

STATE ADMINISTRATION
JANUARY 9, 1981
RM 436

The meeting of the House State Administration Committee was called to order at 8:00 a.m., Friday, January 9, 1981 with Chairman Jerry Fedá presiding. All members were present except Representative O'Connell who was excused and Representative Azzara who was absent.

Chairman Fedá opened the hearing on House Bill 38.

HOUSE BILL 38 SPONSOR: Representative Stobie introduced the bill to the committee. His prepared testimony is attached and is EXHIBIT 1 of the minutes.

David Niss from the Legislative Council was present at the hearing with Representative Stobie to answer any questions the committee might have.

PROPOSERS

There were no proposers testifying at the hearing for HB 38.

OPPOSERS

ELLEN FEAVER, representing the Dept. of Revenue, spoke in opposition to HB 38. Ms. Feaver presented testimony to the committee which is EXHIBIT 2 of the minutes.

DAL SMILIE, representing Dept. of Social Rehabilitation Services (SRS) presented testimony in opposition to HB 38. A copy of his testimony is attached and is EXHIBIT 3 of the minutes.

ILENE SHORE, representing the Public Service Commission was present as a witness in opposition to HB 38. She felt the bill should have safety requirements and concurred with other opposers testimony.

There were no other opposers to House Bill 38.

Chairman Fedá opened the hearing for questions from the committee.

Questions about the cost of the bill were brought up by Representative Pistoria. Ellen Feaver said it could cost thousands of dollars to print code books and probably not less than \$10,000 per publication.

There was a concern among the committee that this bill would not solve the current problem of notification that exists. David Niss from the Legislative Council attempted to clarify some of the confusion the committee felt

concerning HB 38.

Representative Stobie closed the hearing on House Bill 38.

Chairman Feda opened the hearing on House Bill 39.

HOUSE BILL 39 SPONSOR: Representative Stobie introduced the bill to the committee. His prepared statement is attached and is part of EXHIBIT 1 of the minutes.

PROPOSERS

There were no proposers to House Bill 39.

OPPOSERS

There were no opposers to House Bill 39.

Chairman Feda opened the hearing to questions from the committee. Brief discussion followed.

Representative Stobie closed the hearing on HB 39.

Chairman Feda opened the hearing on House Bill 40.

HOUSE BILL 40 SPONSOR: Representative Stobie introduced the bill to the committee. His written presentation is attached and is part of EXHIBIT 1 of the minutes.

PROPOSERS

REPRESENTATIVE RAY JENSEN spoke as a co-sponsor in favor of House Bill 40. He said he felt this legislation would help the problem of a non-elected official making rules when the legislature is not in session that are useless and many times burdensome to the public.

There were no other proposers to House Bill 40.

OPPOSERS

LARRY F SBENDER from the Governor's office said that there could be some serious constitutional problems with this bill and that he would appreciate additional time to address the bill at a later date.

There were no other opponents to House Bill 40.

Chairman Feda opened the hearing for questions from the committee. David Niss from the Legislative Council answered questions for the committee.

Representative Stobie closed on House Bill 40.

Chairman Feda opened the hearing on House Bill 32.

REPRESENTATIVE ROBERT MARKS, SPONSOR, introduced the bill to the committee. He explained that this bill changes the compensation for a legislator serving on an interim committee from one-fourth the daily rate of a grade 8, step 1 state employee for every six hours or fraction thereof to one day's pay at the rate of a grade 8, step 2 employee for every 24-hour period of time or portion thereof spent on authorized committee business.

PROPOSERS

There were no proposers to House Bill 32.

OPPOSERS

There were no opposers to House Bill 32.

Chairman Feda opened the hearing for questions from the committee.

Representative Dussault had questions about page 1, line 21, concerning the grade 8, step 1 2. She suggested an amendment. (see executive session of minutes)

Representative Marks closed the hearing on House Bill 32.

EXECUTIVE SESSION

HOUSE BILL 3 (heard in committee on 1/8/81)

Representative Spilker made a motion that House Bill 3 DO PASS. The motion was seconded by Representative Kropp.

Following discussion, question being called, a vote was taken and carried unanimously that House Bill 3 DO PASS.

EXECUTIVE SESSION (CONT.)

HOUSE BILL 32

Representative Dussault made a motion to amend HB 32 as follows:

Page 1, line 21.

Following: "a"

Strike: "grade 8, step ~~1~~ 2"

Page 1, line 22.

Following: "employee,"

Insert: "described in 5-2-301"

Representative Sales seconded the motion.

A vote was taken and carried unanimously to amend HB 32.

Representative Dussault made a motion that House Bill 32 DO PASS AS AMENDED. Representative Spilker seconded the motion.

Question being called, a vote was taken and carried unanimously that House Bill 32 AS AMENDED DO PASS.

HOUSE BILL 38

Representative Pistoria made a motion that House Bill 38 DO NOT PASS. Discussion followed.

Representative Dussault made a substitute motion that House bill 38 be amended as follows:

Page 2, lines 13 through 20.

Strike: section 4 in its entirety

Renumber: subsequent subsection accordingly

A roll call vote was taken on this amendment. All members voted YES to amend except representatives Kennerly, Phillips, and Pistoria who voted NO. Representatives Azzara, Spilker and O'Connell did not vote. Motion to amend carried.

Discussion about the amendment and the bill followed.

Representative Dussault made a substitute motion for all motions pending that House Bill 38 DO NOT PASS AS AMENDED.

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EXECUTIVE SESSION (CONT.)

The motion carried with all present voting YES except Representative Kanduch who voted NO. HOUSE BILL 38 DO NOT PASS AS AMENDED.

It was decided by the committee to hold off action on House bills 39 and 40

Chairman Fedas, after a brief intermission, opened the hearing on House Bill 26.

HOUSE BILL 26 SPONSOR, Representative Moore, introduced the bill to the committee. He gave background information on the bill and went over several amendments that he said should be put into the bill before it is acted on. He will submit these amendments at a later date. He explained that he had just received the amendments and had not had time to really go over them thoroughly.

PROPOSERS

REPRESENTATIVE DAVE BROWN, co-sponsor, spoke in favor of the bill. He felt the bill would open up competition among consultant firms in Montana and give small business a chance at competing for jobs.

BOB CARROLL, Vice-President of ECON INC., gave testimony in support of House Bill 26. His written testimony and suggested amendments are attached and are EXHIBIT 4 of the minutes.

DON ALLEN, representing Montana Petroleum Assoc., testified in support of the bill. He hoped this bill would help to insure some professionalism in contract services. He urged the committee to consider the bill in hopes of tightening up the system and stopping abuse of the system.

No other proposers gave testimony at the hearing.

OPPOSERS

JIM BECK, Dept. of Highways, testified on HB 26. He said that he was not opposed to the concept of the bill but felt there were some technical problems that he would like clarified. Such as, does a private consultant mean a consultant paid in excess of \$5,000 or a consultant hired for any amount of money. He referred to Section 6 of the bill which requires certain forms to be filed if a private consultant is hired. He questioned whether

HOUSE BILL 26 (Cont.)

or not this filing of data with the Legislative Fiscal Analyst is necessary only if the contract is over \$5,000. He suggested that the committee consider the paper work involved and the space needed for filing all these documents.

MORRIS BRUSETT, representing the Dept. of Administration, spoke on HB 26. He said that he felt there had been abuses of the system but he felt there were problems with the bill. He said steps had been taken within the department to control some of these abuses. He requested that the committee refer to management memo 1-79-10, which is attached and is EXHIBIT 5 of the minutes.

MAXWELL K. BOTZ, president of Hydrometrics, presented written testimony to the committee, which is attached and is EXHIBIT 6 of the minutes.

PATRICK FARMER, of Western Technology & Engineering Inc., gave testimony opposing House Bill 26. He stated that he felt the bill needed amendments and he concurred with Mr. Botz' testimony.

GREGG GROEPPER, representing the Dept. of Labor and Industry, stated that they were in agreement with many of the things that Morris Bruset said. He said they were not strongly opposed to the bill but felt that there are sufficient safeguards now.

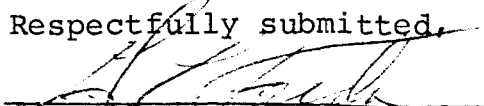
TOM and JEAN ROLL, Bozeman Montana, submitted written testimony but were not present at the hearing. This testimony is attached and is EXHIBIT 7 of the minutes.

Chairman Feda opened the hearing for questions from the committee.

Representative Sales asked Representative Moore to further clarify the bill. Representative Moore explained that this was a "first stab" at the bill and he wanted time to go over the amendments and present them to the committee at a later time. Further discussion followed.

A motion was made to adjourn. Meeting adjourned at 10:45 a.m. The next meeting will be January 12, 1981 at 8:00 a.m. in room 436.

Respectfully submitted,


G. C. "JERRY" FEDA, Chairman

Cathy Martin, Secretary

HOUSE STATE ADMINISTRATION

BILL SUMMARIES

January 10, 1981

- HB 26 (MOORE): This bill controls and regulates the use of private consultants by state agencies by: outlining when an agency may use a consultant and how the consultant must be selected; requiring a 30 day notice before hiring; requiring filing of information relating to consultant studies with the Legislative Fiscal Analyst and the Office of Budget and Program Planning; requiring bid and contract information to be published in the Montana Administrative Register; requiring conflicts of interest to be reported; providing restrictions on former employees bidding for consultant work; and providing when a contract is void because of violations of the act.
- HB 32 (MARKS): This bill, requested by the Legislative Council, changes the compensation for a legislator serving on an interim committee from one-fourth the daily rate of a grade 8, step 1 state employee for every six hours or fraction thereof to one day's pay at the rate of a grade 8, step 2 employee for every 24-hour period of time or portion thereof spent on authorized committee business.
- HB 38 (STOBIE): This bill, requested by the Administrative Code Committee, allows an agency to adopt a rule by reference without publishing it in the Montana Administrative Register or the Administrative Rules of Montana, establishes a form for adoption by reference, and describes procedures for adopting amendments to rules adopted by reference.
- HB 39 (STOBIE): This bill, requested by the Administrative Code Committee, requires the legislature to repeal or direct a change in any rule in the Administrative Rules of Montana by law instead of joint resolution.
- HB 40 (STOBIE): This bill, requested by the Administrative Code Committee, submits a constitutional amendment to the voters to allow the Administrative Code Committee to poll the legislature to suspend an agency rule when the legislature is not in session.

HSP;hjf/1/8/81

Remarks of Rep. Stobie on HB 38, 39, and 40

January 9, 1981

Senate Committee on State Administration

HB 38 - Adoptions by Reference

HB 38 and the next two bills this committee will consider this morning, House Bills 39 and 40, is a product of the work of the Administrative Code Committee, whose job it is to review every rule to be adopted by state agencies. In the course of the committee's work of reviewing rules it has found certain sections of the uniform law governing rulemaking procedure, the Montana Administrative Procedure Act, that could be amended to improve and clarify the rulemaking process.

HB 38 would amend only one section of law, but a very important one. The section proposed for amendment allows state agencies to adopt certain types of rules "by reference", that is, without printing the text of the entire rule. The amendments recommended by the committee would clear up the form which is to be followed and make certain exceptions for agencies adopting large portions of federal rules. The amendment includes a "safety valve" by which the committee may require that more detailed information about the rule be made available to the public.

By this bill the law allowing adoption of rules by reference has been continued and strengthened by clearing up the form the rule must take, allowing certain necessary exceptions, and by giving the Administrative code Committee "safety valve" authority to require greater notice of a rule to the interested public.

Requires printing full text if felt necessary

HB 39 - Repeal of Rules

Secondly, the Administrative Code Committee recommends a bill to change the method by which administrative agency rules may be repealed by the legislature. Current law allows the legislature to amend or repeal any agency rule by a joint resolution which, of course, is not required to be approved by the governor. The committee reviewed a number of court cases and attorney general opinions which seemed to indicate that this process of repeal by resolution might be held unconstitutional -- even in Montana. The committee recommends a bill to require that amendment or repeal of agency rules by the legislature must be done by a bill, signed into law by the governor, or passed over a veto. It is true that the bill would make the rule review process subject to executive approval but the potential for constitutional problems with our current law would be avoided and the responsibility for the repeal of an unwanted or burdensome agency rule would be clear to the legislature -- and the public.

HB 40 - Constitutional Amendment

As early as 1976, one year after the creation of the Administrative Code Committee, it was realized by the committee that there was a need for a strong hand to control agency rulemaking between legislative sessions. Because the legislature, with its statutory power to amend or repeal rules, meets only every other year, an agency may proceed with the adoption of any rule, fair-unfair, easily complied with or burdensome, clearly written or vague, safe in the knowledge that for the time being the rule will stand. The Administrative Code Committee may give its advice, express its

displeasure and raise its collective voice in protest, but it cannot change the rule as a final matter and, short of a special session, neither can the legislature.

There should be ^A solution to this problem, for not only is it a long time between sessions, but the chances of the public being the recipient of an unwanted agency rule have increased with an increase in the number of rules adopted by administrative agencies. During the past biennium the Administrative Code Committee reviewed approximately two thousand rulemaking notices published by state agencies noticing the proposed or final adoption of various rules regulating all manner and kind of businesses, industries, and habits of our daily lives. Some examples of these rules are well known, even notorious, with this legislature.

In reviewing the options available for an interim power to control agency rulemaking the Administrative Code Committee reviewed court cases from Montana and other states and attorney general opinions from other states indicating that it may be unconstitutional for the legislature to enact a law giving a legislative committee the authority to do what the whole legislature can do. This legal problem was also recognized by the committee as early as 1976. Because there is a need for strong and decisive interim control of agency rulemaking and because of the legal questions surrounding the legality of any law allowing the Administrative Code Committee to suspend an agency rule, the committee has chosen to recommend a constitutional amendment as a large step toward interim control of the rulemaking process. Under the proposed amendment, the committee may poll the legislature and the legislature may then vote, using a

process similar to the one used to call a special session, on whether or not to suspend an agency rule. After a suspension under the proposed amendment the legislature would then vote at the next session whether or not to finally amend or repeal the rule.

While the difficulties of approval of a constitutional amendment are clear, the benefits of the amendment are also clear. By adoption of the amendment not only do more legal problems fall by the way-side but after its adoption the people have spoken to the government in the strongest way possible to say that they, in concert with the legislature, must remain in control of the proliferation of *agency rules.*
~~the rulemaking process.~~

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

EXHIBIT 2

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT
of Rule 1.2.423 setting forth) OF RULE 1.2.423 AGENCY FILING
filing fees for publishing in) FEES
the Montana Administrative)
Register) NO PUBLIC HEARING CONTEMPLATED

All Interested Persons:

1. On January 12, 1981, the Secretary of State proposes to amend rule 1.2.423 AGENCY FILING FEES.

2. The rule as proposed to be amended provides as follows:

1.2.423 AGENCY FILING FEES (1) Beginning July 1, 1979 1981 all agencies will be required to pay a \$1.00 2.00 per page filing fee for all pages submitted which are applicable to the notice and rule section of the Montana Administrative Register. The secretary of state will bill annually for all fees incurred by the agency for the fiscal year.

3. The agency filing fee is set in consultation with the Administrative Code Committee and is set to cover a portion of the publication and mailing costs of the ARM or the register. The actual cost to print and mail one page in the register to all of our subscribers is \$10.48. The charge of \$2.00 covers approximately 20% of the actual cost.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Mr. Leonard C. Larson, Room 202, Capitol Building, Helena, Montana, 59620, no later than January 8, 1981.

5. The authority of the department to make the proposed amendment is based on section 2-4-313(6), MCA, and the rule implements section 2-4-313(6), MCA.

Dated this first day of December, 1980.

Frank Murray
FRANK MURRAY
Secretary of State

Social and Rehabilitation Services
Testimony on HB 38

A) Alternatives in order of preference on HB 38:

1) Strike out references to federal rules - law is well know by all - it is a waste of space to copy the voluminous Federal Regulations in the ARM.

Cites to law should be good enough.

2) We should be able to adopt federal rules "as amended" where federal funds are at risk or where mandated by law.

3) Section (5) of HB 38

When noticing intent to incorporate by reference, amendments - notice should allow retroactive effective date.

Act like an emergency rule if hearing requested - does not affect effective date - agency must still reply and consider the comments to the extent it is allowed by federal law.

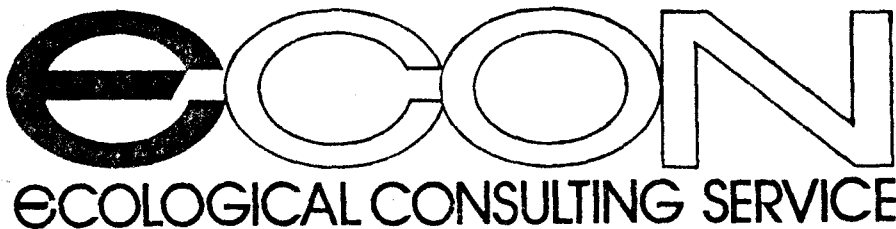
B) As presently drafted HB 38 will cause:

1) Disallowances of Federal Financial Participation.

2) Civil suits (and 42 USC 1984 Actions) during "gap periods" when federal law requires one thing and the ARM requires another.

3) Possible extra general fund expenditures to carry out recently diminished federal programs in "gap periods", i.e.: food stamps, AFDC.

4) Meaningless hearings where Montana residents will testify but the agency will be required to still adhere to federal regulations as amended.



ECON INC.

1300 Cedar Street
Helena, Montana 59601Telephone
406/442-4650

January 9, 1981

Mr. Jerry Feda, Chairman
State Administration Committee, Room 436
House of Representatives
Capitol Station
Helena, Montana 59601

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify on House Bill 26, "An Act to Control and Regulate the Use of Private Consultants by State Agencies;...."

My name is Bob Carroll. I'm Vice-President of ECON INC., a consulting firm 8½ years old headquartered in Helena. ECON INC. provides services in the fields of biology, air quality, water quality, remote sensing and aerial photography interpretation, sociology, economics, archaeology, and a number of other things. We have done a little work for state agencies over the years, the state work amounting to much less than 1 percent of our total work to date.

I applaud what I perceive to be the intent of HB26. There are some portions I think need clarification, some which could be improved, and some which are discriminatory.

My suggestions would be to make the following changes:

- On page 2, line 4: change "studying" to "providing studies."
- On page 2, line 5: between "routine" and "work" add "or special."

- On page 2, section 3, beginning on line 22: delete in its entirety.
We highly approved the state getting the most for its money, but strongly feel that everyone providing services to the state should be under the same rules without discrimination.
- On page 3, line 8: I recommend changing "consulting services" to "work it desires." I also suggest, on lines 8 and 9, striking "or through contract with another state agency." I strongly feel that if a state agency, for whatever reason, wants outside work, it should be open to use the maximum competitive responses the market can provide. There is no reason that any other agency would be prevented from bidding. We also feel that there is a tendency among some agencies, and elements of the university system, to be over-eager to jump into any consultant role that comes up.
- On page 4, lines 8 and 9: the phrase "...copies of all documents, films, recordings, or reports of intangible results..." occurs for the first time. It is used several more times in the Bill. This is confusing to me, as all the items described are certainly tangible, not intangible. Further, every client we've ever had, private, federal or state, wanted very tangible work results. I understand that HB26 is an almost verbatim copy of a Texas law. Perhaps Texans consider anything less than monumental as intangible.
- On page 4, line 12: I suggest deleting part (2) of Section 6. All the material would be on file and available for inspection at the contracting agency. It could be a substantial cost to duplicate these files at the Montana State Library.

**MANAGEMENT MEMO**

	VOL.	YEAR	NO.
MANAGEMENT MEMO NUMBER	1	79	10
DATE ISSUED	12-11-79		
DATE EFFECTIVE	12-11-79		

SUBJECT Professional Personal Services Contracts

EXHIBIT 5

TO: All State Agencies

EXHIBIT 5

FROM: George L. Bousliman, Director
Office of Budget and Program Planning**INTRODUCTION**

Contracting with individuals or organizations for various professional services is a recognized alternative for accomplishing various requirements of state government. This management memo, in recognition of the importance and sensitivity of professional personal services contracts, provides direction for the preparation and control of such contracts. Although this memo specifically addresses professional personal services contracts, good contract management demands that similar guidelines be followed when administering any contract.

It is emphasized that this management memo has as its purpose only to provide minimum requirements concerning the content and filing of professional personal services contracts. Department directors or the person or persons charged by law with the ultimate responsibility for administering each state agency have full authority and responsibility for determining the need for and securing outside contractual help. Also, the issuance of this management memo in no way suggests that contracting for personal services should be curtailed. Administration policy encourages free market solutions when possible to facilitate the policy of no growth in full-time equivalent employees.

For purposes of this management memo, the following definitions shall apply:

Professional Personal Services Contract - An agreement between the State of Montana and a contractor (either individual or organization) for the rendering of professional personal services. The agreement must provide for payment to the contractor with assets of Montana state government.

Professional Personal Services - Medical, religious, legal, lecturing, auditing, investigating, consulting, and similar services, the contracts for which are not subject to the established competitive bidding process due to the particular professional or technical expertise required. It is not necessary to submit a requisition to the Purchasing Division to contract for such services. If there is a question concerning whether or not the Purchasing Division must get involved, contact the Purchasing Division.

MINIMUM REQUIREMENTS

The following items should be included in the contracts for professional personal services:

1. Parties. State the full name and address of each party.
2. Purpose. In plain words, explain what this contract is intended to accomplish.
3. Duties. Provide a clear description of the work the contracted party will perform. Describe the final work product, if any.
4. Compensation. State the maximum amount the state will pay for the contracted party's services, and the means by which the payment will be determined. Where possible, identify milestones in completion of the contract and associate payment dates with these milestones. Explain the means by which a contracted party requests payment when it is due.
5. Time of Performance. State when performance will begin, and when it must be completed.
6. Liaison. Identify by name and title the individual to whom the contracted party is to report.
7. Agency Assistance. Identify the assistance, if any, which the state government will be providing to the contracted party (personnel, equipment, etc.). If none, so indicate.
8. Ownership and Publication of Materials. Identify which party owns the working papers and end products of the agreement, and which party is authorized to release information concerning the work in progress.
9. Determination of Contracted Party's Employment Status. The agency must determine and specify in the contract to which of the following employment categories the individual or organization that is to perform the service belongs:
 - A. Independent Contractor
 - B. Student Intern

These categories are explained as follows:

- A. Independent Contractor - An Independent contractor is one who renders service in the course of an occupation and:
 - 1) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and
 - 2) is engaged in an independently established trade, occupation, profession, or business.

The consideration of who has control over how the job is done is the most important and most difficult factor. To determine this, the following questions should be considered.

- 1) Does the individual or organization retain or exercise the right to control the duties of the job?

- 2) Is payment for the job to be made on a completed contract basis rather than a regular wage basis?
- 3) Does the individual or organization furnish its own major equipment for the job rather than having it furnished for him?
- 4) Is the agency prevented from firing the individual or organization at any time without liability?

If any of the above questions can be answered in the negative, it may prevent the establishment of an independent contractor relationship. The consideration to be given these questions is not a balancing process, rather an independent contractorship is established usually only by a convincing accumulation of these and other tests. A mere indication in the contract that the individual is an independent contractor is not sufficient to establish them as such.

- B. Student Intern - A student intern is a person working in a school program which is sponsored and required by an educational institution for academic credit or a degree. His contract should indicate that he is neither an independent contractor nor an employee, but a student who is the legal responsibility of the supervising educational institution.

A third category of employment status is that of an employee. An employee generally performs a particular kind of work for wages. An employee may fit under some or most of the independent contractor features listed above, but lacks at least one of them so as to give him less than full control or independence over how he performs the assigned task. Employees should be placed on the payroll, not engaged on a contracted services basis.

10. Access to Records. Require the contracted party to maintain reasonable records of his performance and allow access to these records by the agency, and, where required by law, the Legislative Auditor and the Legislative Fiscal Analyst.
11. Termination and Default. Indicate how the contract may be terminated. Where possible, specify the state's remedy in the event that performance is not completed.
12. Venue. Reflect that, in the event of litigation concerning the contract, venue shall be the First Judicial District in and for the County of Lewis and Clark, Montana, and the contract shall be interpreted according to the laws of Montana.
13. Assignment, Transfer, and Subcontracting. Indicate that no assignment, transfer, or subcontracting of the agreement can be made unless all parties agree in writing.
14. Modifications and Previous Agreements. Indicate that the contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written agreement, shall be

valid or binding. Also provide that the agreement shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the agreement.

15. Date. Indicate the date on which the contract is made.

APPROVAL OF LEGAL CONTENT

In order to assure that the above minimum requirements have been addressed, and that the contract is otherwise satisfactorily drafted, each contract shall be approved by a lawyer for the agency, and such approval shall be indicated on each contract. It is suggested that this approval be indicated on the bottom of the last page of the contract by the words "Approved for Legal Content by _____" followed by the approving attorney's signature.

To facilitate contract administration, when an agency will be issuing several similar contracts differing only in parties, compensation, time of performance, or other minor elements, the agency may use a form contract approved by one of its lawyers. It shall remain the responsibility of the department head to assure that all contracts are well drafted and expressed in clear, legally adequate language.

ADMINISTRATIVE CONSIDERATIONS

Based upon past experience, it can be assumed that the Executive Branch will periodically be questioned concerning professional personal services contracts. To facilitate research and information collection, agencies are directed to maintain central files for professional services contracts.

CLOSING

The purpose of this management memo is to provide minimum provisions to be included in contracts for professional personal services, and to facilitate related information collection by establishing filing requirements. The requirements indicated above must be viewed as minimums. It is expected that most contracts will include additional provisions that are particular to each individual contract.

Questions concerning this management memo are to be directed to assigned budget analysts in the Office of Budget and Program Planning.



HYDROMETRICS

1300 Cedar Street
Helena, Montana 59601
(406) 443-4150

HB26

January 8, 1981

Mr. Jerry Feda, Chairman
State Administration Committee
Room 436, House of Representatives
Capital Station
Helena, Montana 59601

Dear Mr. Chairman and Members of the Committee:

My name is Maxwell K. Botz. I am president of Hydrometrics which is a private consulting firm located in Helena, Montana. Our firm provides technical services in the fields of hydrology, engineering and environmental resources. In the past, our firm has performed services for state agencies in Montana and we presently are providing assistance to a few state agencies. The volume of work that we do for these agencies is small, but we feel this work is important. I believe the role of our consulting firm to state agencies should be described. We have achieved an excellent reputation in the field of engineering and hydrology and commonly are called upon to provide technical assistance to state agencies in cases that are technically difficult, have potentially important liability problems, and must be done in short timeframes. As with all private firms, our services are on a competitive basis and we must show that our services are efficient, thoroughly professional, and cost effective.

Examination of this House Bill 26 indicates the objective to be to provide efficient professional services to state agencies. The bill does, however, discourage the use of private consultants. The bill explicitly directs state agencies to attempt to have other state agencies or universities perform consulting services. In the past, I was an Associate Professor of Geology at the Montana College of Mineral Science and Technology in Butte for 6 years and I was employed by the Department of Health and Environmental Sciences for approximately 4 years. I am knowledgeable of capabilities and qualifications both within the university system and within state agencies. I do not believe the role of Montana's university should be as competitors to private consultants in Montana, nor do I believe that state agencies should be in the professional consulting business. This bill presumes that state agencies have personnel whose time is not being utilized and are available for consulting, and similarly that the university system has staff who are qualified to perform consulting services and have time available within their academic schedules. I believe that universities should educate and conduct research and not perform day-to-day consulting, and that state agencies should administer the law and rules of Montana and not perform consulting services. I believe this bill also strongly

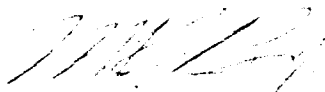
Mr. Jerry Feda
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encourages the use of facilities and equipment of the university system for conducting private consulting services that are directly competitive to those offered by private industry. In effect, all taxpayers would be subsidizing the overhead of university consulting in contrast to those of us in the private sector that must cover this expense on a competitive basis.

We strongly feel that competent, qualified, professional consultants should not be directed to a secondary, non-preferred role in performing work for the State of Montana. I believe the state should encourage the uniform system for procurement of contracts with private consultants. However, it is my opinion that this bill does not accomplish that goal and may create more costly and larger university and governmental staffs and would provide services that are inferior to and are more expensive than those provided by private firms.

Thank you for the opportunity to comment on this bill.

Sincerely,



Maxwell K. Botz, P.E.
President

MKB:bd

January 7, 1981

To members of the House Committee on State Administration:

Please consider the following as testimony in your January 9 hearing on House Bill 26.

Section 4(1)(b) would allow use of private consultants only if the state agency cannot adequately perform the services through contract with another state agency. Because we can envision circumstances where a contract with another state agency would be possible but not the most efficient method, it would seem preferable to delete "or through contract with another state agency."

Several sections speak of what is to be done with the results of studies and include the term "intangible results." Several of us who have read the bill do not know what that means; perhaps it could be made more clear.

Section 7(1) and (2) concern publication of intent to hire a consultant and of the actual contracting. Making this information available to as many consultants as possible is a good idea, but one that might be defeated by the cost of subscribing to the Montana Administrative Register. This could be solved by changing the wording in both subsections to ". . . publication in an addendum to the Montana Administrative Register which shall be available for subscription separately from the rest of the Montana Administrative Register."

Thank you for your attention.

Tom and Jean Roll
721 South 6 Avenue
Bozeman, Montana 59715
587-1767

NAME Man Ray Jensen BILL No. HB 40
ADDRESS House DATE 1-1-81
WHOM DO YOU REPRESENT Self
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Henry Hooper BILL No. HB 26
ADDRESS LABOR & INDUSTRY ESD DATE 1/9
WHOM DO YOU REPRESENT LABOR & INDUSTRY
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: