls, especially in the area of potential fraudulent claims.

We recognize that public trust is indispensable in the successful administration of so sensitive a program as unemployment benefits and we are all doing our level best to achieve and merit that trust.

Sincerely,



FRED BARRETT, Administrator
Employment Security Division
Department of Labor and Industry

FB:kh

U.S. DEPARTMENT OF LABOR
Employment Security Division
P.O. Box 1720 • Helena, Montana 59601

February 15, 1977

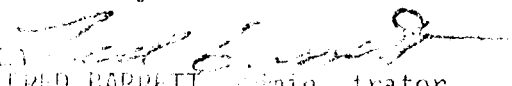
Senator Thomas E. Towe
Chairman, State Administration Committee
State Capitol Building
Helena, Montana 59601

Dear Senator Towe:

The telegram received February 14, 1977, is not entirely satisfactory in directly answering the questions posed and accordingly we have had two telephone conversations with Orlin Waas, Regional UI Director on the interpretation of the telegram. He states that placing the position of UI Claims Investigator under the control of the Department of Revenue is contrary to policy for at least two reasons: (1) Control of the claims investigation process which is an assigned function of the Employment Security Agency would become the responsibility of the Department of Revenue and the conduct of such claims investigation process would thus be removed from Employment Security supervision. (2) The funding provided now for the Claims Investigator within the Employment Security Division would not be available under circumstances where the Division did not maintain control and direction of the position.

My own reaction is that given enough time for negotiation and compromise, it is conceivable that some arrangement might be made which might overcome the Federal objections and still be acceptable to the interested parties. If this were possible I would support the Bill. In reality such negotiations would consume more time than is available and any resulting success is questionable at the very best.

Sincerely,


FRED BARRETT, Administrator
Employment Security Division
Department of Labor and Industry

FB:kh
Enclosure

NAME:

Tom Schneider

DATE:

2/12/77

ADDRESS:

Box 5600

PHONE:

442-4600

REPRESENTING WHOM?

IMPERA

APPEARING ON WHICH PROPOSAL:

SB 380

DO YOU:

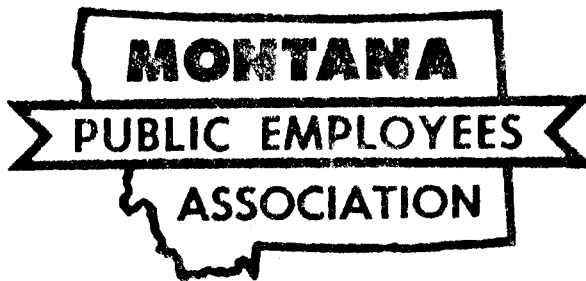
SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS:



THOMAS E. SCHNEIDER - EXECUTIVE DIRECTOR
PHONE (406) 442-4600
P. O. BOX 5600
HELENA, MONTANA 59601

February 12, 1977

SENATE BILL 380

Title 59, chapter 9 grants the Board of Personnel Appeals the authority to establish a grievance procedure to hear and resolve complaints resulting from the operation of the Act.

It further allows an employee who feels that he or she has been directly or indirectly interfered with, restrained, coerced or retaliated against by a supervisor or by the agency for which the employee works as a result of filing a complaint with the board, that such action shall be a basis for a complaint with the board and shall entitle the employee to file a complaint with the board.

THAT ALL SOUNDS WELL AND GOOD BUT IN REALITY it has resulted in the personnel division unilaterally directing the employing agency of an employee engaged in a classification appeal to reclassify the position downward without due process or proper Board of Personnel Appeals determination. It is our contention that once a position is classified, it establishes a protective right for the individual occupying the position. Particularly when the employee has filed a formal classification appeal, it is a direct denial of that protective right to unilaterally change that position's specification or the series in which that classification is assigned or to otherwise adversely affect the position until such time as the appeal has run its full course.

To allow the personnel division to continue its present practice with respect to unilateral changes in downgrading of positions or changing classifications or their series is denying the employees is clearly in violation of the intent of the act.

The full effect of the personnel division's practices is to:

- a. Nullify a pending classification appeal
- b. Interfere, restrain, coerce or retaliate against an employee for appealing
- c. Reduce an employee's salary immediately or long term without due process

Senate Bill 380 is intended to do three things:

1. Broaden the present language to include acts of interference, restraint, coercion or retaliation by other agencies such as the personnel division as being the basis for complaint.
2. Clears up the present problem which results from the language requiring that the board issue an order to the department of administration when the action may have come from some other agency.
3. Prohibits interference, restraint, coercion, or retaliation through the attempt to revise the class specifications of or series of class specifications involving an employee exercising a right conferred by this section prior to final resolution or entry of a final order.

It further makes such actions rebuttable which in essence places the burden of proof on the personnel division or the appropriate agency.

SENATE BILL NO. 380

1 MATERNAL AND CHILD HEALTH BUREAU MANAGEMENT TESTIMONY
2 SUPPORT OF SB NO. 380
3

4 Maternal and Child Health Bureau management shares concern
5 along with employee Dee Capp in proposed Senate Bill No. 380.
6 Management's concern centers on the need to be able to depend on
7 consistent and reliable administration of the uniform class-
8 ification and pay plan. The effort to reclassify employee
9 Dee Capp resulted in a complete reversal of expectation and
10 leads management to believe that the administration of the plan
11 is not consistent or reliable. Such a belief results in manage-
12 ment being stymied in attempting to utilize talent in the most
13 appropriate positions.

14 Management needs to be able to use talent in the most appro-
15 priate roles. Old roles change and new ones get added as Bureau
16 programs modify. Bureau personnel, as evidenced in Dee Capp's
17 case, develop and grow on the job and thereby improve their
18 talent for Bureau purposes. Management would like to be able to
19 advance such personnel to appropriate positions and be reasonably
20 sure that equal-pay-for-equal-work principles will be applied on
21 a consistent and predictable basis.

22 Advancements are effected by management by either supporting
23 an employee's appeal for reclassification or by initiating a
24 reclassification by confirming the change in role, verifying the
25 incumbent's capacity to fill the role, comparing the specifics
26 of the proposed role with others already established in the
27 Bureau, and identifying the class specification that most approp-
28 riately fits the role consistent with equal-pay-for equal-work
29 principles.

30 Management then expects the personnel division to respond
31 to management's decision by reviewing this same decision-making
32 logic, but from the wider perspective of total state government.

1 The personnel division carries out its response (it is hoped)
2 through recognized ground rules in order to assure due process
3 for the employee and to provide the opportunity for a consistent
4 and reliable application of analysis which becomes an essential
5 feedback for management. In the case of Dee Capp's appeal, it
6 would seem that essential ground rules for review were not est-
7 ablished to provide these assurances or expectations. With the
8 institution of a new classification in the middle of the process
9 of review and appeal before the process was completed, management
10 is left in a quandary.

11 The assumptions that management used in its decision-making
12 process in support of Dee Capp's appeal are apparently no longer
13 valid. Management's review of class specifications was handi-
14 capped because a new specification was introduced at a later date,
15 a specification management did not have at hand when it conducted
16 its own review. The new specification had the effect of shifting
17 grade classifications relative one to another and therefore the
18 equal-pay-for-equal-work norms were also shifted. Hence, the
19 comparison of the proposed role with other existing roles no long-
20 er maintains the same logic that was initially applied in support
21 of the appeal.

22 For management to do its job it needs to be able to depend
23 on the validation of its decision-making processes. The logic
24 that is applied in making a decision must be respected if it is
25 valid. The last-minute introduction of a new class specification
26 during an appeal is not supportive of good management decision-
27 making. It undercuts any attempt by management to be consistent
28 and rational in making decisions about classification appeals.
29 The only way to be assured of reliable validation of the decision-
30 making that was used in support of a reclassification is to
31 preclude piece-meal changes in the ground rules before an assess-
32 ment of the entire logic applied in the case can be made. It

1 would seem that the introduction of the new class specification
2 during Dee Capp's appeal was a piecemeal change. Proposed
3 Senate Bill No. 380 would have prevented that and therefore
4 supports management's effort to be logical in its decision-making
5 efforts.
6
7

8 Respectfully Submitted in Support of SB No. 380,
9

10 BY:

Gary Blewett

11 Gary Blewett
12 Assistant Bureau Chief,
13 Maternal and Child Health Bureau
14 Department of Health & Environmental Sciences
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DATED this 12th day of February, 1977.

#7 MONTANA STATE COUNCIL No. 9
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
Affiliated With A.F.L.-C.I.O.



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International President

William E. Luby
International Secretary-Treasurer

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FEBRUARY 12, 1977

TESTIMONY ON SENATE BILL 380

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George L. Hammond
Executive Director

Wesley W. Gerke
Field Representative

Donald R. Judge
Field Representative

Mr. Chairman, Members of the Committee, I'm Don Judge, Field Representative for the American Federation of State, County and Municipal Employees, AFL-CIO, and I appear today as a proponent of Senate Bill 380.

Mr. Chairman, Members of the Committee, Senate Bill 380 provides some guidelines for determining government retaliation against employees initiating classification appeals. Currently there is nothing on the books which delineates those agency actions constituting a retaliation. This bill would provide that to attempt to revise the class specifications of an employee or a series of class specifications which could affect the outcome of an appeal could be considered an agency retaliation measure.

This bill, to be fair, also provides that charges brought against an agency under this section are rebuttable and I believe this provides both the employee and the agency with a proper format for considering such charges. The final decision of course remains with the Board of Personnel Appeals.

One question which may arise in consideration of this bill is the Personnel Division's authority and directive,

TESTIMONY ON SENATE BILL 380
FEBRUARY 12, 1977
PAGE 2

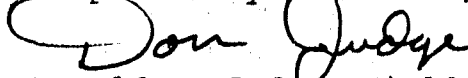
under law, to constantly review and update the classification system, How would this be affected by the implementation of this law? My only answer to that question would be that ethically and morally the Division should probably forstall any action which would change any classification or series of classifications pending the result of any initiated appeal. An employee appeals his/her classification on the basis of existing conditions --- those conditions should remain constant throughout the duration of the appeal.

This bill provides one additional administrative benefit to both the employees and the Board of Personnel Appeals alike. It provides that the Board may order the "appropriate agency or agencies of state government" to initiate corrective measures to resolve the complaint of an aggrieved employee. As the law currently exists, the Board has the authority to issue an order to the department of administration to take corrective action. This constitutes an additional bureaucratic step which I believe unnecessarily mandates the department of administration to involve itself in initiating corrective measures which might be better and more expediently taken by the agency (s) involved.

In closing I would respectfully request that you give this bill your sincere consideration and that you further give this bill a DO PASS recommendation.

I thank you for the opportunity to appear before you today.

Respectfully Submitted,



Donald R. Judge, Field Representative
Montana State Council 9, AFSCME, AFL-CIO
600 North Cooke St.
Helena, Montana 59601

Phone: 442-0760

NAME: Don Judge DATE: 2/12/77

DATE: 2/12/77

ADDRESS: 600 N. Cooke St. Helena

PHONE: 442-0760

REPRESENTING WHOM? AFSCME, AFL-CIO

APPEARING ON WHICH PROPOSAL: SB 380

DO YOU: SUPPORT? X AMEND? OPPOSE?

SUPPORT? ☒

AMEND?

OPPOSE?

COMMENTS: Prepared statement submitted

NAME: Don Judge DATE: 2/12/77

ADDRESS: 600 N. Cooke St. Helena

PHONE: 442-0760

REPRESENTING WHOM? AFSCME, AFL-CIO

APPEARING ON WHICH PROPOSAL: 513379

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: ~~1~~ Prepared statement submitted

15
MONTANA STATE COUNCIL No. 9
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
Affiliated With A.F.L.-C.I.O.



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International President

William E. Lucy
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February 12, 1977

TESTIMONY ON SENATE BILL 379

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George L. Hammond
Executive Director

Stanley W. Gerke
Field Representative

Donald R. Judge
Field Representative

Mr. Chairman, Members of the Committee, My name is Don Judge and I'm a field representative for the American Federation of State, County and Municipal Employees, AFL-CIO. I appear today as a proponent of Senate Bill 379.

Mr. Chairman, Members of the Committee this bill does nothing more than provide the Board of Personnel Appeals full authority to act on the directive given them by the Legislature of the State of Montana. In passing the classification and wage plan for state employees the Legislature made a directive to the state government to provide for similar rates of pay for similar types of work. In creating the Board of Personnel Appeals the Legislature set up a watchdog over the state government to insure that this was being done. However, the Legislature did not provide the Board of Personnel Appeals with the full authority to act as a meaningful watchdog over this process.

It is possible for the state government to preclude the provisions of similar pay for similar work simply by insisting that to follow this directive will require approval of the state's budget director. I'm not insinuating that this has been done, simply that it could be done under existing laws.

TESTIMONY ON SENATE BILL 379
FEBRUARY 12, 1977
PAGE 2

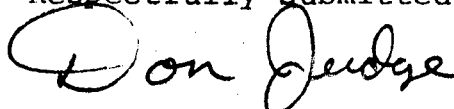
By passing this piece of legislation you will be extending to the Board of Personnel Appeals the authority to enforce its decisions relative to classification appeals for state employees. Without this bill you simply have created a board which has the authority to recomend to the budget director a means to correct similar pay for similar work problems with no authority to enforce such a recommendation.

Although I can't recall any problems encountered by any of our members concerning classification appeals being approved by the Board of Personnel Appeals and subsequently denied by the budget director, I support this bill as a means of precluding that from happening at all.

In closing I would simply repeat that this bill appears to be a housekeeping measure intended to provide a means to properly implement the intent of a previous legislature. I would respectfully request that this committee give this bill a DO PASS recommendation.

I thank you for the opportunity to appear before you today.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Don Judge", written over the typed name.

Donald R. Judge, Field Representative
Montana State Council 9, AFSCME, AFL-CIO
600 North Cooke St.
Helena, Montana 59601

Phone: 442-0760

Office of the Governor

Budget and Program Planning

Thomas L. Judge
Governor

Michael G. Billings
Director

Capitol Building - Helena, Montana 59601

February 12, 1977

To the Members of the Senate Committee on State Administration:

Testimony in Opposition to Senate Bill 379

The Office of Budget and Program Planning strongly opposes Senate Bill 379, because passage of the bill would place unwarranted and perhaps unanticipated power in the Board of Personnel Appeals, and would remove certain restraints on state expenditures and agency staffing patterns.

I. Interpretation of S.B. 379.

First, S.B. 379 creates a large exception to the position control authority of the budget director in sections 59-910 and 59-911 of Montana's state employee classification and pay plan. These sections specify that no state agency may increase the salary or wage of a class of state employees, or may increase the number and class of the positions in a state agency, without the authorization of the budget director.

This bill would add to these sections the language: "Except when otherwise ordered by the board of personnel appeals in a proceeding under this chapter...." This would mean that when the board orders a change in salaries, or in the number or class of agency positions, the budget director's authorization would not be required.

Second, S.B. 379 would add the same exception to the last part of section 82-109.4, which now provides: "However, no changes in personnel or salary status may be authorized that will cause an agency to exceed its appropriation or that will result in a deficiency or supplemental appropriation request to the legislative assembly."

This language from section 82-109.4 is a check upon executive branch personnel expenditures. The Office of Budget and Program Planning has interpreted it to mean that all state agencies have a duty imposed by the legislature to keep the cost of any personnel or salary status changes within the limits of existing appropriations. Instances have arisen in which Budget and Program Planning has refused to authorize such changes until the agency has demonstrated that it could meet the costs of the changes without exceeding its existing appropriation.

Excepting the Board of Personnel Appeals from this limitation on personnel expenditures would allow the board to order changes in personnel or salary status without regard for whether or not the agency had any means to meet the costs within its existing appropriations.

11. Effect of S.B. 379.

1. Classification and pay plan.

The enabling legislation for the state employee classification and pay plan, of which sections 59-910 and 59-911 are a part, was first enacted in 1973. The legislation had several primary purposes, among them to assure, as nearly as possible, equal pay for equal work across state government, by establishing a system which would classify each position according to job duties and responsibilities, and would assign to each classification an appropriate salary based on all relevant factors.

The Department of Administration is responsible for general administration of the classification and pay plan. Its functions include periodic review and necessary changes in position classifications, and initial investigations of classification appeals. Within this system, sections 59-910 and 59-911 give the budget director position control authority, because it is his duty to assure that executive branch spending does not exceed the limits imposed by the legislature. The function of the Board of Personnel Appeals is to hear and resolve employee classification grievances which cannot be satisfactorily resolved prior to reaching the board.

The amendments to sections 59-910 and 59-911 would remove board ordered changes in salaries, wages, classifications, and numbers of positions from the budget director's position control authority. The intent may be simply to expedite the process by removing one step. However, these amendments would have other perhaps unanticipated effects.

For example, the amendments would clearly allow and might even encourage the board to make all of the following types of orders:

- (1) raising the salaries of an entire classification of agency employees;
- (2) increasing the number of a certain type of position within an agency;
- (3) upgrading the classification of a certain type of position within an agency.

The board at present makes some but not all of these orders. These amendments would effectively remove the existing external restraints mandated by the need to control growth in state expenditures and general growth in state government. These restraints now exist in the statutes requiring the Department of Administration, the budget director, and the departmental directors to control staffing patterns, salaries, and overall executive branch spending.

The classification appeals process was intended to allow an employee who believed his position was incorrectly classified to appeal the classification, and, if error was found, to have the classification corrected within other existing statutory restraints. We do not believe the appeals process was meant to allow the Board of Personnel Appeals to change staffing patterns or to set salaries.

2. Limits on agency spending.

Excepting the Board of Personnel Appeals from section 82-109.4 appears to remove any need for the board to consider agency budgets or appropriations in making its orders. The amendment would allow the board, in effect, to rebudget an agency's appropriations, and would ultimately give the board indirect appropriation authority, by allowing the board to control how agency funds are spent, including

funds for which there is no existing appropriation.

The legislature has clearly expressed its intent to keep agency spending within legally authorized agency income. Section 82-109.4 demonstrates this intent, as do the position control statutes, and the requirement that contracts negotiated between the state and state employee collective bargaining units be submitted for final approval to the legislature. Further, section 79-901 provides general limitations:

It shall be unlawful for...(any state agency)...having charge of the disbursement or expenditure of the income provided by legislative appropriation, or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the income provided for such year, or for...any supervisory board or authority either directly or indirectly to authorize, direct or order any such... (state agency)...to increase any expenditures, except as specifically provided by law, and it shall be and is hereby made the duty of any and all of such...(state agencies)...to keep such expenditures, obligations and liabilities within the amount of such income.

All of these provisions demonstrate the intent of the legislature to maintain controls on state expenditures and to require agencies to operate only with funds for which they have lawful spending authority. The Office of Budget and Program Planning supports these principles and believes that removing such restrictions from the board or any other agency can only encourage fiscal irresponsibility.

III. Bill Title.

The title of S.B. 379 is: "An Act to Make Orders of the Board of Personnel Appeals in Classification and Wage Proceedings Binding...." This appears to be inaccurate and thus misleading, because the body of the bill, instead of addressing the binding effect of board orders, actually would give the board extensive authority over agency fiscal matters and staffing patterns, by removing statutory restraints and the authority of other agencies.

IV. Conclusion.

The legislature has imposed many fiscal and operational constraints on state government, to further the principles and practice of fiscal responsibility and accountability. The Office of Budget and Program Planning Supports these principles and opposes S.B. 379 because it is a large step in the wrong direction.

Office of the Governor

Budget and Program Planning

Capitol Building Helena, Montana 59601

BUDGET
PROGRAM
PLANNING
DIVISION

October 1, 1976

MEMORANDUM

TO: Bob Jensen, Executive Director
Board of Personnel Appeals

FROM: Michael G. Billings, Director

*Mike Billings*RECORDED
OCT 4 1976
BOARD OF PERSONNEL APPEALS

SUBJECT: Appeals Involving Upgrades

I have discussed with you on previous occasions the necessity for the Board, when it issues an upgrade order on a classification appeal, to provide an "either . . . or" option in the order: "Either upgrade the position, or alter the duties and responsibilities as follows. . . ." The identification of the duties and responsibilities which must be modified for the position to remain at the appealed grade level should be a straight forward representation of the facts upon which the order to upgrade was based, for presumably these marginal duties and responsibilities are the factors which differentiate the grade of the appealed position from the higher grade settled upon by the Board. 73

The necessity for the "either . . . or" option, as also previously discussed with you, stems from specific statutory restrictions placed upon the Budget Director's authority to approve staffing pattern changes. In particular, the Budget Director is specifically precluded from approving a change in salary status that will cause an agency to exceed its appropriation (thus probably excluding balance transfers to pay for upgrades), or that will result in a deficiency or supplemental appropriation request to the legislature.

I have attached a memo prepared by Office of Budget and Program Planning staff attorney, Joan Uda, which explains the legal issues in considerable detail. You will see that the restrictions which apply to the Budget Director are very explicit, and the memo in its entirety suggests the need for adoption of procedured governing classification appeals which will both be consistent with statutory provisions and accommodate the needs and interests of the employee, the Board, the Department of Administration and the Budget Director.

I would therefore like to invite you to attend a meeting in this office Thursday, October 7, at 2:00 for the purpose of discussing alternative methods for handling classification appeals. Hopefully, out of that meeting will come a meaningful set of alternatives which can be discussed with the Board at the October 26 meeting.

NAME: Peter J. Byrnes DATE: 4/12/77

ADDRESS: 7985 Applegate (Home) Mitchel Bldg (work)

PHONE: 458-9493 (Home) 449-5871 (work)

REPRESENTING WHOM? State, Dept. Admin.

APPEARING ON WHICH PROPOSAL: 379

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ☒

COMMENTS: Will support written testimony of OBPP
representative.

NAME:

Tom Schneider

DATE:

2/12/77

ADDRESS:

Box 5600

PHONE:

442-4600

REPRESENTING WHOM?

MPER

APPEARING ON WHICH PROPOSAL:

SB 379

DO YOU:

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS: