

STATE ADMINISTRATION  
FEBRUARY 12, 1981  
RM 436

The meeting of the House State Administration Committee was called to order at 8:00 a.m. on February 12, 1981 with Chairman Jerry Feda presiding. All members were present except Representatives O'Connell and Azzara who were absent.

The meeting was opened to a hearing on House Bill 680.

HOUSE BILL 680-SPONSOR, Representative Keedy, introduced this bill which proposes a constitutional amendment to require the Legislature to automatically convene in special session when the governor vetoes a bill after adjournment that was approved before the veto by two-thirds of the members present and voting. If approved by the voters at the next general election, this bill becomes effective January 1, 1983. Representative Keedy referred to two bills, HB 303 and SB 217, as examples of bills that passed the House and Senate with a two-thirds vote and were vetoed by the governor after adjournment last session.

#### PROPOSERS

There were no proposers testifying at the hearing.

#### OPPOSERS

There were no opposers present at the hearing.

#### QUESTIONS BY THE COMMITTEE:

Briggs: Is there any fiscal impact or is there a fiscal note that we can look at?

Keedy: Yes, there would be a fiscal impact if a special session was called, but it is very hard to estimate what it would be.

Mueller: What if the bill the governor vetoes is not a substantive bill and the legislators do not feel it warrants a special session?

Keedy: If a bill that attracts a two-thirds vote is considered innocuous it should not be vetoed in the first place.

Dussault: Is it your intent that that it be two-thirds of the Legislative body.

Keedy: I would prefer that it be the entire body but I am not sure if the statutes refer to two-thirds of the Legislature as a whole or of each house.

Representative Keedy closed the hearing on House Bill 680.

HOUSE BILL 687-SPONSOR, Representative Keedy, introduced HB 687 to the committee. This bill is companion legislation to HB 680 and amends statutory provisions to reflect the constitutional amendment. It provides that the Legislature must convene in special session within eight days after the 25th day following adjournment as determined by the Speaker of the House and President of the Senate to reconsider any vetoed bill approved before the veto by two-thirds of the members present and voting. This bill is also effective January 1, 1983, if the constitutional amendment is passed by the voters. Representative Keedy said that the bill may have to be amended because he is not sure about the time limit for convening. A copy of the amendment that was prepared by Lois Menzies is attached to the minutes and is EXHIBIT 1.

#### PROPOSERS

There were no other proposers present to testify.

#### OPPOSERS

There were no opposers present to testify.

#### QUESTIONS BY THE COMMITTEE:

Sales: I am very concerned about this automatic call back. I think it is a step toward annual sessions and I am against annual sessions.

Keedy: You have a right to be concerned about the automatic call back. But I think it is a necessary step, a precautionary step, that will make the governor consider carefully any vetoes.

Spilker: What about an amendment that would say the Legislature shall convene within 40 or 45 days after adjournment.

Keedy: That would be fine with me.

Representative Keedy closed the hearing on House Bill 687.

HOUSE BILL 630-SPONSOR, Representative Sales, introduced this bill to the committee at the request of the Department of Community Affairs and the State Administration Committee. This bill permits the Department of Community Affairs to employ or contract with persons or firms to provide law enforcement in and around state airports whenever required by federal aviation regulations.

#### PROPOSERS

DAVE KNEEDLER, Montana Aeronautics Division, arose and stated that this bill had been introduced at their request and they would be available to answer any questions the committee may have.

#### OPPOSERS

There were no opposers present at the hearing.

#### QUESTIONS BY THE COMMITTEE:

Kropp: How many airports would this bill affect?

Sales: Just the state airport in West Yellowstone.

Following brief discussion, Representative Sales closed the hearing on House Bill 630.

HOUSE JOINT RESOLUTION 23-SPONSOR, Representative Donaldson, introduced this resolution which requests that interim study be assigned to study the feasibility of consolidating state-operated laboratory facilities and coordinating functions of these facilities with private, federal, or local laboratories in the state. It also describes the composition of the study committee, provides compensation for nonlegislative members of the committee, and defines the content of the proposed study. Representative Donaldson said that another bill would have to be put in for appropriations because this bill will require that the committee hire an actuary or a person with knowledge of the industry for about 6 months during the study.

HJR 23 (cont.)

PROPOSERS

DR. JIM GLOSSER, Dept. of Livestock, stated that they support this bill and feel there is a great need for study in this area. He said that he would like to see the bill say that at least two of the members of the board would have laboratory expertise.

GORDON McOmber, Dept. of Agriculture, arose in support of this bill.

DICK BAUMBURGER, Alcoholism Program, stated that they would like to see a study of this type to see what type of alternate or reduced funding it could provide for their program.

OPPOSERS

There were no opposers testifying on HJR 23.

QUESTIONS BY THE COMMITTEE:

Spilker: Why would you need an appropriation?

Donaldson: I think the amendment that would be put in the bill will require one. We need to put someone on staff for about 6 months who is qualified in this field because this is a very complicated area.

Following brief discussion Representative Donaldson closed the hearing on HJR 23.

EXECUTIVE SESSION

HOUSE BILL 399

TABLED

House Bill 399, scheduled for hearing 2/12/81, was cancelled at the sponsors request. A motion was made by Representative Kanduch that HB 399 be TABLED. A vote was taken and carried unanimously.

This same subject will be addressed in a bill being introduced by the Senate.

EXECUTIVE SESSION (cont.)

HOUSE BILL 138 - returned

DO PASS AS AMENDED

Lois Menzies, staff researcher, explained the amendments that she and Mr. Stropp had worked out. Following brief discussion Representative Pistoria moved the amendments which are attached and are EXHIBIT 2 of the minutes. A vote was taken and carried unanimously. Representative O'Connell and Azzara were absent.

Representative Sales made a motion that HB 138 DO PASS AS AMENDED. Question being called, a vote was taken and carried unanimously with those present.

HOUSE JOINT RESOLUTION 23

NO ACTION TAKEN

This bill was held for amendments that will be presented to the committee by the sponsor.

HOUSE BILL 630

DO PASS

Representative Briggs moved a DO PASS on HB 630. Question was called and a vote taken. Motion carried unanimously.

HOUSE BILL 680

DO PASS

Representative Mueller said that he would move a DO NOT PASS on this bill because he did not like the automatic call back. He said the concept was good though. Discussion followed.

Representative Spilker made a substitute motion that HB 680 DO PASS. She said that there is a small risk involved but feels it is one that is worth taking. Following discussion a vote was taken and carried with 13 YES, 4 NO and 2 absent. Representatives Sales, Hanson, Pistoria and Mueller voted no.

HOUSE BILL 687

DO PASS AS AMENDED

Representative Dussault proposed amendments to the committee. A copy of these amendments is EXHIBIT 1 of the minutes. A vote was taken on the amendments and carried unanimously.

EXECUTIVE SESSION (cont.)

HB 687 (cont.)

Representative Kanduch made a motion that House Bill 687 DO PASS AS AMENDED. Question was called and a vote taken. The motion carried with 13 YES, 4 NO and 2 absent. Representatives Sales, Hanson, Pistoria and Mueller voted no.

HOUSE BILL 26

DO PASS AS AMENDED

Representative Moore, sponsor, and Mr. Morris Brusett explained the amendments to the committee. A copy of these amendments is attached and is EXHIBIT 3 of the minutes.

Representative Dussault asked Mr. Brusett to explain the rational behind the exclusion of attorneys. He said that their department felt a need to be excluded and other departments requested that they be excluded. He said that a department must submit a request to the legal services review committee when they want to contract the services of an attorney. This committee is made up of three members including the Budget Director, the Attorney General and the chief legal counsel to the governor. A copy of this EXECUTIVE ORDER NO. 3-81 is attached and is EXHIBIT 4 of the minutes.

Representative Kropp said that as far as he is concerned the bill is "gutted" with this exclusion.

Representative Hanson moved a DO PASS on the amendments. He said that with just the 16th amendment it is more restrictive and is better than the present system. A vote was taken on this motion and carried with those members present. Representative Spilker and McBride voted no on the amendments.

Representative Hanson moved a DO PASS AS AMENDED. A vote was taken and carried with 15 YES, 2 NO and 2 absent. Representatives Kennerly and Pistoria voted no.

A motion was made to adjourn at 10:30 a.m.

Respectfully submitted,

  
\_\_\_\_\_  
G. C. "JERRY" FEDA, Chairman

Cathy Martin-Secretary

AMENDMENTS TO HOUSE BILL 687     STATE ADMINISTRATION

1. Page 1, line 19.

Strike: "[section 2]"

Insert: "5-3-101"

2. Page 2, line 6.

Following: "within"

Strike: "eight"

Insert: "45"

Following: "days"

Strike: "after the 25th day"

3. Page 2, line 9.

Following: "voting"

Insert: "The special session must be limited to  
the reconsideration of the vetoed bill unless  
two-thirds of the members attending the session  
agree to consider additional subjects"

4. Page 3, line 5.

Following "provided in"

Strike: "[section 2]"

Insert: "5-3-101"

## STATE ADMINISTRATION

## PROPOSED AMENDMENTS TO SECOND READING COPY OF HB 138:

1. Strike: All committee amendments contained in the House State Administration standing committee report dated January 20, 1981.
2. Title, line 6.  
Following: "OF"  
Strike: "ANY BUSINESS"  
Insert: "CERTAIN BUSINESSES"
3. Page 2, line 3.  
Following: "section"  
Insert: ", provided the licensee does not relocate his premises to a noncontiguous site or relocate his entrances any closer than the existing entrances,"





## Proposed Amendments to HB 26

1. Page 2, line 5.  
Following: "contract."  
Strike: "The"  
Insert: "However, the"  
Following: "term"  
Strike: "includes routine"  
Insert: "is limited to professional consulting service"
2. Page 2, lines 6 and 7.  
Following: "contract"  
Strike: the remainder of line 6 through "programs" on line 7  
Insert: "with a private consultant, nor does it include the making of periodic or routine reports or the collection of routine data necessary to the functioning of a state agency or its programs or necessary for the proper monitoring of private providers of human services regulated by a state agency"
3. Page 2, line 17.  
Following: "services"  
Insert: "other than a state agency or employee"
4. Page 2, line 23.  
Following: "engineers"  
Insert: "surveyors, real estate appraisers,"
5. Page 2, lines 24 and 25.  
Following: "architects"  
Strike: the remainder of line 24 through "for" on line 25  
Insert: "in connection with"
6. Page 2, line 25.  
Following: "facilities,"  
Insert: "or highways;"
7. Page 3, line 1.  
Following: "dentists,"  
Insert: "psychiatrists, psychologists, physical therapists, nurses, pharmacists, ophthalmologists, optometrists, speech pathologists,"  
Following: "medical"  
Strike: "or"  
Insert: ", "  
Following: "dental"  
Insert: ", or health-care"
8. Page 3, line 2.  
Following: "providers"  
Strike: the remainder of line 2 in its entirety  
Insert: "; expert witnesses hired for use in litigation; hearing officers hired in rule-making and contested-case proceedings under the Montana Administrative Procedure Act; or attorneys as specified by Executive Order of the Governor."

Proposed Amendments to HB 26  
(continued) Page 2

9. Page 3, lines 8 and 9.

Following: "personnel"

Strike: the remainder of line 8 through line 9 in their entirety

10. Page 3, line 16.

Following: "consultant"

Insert: "who is a bona fide resident of Montana as defined in  
18-2-401 and"

11. Page 3, line 20 through line 3 on page 4.

Strike: section 5 in its entirety

Renumber: subsequent sections

12. Page 4, lines 8 through 10.

Following: "with"

Strike: the remainder of line 8 through "developed" on line 10

13. Page 4, line 10.

Following: "developed"

Insert: "a brief resume of the results accomplished"

14. Page 4, lines 14 and 15.

Strike: lines 14 and 15 in their entirety

Insert: "central office of the state agency or repository designated  
by the state agency"

15. Page 4, line 18.

Following: "shall"

Insert: "upon request"

16. Page 4, line 23 through line 17 on page 6.

Strike: section 7 in its entirety

Insert: "Section 7. Solicitation of bids. (1) A state agency that desires to contract with a private consultant shall establish a bid list in its central office or in another appropriate division or unit of the state agency. Any private consultant who desires to submit bids to that agency for the provision of consulting services may request the agency in writing to place him on the agency's bid list.

(2) Whenever it is reasonably foreseeable that a proposed use of a private consultant will involve a contract with a value in excess of \$5,000, the state agency shall notify all private consultants who have requested to be placed on the agency's bid list. The notice shall contain the following:

(a) a notice of invitation for offers of consulting services;

(b) the name and address of the person who should be contacted by a private consultant who wants to make an offer;

(c) the closing date for receipt of offers of consulting services;

(d) the procedures and specifications upon which the agency will award the contract for consulting services; and

(e) any other information that the agency believes pertinent.

(3) In addition to the notification required in subsection (2) of this section, the state agency, in its discretion, may solicit bids for consultant services by advertisement or other means.

(4) An agency need not follow the provisions of this section in bona fide emergency situations."

17. Page 6, line 18 through line 2 on page 7.

Strike: section 8 in its entirety

Renumber: subsequent sections

18. Page 7, line 3.

Following: "A"

Insert: "principal or officer of a consulting firm or an individual"

19. Page 7, line 9.

Following: "agency"

Strike: ", "

Insert: "and"

20. Page 7, lines 9 through 14.

Following: "employment"

Strike: the remainder of lines 9 through 14 in their entirety

21. Page 7, line 24.

Following: "treasury"

Insert: "if violation of [this act] was caused by the consultant"

22. Page 7.

Following: line 24

Insert: "(3) If a contract is void under this section due to the violation of [this act] by the state agency, the state shall pay the consultant for all work performed up to the date that the consultant is informed in writing of the violation by the state agency."

23. Page 8, line 1.

Strike: line 1 in its entirety

Insert: "July 1, 1981"

## STANDING COMMITTEE REPORT

February 12, 19 81  
Journal

MR. SPEAKER .....

We, your committee on STATE ADMINISTRATION .....

having had under consideration ..... HOUSE Bill No. 26

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTROL AND REGULATE  
THE USE OF PRIVATE CONSULTANTS BY STATE AGENCIES; AND  
PROVIDING AN EFFECTIVE DATE."

Respectfully report as follows: That ..... HOUSE Bill No. 26  
be amended as follows:

1. Title, lines 5 and 6.  
Following: "AGENCIES"  
Strike: "; AND PROVIDING AN EFFECTIVE DATE"
2. Page 2, line 5.  
Following: "contract."  
Strike: "The"  
Insert: "However, the"  
Following: "term"  
Strike: "includes routine"  
Insert: "is limited to professional consulting service"
3. Page 2, lines 6 and 7.  
Following: "contract" on page 6  
Strike: "that" through "programs" on line 7  
Insert: "with a private consultant, but does not include the  
making of periodic or routine reports or the collection of  
routine data necessary to the functioning of a state agency  
or its programs or necessary for the proper monitoring of  
private providers of human services regulated by a state  
agency"

## STATE ADMINISTRATION

AMENDMENTS TO HOUSE BILL 26

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19...81...

4. Page 2, line 17.

Following: "services"

Insert: "other than a state agency or employee"

5. Page 2, line 23 through line 2 on page 3.

Following: "of"

Strike: remainder of section 3

Insert: ":

(a) registered professional engineers, surveyors, real estate appraisers, or registered architects concerned with the design or construction of state facilities or highways;

(b) physicians, dentists, psychiatrists, psychologists, physical therapists, nurses, pharmacists, ophthalmologists, optometrists, speech pathologists, or other medical, dental, or health-care providers; and

(c) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys.

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6. Page 3, lines 8 and 9.

Following: "personnel" on line 8

Strike: "or" through "agency" on line 9

7. Page 3, line 16.

Following: "consultant"

Insert: "who is a bona fide resident of Montana as defined in 18-2-401 and"

8. Page 3, line 20 through line 3 on page 4.

Strike: section 5 in its entirety

Renumber: subsequent sections

9. Page 4, lines 8 through 10.

Following: "with" on line 8

Strike: "copies" through "developed" on line 10

Insert: "a brief resume of the results accomplished"

10. Page 4, lines 14 and 15.

Following: line 13

Strike: "Montana" through "receipt" on line 15

Insert: "central office of the state agency or repository designated by the state agency"

11. Page 4, line 18.

Following: "shall"

Insert: "upon request"

(cont.)

## STATE ADMINISTRATION

AMENDMENTS ON HOUSE BILL 26 -3- FEBRUARY 12, 19 81

12. Page 4, line 23 through line 17 on page 6.

Strike: section 7 in its entirety

Insert: "Section 7. Solicitation of bids.

(1) In order to contract with a private consultant, a state agency shall establish a bid list in its central office or in another appropriate division or unit of the state agency. Any private consultant who desires to submit bids to that agency to provide consulting services may request in writing the agency place him on the agency's bid list.

(2) Whenever it is reasonably foreseeable that a proposed contract for private consultant services will exceed \$5,000, the state agency shall notify all private consultants who have requested to be placed on the agency's bid list. The notice shall contain the following:

(a) a notice of invitation for offers of consulting services;

(b) the name and address of the person within the agency to be contacted by a private consultant wishing to make an offer;

(c) the closing date for receipt of offers of consulting services;

(d) the procedures and specifications upon which the agency will award the contract for consulting services; and

(e) any other information that the agency believes pertinent.

(3) In addition to the notification required in subsection (2), the state agency, in its discretion, may solicit bids for consultant services by advertisement or other means.

(4) An agency need not follow the provisions of this section in bona fide emergency situations."

13. Page 6, line 18 through line 2 on page 7.

Strike: section 8 in its entirety

Renumber: subsequent sections

14. Page 7, line 3.

Following: "A"

Strike: "person"

Insert: "principal or officer of a consulting firm or an individual"

15. Page 7, lines 9 through 14.

Following: "agency" on line 9

Strike: ", "

Insert: "and"

Strike: remainder of section

16. Page 7, line 17.

Following: "section"

INSERT "6"

## STATE ADMINISTRATION

AMENDMENTS HOUSE BILL 26

-4-

February 12

1981

17. Page 7, line 20.

Following: line 19

Strike: "9"

Insert: "7"

18. Page 7, line 24.

Following: "treasury"

Insert: "if violation of [this act] was caused by  
the consultant"Insert: "(3) If a contract is void under this section  
because of a violation of [this act] by the state  
agency, the state shall pay the consultant for all  
work performed up to the date that the consultant  
is informed in writing of the violation by the state  
agency."

19. Page 7, line 25 through line 1 on page 8.

Strike: section 11 in its entirety

## STATE OF MONTANA

Office of the Governor

Executive Order No. 3-81

Executive Order continuing the authority of the legal services review committee established within the executive branch to review agency use of legal counsel, and establishing membership and review standards.

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I, TED SCHWINDEN, in accordance with the authority vested in me by the laws and Constitution of the State of Montana, and in recognition of the need to evaluate and direct the Executive Branch's use of private legal counsel so as to insure the maximum effectiveness of all Executive Branch legal resources, hereby order all Executive Branch agencies to continue compliance with Executive Order No. 15-78 which reads in full as follows:

I. All Executive Branch agencies which under the Constitution and laws of Montana are directly accountable to the Governor shall effective the date of this Order, submit all requests to engage private legal counsel to the Legal Services Review Committee, created below. Such requests must be in the form and must contain the information requested by the Committee, which shall include the specific terms of the engagement including the legal services to be performed and the fees or maximum cost to the state. An agency may engage private legal counsel only if the agency obtains prior written approval for such engagement under Part II of this Order. This Order applies to all existing contracts, retainers, or other agreements existing on the date of this Order as well as those requested after such date, but shall not impair valid contracts entered into before such date.

II. There is hereby created a Legal Services Review Committee, as follows:

6279  
Book N-Pg 54



(1) Composition. The Legal Services Review Committee has three members, including the Budget Director or his designated representative, who is chairman; the Attorney General or his designated representative; and the chief legal counsel to the Governor. Two members constitute a quorum.

(2) Responsibilities. The Committee shall review and approve or disapprove, in writing, each agency request to use private legal counsel, and shall approve only requests which meet one or more of the following criteria:

(a) The agency's legal staff lacks time or essential expertise to handle the matter;

(b) a substantial conflict of interest exists affecting all of the agency's legal staff or all but a number insufficient to handle the matter;

(c) the agency has a need for extensive legal work in a geographic area remote from the agency's home office; or

(d) other criteria determined by the Committee.

The Committee shall complete its review of each request in a timely manner, as agency need requires.

The Committee shall, in addition to reviewing requests to engage private counsel arising after the date of this Order systematically review, in a timely manner, all existing engagements of private legal counsel under the same criteria used for new requests, and shall periodically review all engagements approved by the Committee, according to methods established by the Committee.

The Committee shall not approve general retainer agreements unless the agency can show extraordinary circumstances justifying such an agreement.

(3) Nature of Review. The Committee's review is not a hearing, adversarial or otherwise, but is an internal administrative control to be handled informally and expedi-

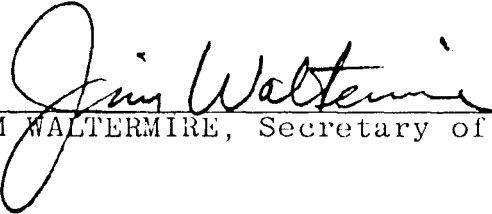
tiously.

GIVEN under my hand and the GREAT SEAL  
of the State of Montana, this third  
day of February in the year of our Lord  
One Thousand, Nine Hundred Eighty-One.



TED SCHWINDEN, Governor

ATTEST:



JIM WALTERMIRE, Secretary of State

## VISITORS' REGISTER

HOUSE COMMITTEE

LL

Date \_\_\_\_\_

**SPONSOR**

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

HOUSE

COMMITTEE

LL

HVR 23

Date 2/12/81

SPONSOR

Donaldson

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

HOUSE

COMMITTEE

LL

Date \_\_\_\_\_

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.