

STATE ADMINISTRATION
MARCH 11, 1981
RM 436

The meeting of the House State Administration Committee was called to order at 8:00 a.m. on March 11, 1981, with Vice-Chairman Walter Sales presiding. All members were present except Representatives Feda, Dussault and O'Connell who were excused.

SENATE BILL 312, SPONSOR, Senator Hims1, introduced this bill at the request of the Legislative Audit Committee. This bill states that it is in the best interest for the public as well as private associations to submit nominees to the governor for board appointments. To accomplish this goal, the bill removes the requirement that gubernatorial appointments to nine boards be made solely from lists submitted by private associations. It further provides that private associations and members of the public may submit lists of nominees for the governor's consideration.

PROPOSERS

There were no other proposers present to testify on SB 312.

OPPOSERS

There were none present.

QUESTIONS BY THE COMMITTEE:

There were no questions.

Senator Hims1 closed the hearing on SB 312.

SENATE BILL 7, SPONSOR, Senator Towe, introduced this bill requested by the Revenue Oversight Committee. This bill permits the seven-member Coal Board to hire and fire its own personnel and to determine policy matters concerning its budget independent of the Department of Community Affairs. Senator Towe said that past appointment of staff by the department has proven to be unworkable. He stated that out of the 23 other boards that have quasi-judicial authority, 8 have the authority to hire their own personnel. He said that if the Board had the power to hire and fire their own employees, perhaps they would do a better job of reviewing the applications and therefore do a better job for the state of Montana.

SB 7 (cont.)

PROPOSERS

JACK COHN, Montana Coal Board, former chairman, stated that the Coal Board has no control over their budget even though SB 87 stated that the Board would be under the Department of Community Affairs for administration purposes only. He said that the Board has been known to operate on a minimal amount of money and he feels the Board should have control over how the money is spent. He said that the Coal Board has always paid for consultant services and even part of the director's salary but these services are more for the department than for the Board. He said that in the past the department has hired personnel for the Board but 90% of the work done by that person was for the department. The Board does not have any faith in the department.

OPPOSERS

DAVE WANZENRIED, Department of Community Affairs, stated that this would have an adverse effect on program administration. He said that the Coal Board meets about two times a month and they would not have the observation of day to day quality of the work being done by the personnel. He stated that this bill is mainly the result of one person who was hired in 1978 and was not cleared with the Board. He said that it has been proposed to transfer the Coal Board to the Department of Commerce. This would not work under the autonomy provided by SB 7. The finding further is that the U.S. Government rejects the idea of plural executive.

QUESTIONS BY THE COMMITTEE:

Kropp: What is your budget?

Cohn: The proposed budget for fiscal 82 is \$85,000.

Spilker: What would stop the Board from hiring as many people as they wanted to hire even if they didn't need them.

Towe: There is an oversight committee and the budget would still be controlled by the legislature.

McBride: Do you see this as a problem of personalities within the department and the Board.

Wanzenried: I think it is a problem of personalities. However, the department is under a new director.

Senator Towe closed the hearing on SB 7. He said that if the Board does not have the authority to govern themselves you are not going to have an effective operation. We feel they need this autonomy to do their jobs effectively. He stated that this Board is no different than the other boards that have this authority. The reviews of the Board and the Oversight Committee guarantees accountability.

SENATE BILL 181-SPONSOR, Senator Story, introduced this bill requested by the Administrative Code Committee. This bill requires an agency upon request of the Code Committee to prepare an economic impact statement concerning the adoption, amendment, or repeal of a proposed rule. The Committee may also prepare a similar statement. The bill outlines the contents of the impact statement, suspends an agency's rulemaking authority when a request for a statement is made by the Committee, and provides that the Committee may refuse to accept any statement that the members determine is inadequate. He said that the Committee was created to be a "watch dog" within the agency. He said that the committee would prepare a list of the information required from an agency. This would be a significant cost savings from having to prepare a complete impact statement. He said that the section of this bill that allows the Committee to suspend rulemaking authority will get the most opposition. He said that the Administrative Procedures Act does have a time frame. If an impact statement is requested in the middle of a time frame the Committee would not expect the agency to go back to "square one" and re-notice etc..

PROPOSERS

CHAD SMITH, representing the Montana Hospital Association, said that they support the bill and would like to offer one amendment on page 2 lines 14 through 18, to be sure that we are not talking about further cost of government itself, following rule, add "cost of compliance to all persons affected".

DAVE GOSS, representing the Billings Chamber of Commerce, stated that they support the bill and also feel that a fiscal note should be required on some of the rules being proposed because it is the taxpayers money being used to administer them.

SB 181 (cont.)

PETER JACKSON, W.E.T.A., stated that there is a real need for regulation on new rules within the agencies.

DON ALLEN, Montana Petroleum Assoc., said that there has been a problem in getting these agencies to look at the cost of some of these rules.

OPPONENTS

MONA JAMISON, legal council for the governor, stated that this bill has some legal problems. Under this bill, she stated, the Committee would be able to suspend the rules before the rulemaking process begins. The executive branch is the traditional authority to administer the laws, the legislature is the authority to pass the laws. She stated that there is a question of "separation of powers" in this bill. Also it is possible, she said, that the Committee would be taking unconstitutional action without the authority of the legislature. This raises the question of "unlawful delegation of legislative powers". Also she stated that the committee must consider the delay aspects of this bill. She said that including some of the criteria of this bill under MEBA should be considered as an alternative to this bill. She also added that this legislation would be very costly.

ROBERT WOOD, Department of Business Regulation, concurred with Mona Jamison.

DAL SMILIE, SRS, stated that the agencies that make these rule determinations are regulated by the legislature. The authority of one standing committee to regulate these rules is unconstitutional and unfair. He said that sometimes the department has to make rules quickly or they may be dissolved by the federal government or they may be subject to law suits etc. This bill would impose an unnecessary time delay.

JOHN NORTH, Dept. of State Lands, concurred with other testimony and also added that the words "in its judgement" and "Its determination" on page 4 of the bill, are too subjective.

DON MacINTYRE, Department of Natural Resources, stated that the agencies have to pay for these economic impact statements and they may not have the ability within their budgets to pay for private consultants etc. that the Committee may request.

SB 181 (cont.)

JOY BRUCK, League of Women Voters, stated that the league has no quarrel with the Code Committee requesting an economic impact statement, but we do object to the committee having the authority to suspend rulemaking proceedings. We believe, she stated, this is something that the entire legislature must be responsible for. This could also be an infringement on the separation of powers. We believe that allowing the oversight committee to function as they do now in addition to having the entire legislature meet more often is a big step in giving the legislature the strength and control it should have.

QUESTIONS BY THE COMMITTEE:

Kropp: What about the cost?

Story: The suggestion of the governor's council, that these requirements should be written into the law, would be extremely more costly than this proposal. The situation where we would require a statement only happens maybe two or three time a year or less. This is what the budget supplements are for. Much of this problem is due to the "ambient air standard problem".

Spilker: Is the fiscal note a fair representation?

Story: No, we do not think we will require this statement very often. It will depend on how many times we have to request an impact statement.

McBride: Is there any time limit on how long it can take the committee to approve the statement.

Story: No, but concerning an agency deadline, they can pass an emergency rule and this bill would not apply.

Senator Story closed the hearing on SB 181.

SENATE BILL 187-SPONSOR, Senator Graham, introduced this bill requested by the Department of Administration which permits the State Records Committee to establish categories of state records that may be disposed of or destroyed without prior approval of the Committee.

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SB 187 (cont.)

PROPOSERS

MIKE TREVOR, Department of Administration, appeared in support of this bill. A copy of his prepared testimony is attached and is EXHIBIT 1 of the minutes.

JOHN NORTHEY, Legislative Auditors Office, stated that this bill will expedite record disposal.

OPPOSERS

There were no opposers.

QUESTIONS BY THE COMMITTEE:

Spilker: Who is the state record committee?

Trevor: It consists of a member from the Historical Society, the Legislative Auditors Office, The attorney generals office and the Department of Administration.

Senator Graham closed the hearing on SB 187.

EXECUTIVE SESSION

SENATE BILL 187

BE CONCURRED IN

Representative Mueller moved that SB 187 BE CONCURRED IN. A vote was taken and carried unanimously with those present.

Representative Phillips was assigned to carry SB 187 in the House.

SENATE BILL 312

BE CONCURRED IN

Representative Winslow made a motion that SB 312 BE CONCURRED IN. A vote was taken and carried unanimously with those present.

Representative Winslow was assigned to carry SB 312 on the House floor.

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SENATE BILL 7

BE NOT CONCURRED IN

Representative Phillips made a motion that SB 7 be concurred in.

Representative Spilker made a substitute motion that SB 7 BE NOT CONCURRED IN. She said that we are trying to referee a personality dispute and I do not feel this bill will help the situation down the road. She said that Senator Towe said that 8 out of the 23 boards had this authority that means that 15 do not. The 8 boards that do are different because they are made up of professional people.

Representative Mueller agreed and stated that with the board only meeting twice a month there was not enough accountability.

Representative Holliday said that from her experiences with the Board, she feels they are very accountable. This is the purpose of the Coal Oversight Committee.

Representative Spilker said that that committee has no standing, it was just put together at the request of Senator Towe.

Following further discussion, a vote was taken on the substitute motion and carried with 13 YES, 4 NO and 2 absent. Representatives Phillips, Holliday, Azzara and Pistoria voted no.


SENATE BILL 181

Representative Kanduch suggested that the committee hold action on this bill until HB 329 is heard in the Senate.

SENATE BILL 298, scheduled for hearing 3/11/81 was cancelled to be rescheduled at a later date.

A motion was made to adjourn at 9:50 a.m.

Respectfully submitted,



WALTER SALES, Vice Chairman

Cathy Martin-Secretary

JUSTIFICATION FOR SENATE BILL 187

Senate bill 187 amends Section 2-6-212, MCA to allow ongoing disposal of certain state records without repetitive, time consuming action by the State Records Committee.

Section 2-6-212, MCA is amended as follows:

A portion of the current section beginning on line 13 through 15 has been deleted to accommodate the additions at line 15, 16 and 18 through 20.

Subsection (2) has been added at line 21 through 24 to establish the authority of the State Records Committee to designate categories of State records which may be destroyed in an on-going fashion, and would eliminate the need for State agencies to submit a disposal request each time such records were to be destroyed. Only selected records would be affected, and these would still have a minimum retention requirement. Conformance to this requirement could be verified by audit.

This amendment would streamline the records disposal process, and eliminate paperwork and delay. It would model disposal procedures after those adopted by the Federal government, and yet retain control of records disposal within the State Records Committee. Unanimous approval of the State Records Committee, composed of representatives of the Montana Historical Society, Legislative Auditor's Office, Attorney General's Office, and Department of Administration, would be required for records to be selected for on-going disposal authority. Agencies would be relieved of the burden of repetitively submitting disposal requests for records of minor importance.

Mike Turron
Dept. of Admin.

WITNESS STATEMENT

NAME Jay Bruch BILL No. SB 181
ADDRESS 1601 Olmstead Helena DATE 3-11-81
WHOM DO YOU REPRESENT LWR of Montana
SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We have no quarrel with the Code Comm.
requesting an economic impact statement, but we
do object to the comm having the authority to
suspend rulemaking proceedings. we believe this is
something the entire legislature must be responsible
for, not just a comm acting on behalf of the
legislature. And, this could also be an infringement
on the separation of powers.

We believe that allowing the oversight comm.
to function as they do now in addition to having
the entire legislature must move often as a big
step in giving the legislature the strength and
control it should have

VISITORS' REGISTER

HOUSE STATE ADMINISTRATION COMMITTEE

BILL SB 187

Date 3/11/81

SPONSOR GRAHAM

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE STATE ADMINISTRATION

COMMITTEE

BILL SB 181

Date 3/11/81

SPONSOR STORY

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE STATE ADMINISTRATION COMMITTEE

BILL SB 7

Date 3/11/81

SPONSOR TOWE

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STATE ADMINISTRATION

COMMITTEE

Date 3/11/81

SPONSOR

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.