

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 18, 1977

The twenty-sixth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lee on the above date in Room 402 of the State Capitol Building at 9:30 a.m.

ROLL CALL: All members present with Senator Blaylock, Senator Mehrens, and Senator Smith excused.

FURTHER CONSIDERATION OF HB 700: Further discussion was held on HB 700. HB 700 does set up a state wide register of all job opportunities available so they can be listed centrally. The Employment Security Division does not maintain a central listing of these jobs. They get inquiries as to what jobs are available. These people fill their own positions often with their own people and do not list them with anyone else. Nothing is being taken away from the Employment Security Division, a central listing of state government opportunities is being maintained.

Currently there are 14 full time positions in the Merit System. Mr. Duane Johnson, Personnel Division, stated that they have a budget request for 28 more full time employees. Seven of them will be transferred from the old board and it will be an increase in the Board of Administrations Budget of around \$600 thousand dollars.

Mr. Johnson also stated that this bill will rename the Board of Personnel Appeals as the Public Employment Labor Relations Board. The Board of Personnel Appeals presently administers the collective bargaining act for all public employees and hears and rules upon classification appeals. HB 700 will make the Board of Personnel Appeals strictly a labor relations board. The classification appeals function is placed under the Personnel Review Board. This will remove the conflict to hear both classification grievance and union grievances.

Mr. McGillivray of the Merit System Council stated that the Merit System does have a recruiting function. All agencies are placed with their office. We go through a process to review all applications. We do have a problem with this bill when it defines public employees and then exempts certain people.

Mr. Johnson stated that this bill would create a better system because currently the personnel system is totally fragmented. One of the most serious flaws is that Montana has a state wide classification and pay plan including those under the Merit System. We have two different means of delivering these functions. By absorbing both into one board, we are saving money. We are proposing to centralize the whole system.

Mr. Johnson submitted a copy of a letter from Charles Dooley in Denver on HB 700. A copy of his letter and Mr. Johnson's reply letter is attached.

Senator Goodover stated that he didn't see why the Personnel Review Board is allocated to the Department of Labor and Industry for administrative purposes only when the law says it does not make any difference whether it is the Department of Labor or the Department of Administration. Mr. Johnson stated that he felt the Department of Administration represented management.

Senator Goodover then made a motion to amend page 8, line 20, changing the Department of Labor to the Department of Administration. Senators Goodover, Himsl, and Nelson voted "aye", Senator Lee voted "nay" and Senator Lowe abstained from voting. Nothing will be decided until the rest of the members are present to vote.

ADJOURN:

There being no further business, the meeting was adjourned at 10:35 a.m.

A handwritten signature in cursive script, appearing to read "Robert E. Lee", is written over a horizontal line.

Robert E. Lee, Chairman

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date _____

3/18

[illegible]

SENATE

LABOR

COMMITTEE

BILL _____

VISITORS' REGISTER

DATE 5/18

NAME

REPRESENTING

BILL #

(check one)
SUPPORT OPPOSE

Jim Heiber

Eastern Montana College 346

Steve Heizer

Mont. Univ. System 346

Susan Johnson

Personnel Div.

700

✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

UNITED STATES CIVIL SERVICE COMMISSION

DENVER REGION

DIRECTOR, DENVER REGION
U.S. CIVIL SERVICE COMMISSION
BUILDING 20, DENVER FEDERAL CENTER
DENVER, COLO. 80225

COMPRISING COLORADO, MONTANA, N. DAKOTA, S. DAKOTA, UTAH, WYOMING
OFFICE OF THE DIRECTOR, DENVER, COLO. 80225

IN REPLY, PLEASE REFER TO

DE:1PP:MT-2

YOUR REFERENCE

FEB 13 1977

Mr. Duane Johnson
Administrator
State Personnel Division
Department of Administration
Mitchell Building
Helena, MT 59601

Dear Duane:

Thank you for forwarding a copy of House Bill 700 for our review and comments. We hope our comments will still be timely even though we received the proposal too late for input prior to the Committee hearing on Wednesday.

From our earlier discussions with you and Mr. Gosnell, we were under the impression that the legislative proposal you were preparing would have established a statewide personnel system based on merit principles covering substantially all State employees. It appears, however, that H. B. 700 is primarily an amendment of Montana's labor relations law which would establish two separate Boards to hear employee grievances and would continue to maintain a separate merit system for "...certain state agencies of state government, as a requirement for receipt of Federal funds."

We are not commenting on the labor relations aspect of the Bill at this time, but have forwarded a copy to our Regional Labor Relations Officer.

Our chief concern is that the language in Section 1 of the proposed legislation, which would strip the present Merit System Council, retitled as the Personnel Review Board, of its major responsibility as an impartial citizen's body for establishing personnel policies and procedures. That responsibility would be transferred to "...the department." The word "department" is not defined in the Bill. However, we assume it refers to a program agency of State government and, as such, would not be considered "impartial" when it comes to establishing rules binding upon its own employees.

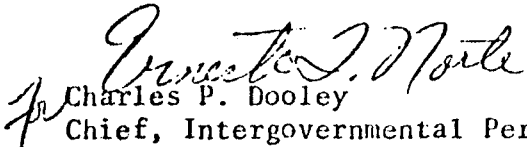
Since H. B. 700 would not establish a merit system covering substantially all State employees, the second paragraph of the Merit System Organization section (45 CFR Part 70.3) of the Federal Standards for a Merit System of Personnel Administration will still apply. Note the marked section of the enclosed Federal Standards.

THE MERIT SYSTEM-A GOOD INVESTMENT IN GOOD GOVERNMENT

In summary, it would appear to us that H. B. 700 would have the effect of weakening, rather than strengthening the merit-based system which has been approved by the Department of Health, Education and Welfare, Labor and Defense to serve Montana's federally-funded agencies since 1940.

As we have indicated on a number of occasions in the past, Duane, our staff would appreciate the opportunity to work with you and other Montana officials to develop a strong, efficient statewide personnel system based on merit principles.

Sincerely yours,


Charles P. Dooley
Chief, Intergovernmental Personnel
Programs Division

Enclosure

cc: Jack Crosser, Department of Administration

✓ Representative Joe Brand

Representative Dorothy Bradley

Representative W. Jay Fabrega

Representative Robert Palmer

Representative Peter M. Meloy

William S. Gosnell, Office of Legislative Fiscal Analyst



THOMAS L. JUDGE, CLERK

STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
STATE PERSONNEL DIVISION
MITCHELL BUILDING
HELENA 59601

449-3871

February 22, 1977

Mr. Charles P. Dooley, Chief
Intergovernmental Personnel Program Divisions
Building 20, Denver Federal Center
Denver, Colorado 80225

Dear Mr. Dooley:

I am in receipt of your memo dated February 18, 1977, relative to our H.B. 700. As Mr. Byrnes, of my staff, expressed to Mr. Norte today, my staff and I are extremely upset by that letter. I am completely undecided as to whether Mr. Wadsworth has some self-serving motivation in hindering our continuing progress towards what has always been our mutual goals; or whether the letter is the inadvertent result of incredibly inept staff work on his part.

The following portions of this letter will serve as a point-by-point analysis of the subject memo. However, I would first like to put this in perspective. Mr. Crosser, Director of the Department of Administration, Mr. Byrnes, and I have discussed the Bill at length with Mr. Wadsworth by telephone. He also received a copy of our proposed reorganization plan, of which this Bill is a part, and if he had had any interpretation problems we were no further than a phone call away.

Your first mistaken allegation is in paragraph two where you contend that H.B. 700 would not "establish a statewide personnel system based upon merit principles covering substantially all State employees."

You apparently are unaware of Montana law 59-913 which states in pertinent part:

"(3) The department (of administration) shall issue personnel policies for the state." ...

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You apparently are also unaware of 36 Attorney General Opinion #29 dated October 7, 1975, which expounds upon the existing authority for a statewide personnel system. (A copy of said opinion is enclosed for your information. Please note particularly the 3rd and 4th paragraphs of page 2.)

The statutory authority for a statewide personnel system has existed in Montana since 59-913 was enacted in 1973. You apparently are also unaware of the many existing personnel policies for all State employees including all merit system employees which have been and are continuously being established, reviewed, and modified by the Department of Administration pursuant to legislative intent, sound employee relations, and management efficiency and effectiveness. There are existing statewide policies for sick leave, lay-off, annual leave, jury duty, comp-time, classification, employee pay, etc. There soon will be statewide policies for maternity leave, termination, etc. The present Merit System Council has consistently accepted all of the existing personnel policies as established by the Department of Administration as being in full compliance with sound merit principles. Not once has the Merit System Council even hinted that any of the department's personnel policies established pursuant to 59-913 are contrary to merit principles.

In short, the Montana Legislature in 1973 established a statewide system of personnel administration. Appropriate personnel policies and procedures have been and are continuously being established, administered, and modified by the Department of Administration based upon the public interest, management effectiveness, and sound employee relations. The statewide personnel policies and procedures established to-date by the Department of Administration have been accepted as being consistent with merit principles by the existing Merit System Council and have been incorporated by reference into the existing State Merit System regulations embodied in the Montana Administrative Code, Title 2, chapter 34.

Your second sentence of paragraph two states that H.B. 700 "is primarily an amendment of Montana's Labor Relations Law."

A statement such as that could only be made by someone who had not read H.B. 700 or by someone who does not understand legislative draftsmanship. I am totally baffled at your remark. I would have hoped that whoever reviewed H.B. 700 in your office would have read H.B. 700 and would have been at least vaguely familiar with legislative drafting.

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To anyone who has read H.B. 700 and understands legislative writing it is obvious that only two sections of Montana's Collective Bargaining Act for Public Employees would be amended, i.e., 59-1602 and 59-1603. As the title of H.B. 700 clearly states the only modification to 59-1602 and 59-1603 is the renaming of the Board of Personnel Appeals to the Public Employment Labor Relations Board. Changing the name of the Board of Personnel Appeals can hardly be called the "primary" purpose of H.B. 700.

Your second sentence is additionally falacious by stating that H.B. 700 "would establish two separate Boards to hear employee grievances."

If you were at all aware of the present situation in Montana (which is certainly difficult for you in Denver) you would realize that there presently are two separate Boards to hear employee grievances. The Board of Personnel Appeals hears all state employees' classification and wage grievances. In addition, it hears all other types of grievances of Highway Department employees. The present Merit System Council hears all other grievances except classification and wage grievances which Merit System agency employees have.

Part of the intent of H.B. 700, which you obviously overlooked, is to combine the existing duplication of grievance hearing functions of the Board of Personnel Appeals and the Merit System Council into one impartial citizens' board, i.e., the Personnel Review Board.

The Personnel Review Board would, of course, be an impartial citizens' board appointed by the Governor pursuant to merit principles as the existing Merit System Council is. (See page 8 of H.B. 700.) In this way H.B. 700 will provide for an impartial citizens' board and not a labor board as the Board of Personnel Appeals to hear grievances of all non-organized state employees. Furthermore, the Personnel Review Board will have full authority to review and approve or disapprove personnel policies and procedures as developed by the Department of Administration pursuant to 59-913 and 59-914. (Please see enclosed amendment to section 1 of H.B. 700 which clarifies approval authority over personnel policies being maintained in impartial citizens' board.)

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Your chief concern in your February 18, 1977, letter was that the original language of section 1 of H.B. 700 would shift the responsibility for establishing personnel policies and procedures away from the Merit System Council to the Department of Administration without an impartial citizens' board, such as the existing Merit System Council or the proposed Personnel Review Board, having the right to approve or disapprove of any proposed policy or procedure on the basis of merit principles. Your fears are totally unfounded and we have already moved to amend section 1, to insure that the impartial citizens' board, the Personnel Review Board, clearly has the final authority to approve or disapprove of said personnel policies and procedures based upon sound merit principles. (Please see enclosed Amendment to H.B. 700.) As noted below, the major responsibility of such a council or board is to assure not to establish.

The second paragraph of the Merit System Organization section (45 CFR Part 70.3) of the Federal Standards for a merit system of personnel administration will still apply as you note in paragraph five of your letter. That paragraph states in pertinent part:

..."An impartial citizens' merit system council will be established to assure that in accordance with merit principles public employment is based on the public interest, including management effectiveness and sound employee relations." ...

Though the Personnel Review Board and its "review and approval" or disapproval of proposed personnel policies of the Department of Administration, "accordance with merit principles" is assured in not only grant-in-aid agencies, but also throughout State government. Furthermore, the authority of the impartial citizens' board, the Personnel Review Board, is not weakened -- it is strengthened -- by H.B. 700. Specifically, section 5, 82A-206.1 would provide that the Board issue an order, after any grievance hearing, requiring such action as will resolve the employee's grievance. That order would in turn be enforceable in the courts by the Board or the employee. The present Merit System grievance procedure does not empower the Merit System Council to issue such order, let alone enforce its order in court. Certainly such broadening of the impact of merit principles does not weaken the merit-base system as you suggest.

The basic intent of H.B. 700 is: (1) To combine the existing grievance functions of the Board of Personnel Appeals and the Merit System Council into one grievance hearing system and to allow non-merit system and non-organized employees the same right to grieve the conditions of their employment as merit agencies or organized employees have.

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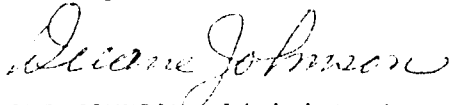
(2) To avoid duplication in personnel systems. Presently there is the Merit System personnel management system and the Department of Administration's personnel management system. It is only logical that these functions be combined. Furthermore, it is legislative mandate and public policy in Montana:

..."to eliminate overlapping and duplication of efforts within the executive branch of state government." Section 82A-102

In summary, we have as an on-going objective: the precise last words of Mr. Wadsworth's letter, "to develop a strong, efficient statewide personnel system based on merit principles." In fact, we have centralized the Classification and Pay Plans. Our current statutes give this organization centralized personnel policy and procedures authority and implementation is underway in that area. The next step is organizational consolidations, elimination of duplication, the extension of benefits statewide, and the significant strengthening of the impartial citizens' board overseeing our processes.

I would request that you take immediate and positive steps to insure that no further jeopardy is attached to this Bill by your function or staff. It should be clearly understood, that all parties concerned must be satisfied with reasonable, structured progress toward mutual goals.

Sincerely,



DUANE JOHNSON, Administrator
State Personnel Division

DJ/ld

cc: Jack Crosser, Dept. of Administration
Representative Joe Brand
Representative Dorothy Bradley
Representative Jay Fabrega
Representative Robert Palmer
Representative Peter M. Meloy
William S. Gosnell, Office of Legislative
Fiscal Analyst