

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 12, 1985

The meeting of the State Administration Committee was called to order by Chairman Sales at 9:00 a.m. on the above date in Room 317, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 133: Sen. John Mohar, Senate District #1, said that this series of bills, 133 through 138, came out of the Interim Study of the Governor's State Building Advisory Council and gave the makeup of that Council. He said this bill was very similar to Rep. Bardanoue's bill, HB 143. Senate Bill 133 changes the word "approve" to "accept". HB 143 has been tabled in the Senate and if SB 133 passes, HB 143 will be allowed to die. Currently, they review plans but not the cost estimates. They do not necessarily approve the plans, only accept them.

PROPONENTS: Barbara Martin, Staff Researcher for the Governor's Council, supported the bill and said it would also take care of some housekeeping matters. The current law is limited only to plans by architects and frequently there are plans submitted by engineers as well. The Department is now required to do a detailed analysis of plans which the architects and engineers are paid to do. The purpose of the bill is to have the architect or engineer accept some responsibility for their plans.

Phil Hauck, Administrator of the Architecture & Engineering Division of the Department of Administration, thought the bill was necessary because of the responsibility for the plans and specifications. These people are paid a great deal of money to prepare these plans and specs and if his people approve them they accept the responsibility for these plans and specs. The architect is being paid to assume that responsibility and there should be no wording in the law that lets them slip off the book by saying his division approved the plans.

Marty Crennen, Architect, and was also on the Governor's Council supported the bill for the same reasons as indicated previously. He said, however, that they think it essential that there be some indication that the State of Montana has signed off on the plans and that is why the word "accept" is in there.

Bill Lannan, University System and also on the Governor's Council, supported the bill.

Curt Chisholm, Deputy Director of the Department of Institutions, stated that Carroll South, the Director was also a member of the Governor's Council, and stated their support for the bill.

OPPONENTS: There were no opponents.

DISCUSSION OF SENATE BILL NO. 133: Chairman Sales asked Sen. Mohar to explain the difference between HB 143 and this bill. Sen. Mohar explained explained the difference as being page 1, line 16 and page 2, line 5 where the word "approve" is changed to "accept".

Rep. Harbin asked about the "extension of authority" on page 3. Sen. Mohar said this is standard language if there is currently rule making authority that authority would be extended.

Rep. Jenkins asked what would happen if they do not accept all plans. Mr. Hauck said they would have to work with the architect to get a mutually agreed upon solution to the problem. Lois Menzies, Staff Researcher, didn't think that every plan put before the Department has to be approved. Mr. Hauck said they have to be reviewed before they are accepted. Rep. Jenkins said he really had problems with the words "all plans, specifications" etc. Sen. Mohar said if the House felt strongly about that he would have no objection to striking the word "all".

Rep. Cody asked if the Department has been held liable for approving any plans. Mr. Hauck said not as yet but it had been threatened.

CONSIDERATION OF SENATE BILL, NO. 134: Again, Sen. John Mohar, sponsor, explained the bill, saying that at the present time if the project is overbid the only option is to rebid the whole project. This could cause a delay of several months with readvertising, etc. and could eliminate much of the summer construction season. This bill would grant permissive authority to negotiate a project, however, they would not have to negotiate. The bill was originally passed out of the Senate committee but the amendment on page 2, line 6 through 24 was made on the floor of the Senate when they decided there should be a limit of 3%.

PROPOSERS: Barbara Martin, Staff Researcher, Governor's Council, said that rebidding a project can cause a substantial time lag and it is also an expensive process. The negotiations would be limited to the lowest responsible bidder and the negotiations would be subject to the board of examiner's approval, limited to 3% of the project cost. The contractor would not be compelled to negotiate. She also said there is a precedent for a bill such as this as two states have laws permitting negotiation. Colorado has no cap on the overbid and there have been no litigations in either of these states so there has not been any legal problems.

Phil Hauck, Architecture and Engineering Division, said his responsibility to the State is to get the projects authorized by the Legislature under contract and this bill would help his office do that. The federal government and private contractors

do negotiate contracts and asked for the Committee's support of the bill.

Bill Lannan, University System, supported the bill and said it was a viable alternative. The 3% is a very small percentage and said it would be better if it was increased to 5% at least. Three percent is a small amount when you consider a \$5 million project. They are willing to go along with the 3% however if that is the feeling of the Committee.

Curt Chisholm, Department of Institutions, said that Mr. Hauck's office lets out many contracts and it would certainly help their projects tremendously. He said it would be great if the A&E Division could negotiate within that 3% and the Department of Institutions would strongly support this added flexibility.

Marty Crennen said he supported the bill in the interest of saving time and dollars and said it was in line with the private sector. The intent of the bill is that negotiation would not include major deviations from the program or scope of the work. It would only include relatively insignificant portions of the contract.

Ralph DeCunzo, Department of Military Affairs, said that Mr. Hauck's office needs this flexibility. He also asked the Committee to consider the 5% rather than 3% and said that negotiations are a standard procedure within the private sector. He said the State could do the same thing and still keep everything above board.

OPPONENTS: There were no opponents.

DISCUSSION OF SENATE BILL NO. 134: In answer to a question from Rep. Pistoria, Sen. Mohar didn't think the 5% would have any problem in the Senate as there was quite a bit of consensus for the 5%. Sen. Regan said on the floor of the Senate that if a cap of 3% was put on she would vote for the bill so the 3% came out on a Committee of the Whole amendment.

Rep. Campbell asked how much the rebidding process costs. Mr. Hauck said on larger projects there would be more work going back and reducing the cost of the project. As far as the re-advertising and time involved it would be proportionate to the job involved. They could lose practically a year's time if you consider the next construction season.

Rep. Harbin said if it is left at 3% it has a pretty good chance of passage - if amended to 5% it would have to go back for concurrence by the Senate, therefore, he asked Rep. Mohar if he thought he would rather leave it at 3%. Sen. Mohar said that 5% would be fair and thought it would be worth trying at 5%.

Chairman Sales felt that the difference between 3% and 5% was a major point as if a bid comes in at 3 1/2% above the appropriation they have to go through the rebidding process and thought the negotiation would be the best way. Sen. Mohar stated that was the original intent of the bill until it got to the Senate floor. Chairman Sales said he would like to see no cap on it.

Rep. Harbin stated that it is not only a cost to the State to go through the rebidding but a cost to the contractors as well and those extra costs would be figured in the rebid. Sen. Mohar said he would accept the percentage that the House deems is right and would try to get it through the Senate.

There being no further questions, Sen. Mohar closed.

CONSIDERATION OF SENATE BILL NO. 135: Again, Sen. Mohar, sponsor of the bill, said that the bill involves removing the board of examiners' approval of change orders concerning construction projects. The board of examiners is a three member board consisting of the governor, the attorney general and the secretary of state. There could be a delay of up to a month if the board has just met. Any change must have a change order and the current process is cumbersome and time consuming. This bill would streamline the process by eliminating the requirement that the board of examiners approve all change orders.

Barbara Martin stated that the longer the delay the greater the potential for cost increase. She explained that a change order is a modification of the contract after the contract has been awarded. She also said there is a precedent within the State for department heads to approve change orders such as the departments of highways and natural resources and conservation. Her prepared testimony is attached as Exhibit #3.

Phil Hauck, Architecture and Engineering Division, said that with the change in this bill the contractor would have direct access to the people who are responsible for the approval of the change orders.

Bill Lannan, University System, said this system is going to do what the Governor asked when he appointed the Council to streamline and improve the building construction process.

Curt Chisholm, Department of Institutions, supported the bill.

OPPONENTS: There were no opponents to the bill.

DISCUSSION OF SENATE BILL NO. 135: Rep. Cody asked Mr. Hauck how much this would speed up the process. Mr. Hauck replied if they can eliminate the board of examiners, which is set by law, the rest can be taken care of administratively. They hope to get this down to a matter of a few days.

There being no further questions, Sen. Mohar closed.

CONSIDERATION OF SENATE BILL NO. 136: Sen. Mohar, sponsor of SB 136 also, explained that this bill would provide that any contract awarded to other than the low bidder or a contract that is protested would have to be approved by the board of examiners.

PROPOSERS: Barbara Martin stated that determining the low bidder is usually pretty well cut and dried. However, if the bid is awarded to other than the low bidder this bill would permit those contracts awarded under such circumstances to still be approved by the board of examiners. Other contracts would be approved by the department of administration and this could save up to one month.

Phil Hauck, Architecture and Engineering Division, said it would save time when they need the time in awarding contracts. He also said 95% of the contracts are unprotested and simply go to the lowest responsible bidder. The majority of the contracts would be taken out of the hands of the board of examiners.

Ralph DeCunzo, Department of Military Affairs, said it would streamline the process, put the responsibility with the agency that makes the decision and provides better access for the contractors and the public.

Bill Lannan, University System, said it is a good bill and would do exactly what the Council wants.

OPPOSERS: There were no opposers.

DISCUSSION OF SENATE BILL NO. 136: Rep. Harbin asked Sen. Mohar why 136 and 135 weren't combined, to which Barbara Martin said the Legislative Council and legal staff felt there may be some question whether it was a single subject because they deal with contract awards and change orders and didn't think they should be in one bill.

CONSIDERATION OF SENATE BILL NO. 137: Sen. Mohar, sponsor of SB 137 said that this is the last of the bills reducing the powers of the board of examiners. They have been informed and none of them had any problems with removing these powers. There is also a precedent in the executive branch within the State.

PROPOSERS: Barbara Martin said that currently all appointments of architects and engineers are subject to the approval of the board of examiners. The agency recommends three names to the department, the department recommends one name and the board of examiners either does or does not concur in that recommendation. Fifty percent are for projects under \$100,000. This would only apply to those projects under \$100,000. This would also eliminate the possible one month delay in getting approval.

Phil Hauck also supported the bill.

Bill Lannan said this could be an improvement in the administration of construction projects in the state.

Marty Crennen supported the bill and said that the size of the projects they are talking about are relatively small.

Ralph DeCunzo said it would be well within the capabilities of the architectural and engineering division to select the architects for projects costing under \$100,000.

OPPONENTS: There were no opponents.

DISCUSSION OF SENATE BILL NO. 137: There were no questions from the Committee.

CONSIDERATION OF SENATE BILL NO. 138: Sen. Mohar, again the sponsor, said that individual sureties have been allowed by law since 1981. This bill would eliminate the provision allowing individual sureties for State projects. He said that the department doesn't have the staff to research the financial backgrounds of the persons signing these individual sureties. Sen. Hammond wanted local governments to be allowed to use individual sureties, therefore, the amendment on page 3, lines 8 through 13 was included in the bill. It was felt that in small communities they would pretty well know the person signing those sureties. Sen. Mohar said that amendment is appropriate and would relieve the department of administration from signing off on individual sureties.

PROPOSERS: Barbara Martin said that current law requires all projects to be covered by a surety bond or negotiable security in the amount of 100% of the construction costs. She read her prepared testimony which is attached as Exhibit #6.

Phil Hauck said the situation has arisen several times. The contractor places a bid bond and then a cashier's check and they award the contract because that is the law. The contractor is then to provide bond. He will provide two sureties in place of the bond. They either have to accept those sureties or reject the bid and rebid the project. He said that in the past they have been compelled to take individual sureties and have no way of knowing their financial capabilities. He said the law allows them to do this on any size project and asked that this be taken out of the law.

Eugene Fenderson, Montana State Building Trades Council, said they supported the bill but didn't agree with the amendments concerning local governments. He said that one of the problems could be that the home town boys would sign sureties for home town boys but not for a company from another town.

OPPONENTS: There were no opponents.

DISCUSSION OF SENATE BILL NO. 138: Rep. Cody asked if there was anything in this package of bills that would prevent a situation such as Bozeman where the bricks fell off the building. Sen. Mohar said that was not addressed in these bills. He also said that Sen. Blaylock's bill in the Senate would have set up a Board of Contractors which would have regulated this to a certain extent and those irresponsible contractors would have been eventually weeded out. There has been a study resolution introduced to study licensing contractors and building codes during the interim. He said that building inspections do serve a purpose and said that unless you live in an urban area the house you purchase may only have had an electrical inspection and nothing else.

Rep. Harbin, speaking to the question by Rep. Cody, said there is a contractor retainage law where 10% of the project cost would be held back and this can be held up to a year. Sen. Mojar said that if the project is completed the 10% would be paid to the contractor so a situation such as in Bozeman would have to occur before that 10% would be paid out.

Rep. Jenkins asked if there was a limit on how long they have to pay subcontractors. Sen. Mohar said they usually have 35 days to pay these bills. Barbara Martin said that this is an entirely different issue than what is being discussed in this bill. This only concerns sureties and bonds. On State projects a contractor has to sign an affidavit that all those things were paid that were incurred to complete the project. If he didn't sign that affidavit the project would not be considered completed. The sureties or bonds would be on deposit to make sure all those things were paid.

Chairman Sales asked Mr. Hauck, in the case of the cashiers check being submitted and the contractor is awarded the bid, if A&E doesn't accept the two individual sureties what would happen. Mr. Hauck said they would have to back up and rebid the project. He said they have accepted individual sureties on small projects. Chairman Sales asked him if they had accepted sureties for contractors that they deemed were unacceptable. Mr. Hauck said they have accepted some that they did not know for sure were acceptable and said that it is a bad way to do business. Chairman Sales said he thought it was a reasonable option and didn't see anything wrong with accepting individual sureties. Mr. Hauck said, up to this point, nothing has happened, but they are concerned with what could happen. Rep. Harbin said if they have to get a financial statement on an individual signing a surety that it could take 6 months and they only have 30 days to award a contract.

In closing, Sen. Mohar said it would still allow some flexibility because they can go to a bonding company and would allow certain negotiable securities to be used in lieu of a bond. He said as a contractor he felt these bills would streamline the contracting process.

The Committee then went into executive action on SB 10 and 11 which were held over from March 8, 1985 for study on some amendments. Rep. Pistoria was excused from the meeting to attend another hearing.

DISPOSITION OF SENATE BILL NO. 10: This bill had been assigned to Rep. Harbin and Rep. Cody to come up with some other language in place of "restrictions" on the ballot. The word "restrictions" would be changed to read "constraints". Rep. Cody said it was probably a little reverse psychology and felt that the public would be more inclined to read the explanation of the secretary of state on the ballot. Sen. Neuman had been contacted and was comfortable with the word change.

The AMENDMENTS WERE ADOPTED UNANIMOUSLY. Rep. Garcia moved that SB 10 BE CONCURRED IN AS AMENDED. Motion CARRIED with Rep. Peterson voting "no".

DISPOSITION OF SENATE BILL NO. 11: Lois Menzies, Staff Researcher, explained the proposed amendments to SB 11. (See Committee Report attached). She said when the bill was heard there were some questions about the amendments concerning the words "long term". Amendments 9, 10 and 11 change the word "long term" to "retirement" to make the bill constitutional. It now conflicts with the constitutional requirement. If SB 10 passes 9, 10 and 11 would be changed to "long term".

She said that the second part of the amendments would insert five sections of the law that are not in the bill and these should have been included. This was simply an oversight. When they eliminated the laundry list these five sections should have been included and reference to the constitution should be removed in those sections. Lois said she had talked with Dale Harris and Jim Howeth, explained the amendments to them and they both agreed that it should be done.

Rep. Phillips moved ADOPTION OF THE AMENDMENTS, seconded by Rep. Compton. The motion CARRIED UNANIMOUSLY.

Rep. Cody then moved that SB 11 BE CONCURRED IN AS AMENDED, seconded by Rep. Garcia. The motion CARRIED with Rep. Peterson voting "no". Rep. Harbin will carry the bill.

DISPOSITION OF SENATE BILL NO. 133: Rep. O'Connell moved that SB 133 BE CONCURRED IN, seconded by Rep. Fritz.

Rep. Jenkins said he still had a problem with "accept all plans". He didn't think they should have to accept all plans, specifications and cost estimates. Lois explained that the word "all" is through all the sections. For a project costing more than \$25,000 they would have to do this. Rep. Fritz said the operative word here is "review". They don't necessarily approve the plans.

The motion To Concur in SB 133 CARRIED with Rep. Jenkins voting "no".

DISPOSITION OF SENATE BILL NO. 134: A discussion was held concerning amending the 3% to 7%. If this was not accepted by the Senate it was felt that 5% would be a compromise. Rep. Fritz moved the ADOPTION OF THE AMENDMENTS, seconded by Rep. Harbin. Motion CARRIED.

Rep. Fritz then moved that SB 134 BE CONCURRED IN AS AMENDED, seconded by Rep. Harbin. Motion CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 135: Rep. Nelson moved that SB 135 BE CONCURRED IN. Rep. Jenkins wanted the bill to be amended on page 2, line 2 following "orders" inserting "accepted". Chairman Sales said that the department of administration will still review and approve all change orders. Rep. Nelson said that all the changes will carry over if all the bills are passed. Rep. Fritz said that all change orders have to be approved.

Lois said if there is a very strong feeling on the part of the committee the word "all" could be deleted. Rep. Harbin said that these changes should be done in SB 133 and not this bill. Rep. Phillips said that if "all" is deleted this could mean that some small change orders would be left out from review and approval. The question being called for, the motion CARRIED with Rep. Peterson voting "no".

DISPOSITION OF SENATE BILL NO. 136: Rep. Campbell moved that SB 136 BE CONCURRED IN, seconded by Rep. Fritz.

Rep. Cody asked why the board of examiners is not doing what they should be doing. Rep. Smith said that getting these three persons to review a building plan is worthless as none of them are capable or qualified to do so, however, they are still responsible for the people that work for them and will be doing the reviewing. Chairman Sales asked if the secretary of state has anyone to advise him on plans and specifications. He wondered if this bill doesn't pass if we are encouraging these three people to hire someone to advise them in these matters.

The motion CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 137: Rep. Fritz moved that SB 137 BE CONCURRED IN, seconded by Rep. Compton. The motion CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 138: Rep. Cody disagreed with the statement that unless you live in an urban area there probably are no inspections of house construction. She said in her business as a real estate broker most housing construction is being financed by some type of lending institution and they are going to see that inspections are carried out.

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Page 10

Rep. Peterson moved that SB 138 BE CONCURRED IN, seconded
by Rep. Compton. Motion CARRIED UNANIMOUSLY.

There being no further business before the Committee, the
meeting was adjourned at 11:00 a.m.


WALTER R. SALES Chairman

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(Type in committee members' names and have 50 printed to start).

DAILY ROLL CALL

State Administration COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/12/85

NAME	PRESENT	ABSENT	EXCUSED
Chairman Walter Sales	✓		
V-Chairman Helen O'Connell	✓		
Campbell, Bud	✓		
Compton, Duane	✓		
Cody, Dorothy	✓		
Fritz, Harry	✓		
Garcia, Rodney	✓		
Hayne, Harriet	✓		
Harbin, Raymond	✓		
Holliday, Gay	✓		
Jenkins, Loren	✓		
Kennerly, Roland	✓		
Moore, Janet	✓		
Nelson, Richard	✓		
Peterson, Mary Lou	✓		
Phillips, John	✓		
Pistoria, Paul	✓		
Smith, Clyde	✓		

STANDING COMMITTEE REPORT

March 12 19 85

MR. SPEAKER

We, your committee on State Administration

having had under consideration Senate Bill No. 10

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color

AMEND CONSTITUTION TO PROVIDE PRUDENT EXPERT RULE FOR INVESTMENTS

Respectfully report as follows: That Senate Bill No. 10

BE AMENDED AS FOLLOWS:

- 1) Title, line 3.
Strike: "RESTRICTIONS"
Insert: "CONSTRAINTS"
- 2) Page 2, line 24.
Strike: "restrictions"
Insert: "constraints"
- 3) Page 3, line 3.
Strike: "restrictions"
Insert: "constraints"

AND AS AMENDED
BE CONCURRED IN

XXXXXX
DO PASS

STANDING COMMITTEE REPORT Page 1 of 5

March 12 19 85

MR. SPEAKER

We, your committee on State Administration

having had under consideration Senate Bill No. 11

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color

REPLACE PRUDENT MAN RULE WITH PRUDENT EXPERT RULE FOR INVESTMENTS

Respectfully report as follows: That Senate Bill No. 11

BE AMENDED AS FOLLOWS:

1. Title, line 5.

Strike: "CONFORMING"

Insert: "REVISING LAWS CONCERNING"

2. Title, line 6.

Following: "PROGRAM"

Insert: ";

3. Title, lines 6 and 7.

Strike: "WITH" on line 6 through "REMOVE" on line 7

Insert: "REMOVING CERTAIN"

4. Title, line 8.

Strike: "PROVIDE"

Insert: "PROVIDING"

XXXXXX
DO PASS

CONTINUED

March 12

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5. Title, line 9.
Following: "SECTIONS"
Insert: "17-5-609, 17-5-619,"
Following: "17-6-201,"
Insert: "17-6-203,"

6. Title, line 10.
Following: "17-6-211,"
Insert: "17-6-305, 17-6-308,"
Strike: "A DELAYED"

7. Title, line 11.
Strike: "DATE"
Insert: "DATES"

8. Page 1.
Following: line 13
Insert: "Section 1. Section 17-5-609, MCA, is amended to read:

"17-5-609. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-601 through 17-5-610 with moneys from the investment funds; notwithstanding the provisions of 17-6-211."

Section 2. Section 17-5-619, MCA, is amended to read:

"17-5-619. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-611 through 17-5-620 with moneys from the investment funds; notwithstanding the provisions of 17-6-211."

Re-number: subsequent sections

9. Page 3, line 1.
Strike: "LONG-TERM"
Insert: "Retirement"

10. Page 3, line 4.
Strike: "LONG-TERM"
Insert: "Retirement"

11. Page 3, line 6.
Strike: "LONG-TERM"
Insert: "Retirement"

12. Page 3, line 8.
Strike: "SHALL PREVENT"
Insert: "prevents"

CONTINUED

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13. Page 5.

Following: line 4

Insert: "Section 4. Section 17-6-103, MCA, is amended to read:

"17-6-203. Separate investment funds. Separate investment funds shall be maintained as follows:

(1) the nonexpendable trust funds, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in sections 2 and 10, Article X, of the 1972 Montana constitution and all money referred to in 17-2-102(8). The principal and any part thereof of each and every fund constituting the Montana nonexpendable trust fund type shall be subject to payment at any time when due under the statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system now or hereafter maintained by the state, including those now maintained under the following statutes:

(a) the highway patrolmen's retirement system described in Title 19, chapter 6;

(b) the public employees' retirement system described in Title 19, chapter 3;

(c) the game wardens' retirement system described in Title 19, chapter 8;

(d) the teachers' retirement system described in Title 19, chapter 4; and

(e) the industrial accident insurance program described in Title 39, chapter 71, part 23;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by 17-2-103;

(4) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise, or contribution on the part of the state of Montana to be observed. If such gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other such gifts, donations, grants, legacies, bequests, devises, or contributions.

(5) a fund consisting of coal severance taxes allocated thereto under section 5, Article IX, of the Montana constitution; the principal of this trust fund shall be permanent and--invested--in--the--commissionable--investments--enumerated--in--17-6-314; in the event the legislature appropriates any part of the principal of this fund by vote of three-fourths of the members of each house, such liquidation may create a gain or loss in the principal; and

CONTINUED

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(6) such additional investment funds as may be expressly required by law or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source."

ReNUMBER: subsequent sections

14. Page 10.

Following: line 6

Insert: "Section 6. Section 17-6-305, MCA, is amended to read:

"17-6-305. Investment of twenty-five percent of the coal tax trust fund in the Montana economy. (1) Twenty-five percent of all revenue deposited after June 30, 1983, into the permanent coal tax trust fund established in 17-6-203(5) shall be invested in the Montana economy with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, as required by 17-6-204(1) the long-term benefit to the Montana economy shall be considered.

(3) The legislature may provide additional procedures to implement this section."

Section 7. Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. The Montana in-state investment fund must be invested in the ~~as permitted authorized as permissible investments under 17-6-211 and in any other type of in-state investment as~~ authorized by rules adopted by the board."

ReNUMBER: subsequent sections

15. Page 10.

Following: line 14

Insert: "NEW SECTION. Section 9. Extension of authority. Any existing authority of the Board of Investments and the Montana Economic Development Board to make rules on the subject of the provisions of this act is extended to the provisions of this act."

NEW SECTION. Section 10. Coordination instruction. If Senate Bill No. 10, including the section of that bill amending Article VIII, section 13, of the Montana Constitution, is approved by the electorate on November 4, 1986, the word "retirement" appearing three times in 17-6-201(3) is changed to "long-term."

ReNUMBER: subsequent section

CONTINUED

March 12 1985.....

16. Page 10, line 15.

Strike: "date"

Insert: "dates"

Strike: "This act is"

Insert: "(1) Sections 1 through 9 and this section are effective
October 1, 1985.

(2) Section 10 is"

AND AS AMENDED
BE CONCURRED IN

STANDING COMMITTEE REPORT

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19.....

MR. SPEAKER

We, your committee on State Administration

having had under consideration Senate

Bill No. 133

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color

**ACCEPTANCE RATHER THAN APPROVAL OF PLANS AND SPECIFICATIONS FOR
BUILDINGS**

Respectfully report as follows: That Senate

Bill No. 133

BE CONCURRED IN

XXXXXX
DO PASS

STANDING COMMITTEE REPORT

March 12 1935

MR. SPEAKER

We, your committee on State Administration

having had under consideration Senate Bill No. 135

Third reading copy (Blue)
color

**REMOVE BOARD OF EXAMINERS CHANGE ORDER APPROVAL IN BUILDING
CONSTRUCTION**

Respectfully report as follows: That Senate Bill No. 135

BE CONCURRED IN

~~DO PASS~~

STANDING COMMITTEE REPORT

March 12 1985

MR. SPEAKER

We, your committee on State Administration

having had under consideration Senate Bill No. 136

Third reading copy (Blue color)

REQUIRE BOARD OF EXAMINERS APPROVAL FOR ONLY SOME CONSTRUCTION CONTRACTS

Respectfully report as follows: That Senate Bill No. 136

BE CONCURRED IN

DO PASS

STANDING COMMITTEE REPORT

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SPEAKER

MR.

STATE ADMINISTRATION

We, your committee on

SENATE

having had under consideration Bill No. **134**

Third

reading copy (**Blue**) , Second Printing
color

NEGOTIATION TO BRING CONSTRUCTION BID WITHIN APPROPRIATION

Respectfully report as follows: That.....**SENATE**..... Bill No. **134**.....

BE AMENDED AS FOLLOWS:

1) Page 2, line 13

Strike: "38"

Insert: "78"

**AND AS AMENDED
BE CONCURRED IN**

DO PASS

STANDING COMMITTEE REPORT

: March 12 19 85

MR. SPEAKER

We, your committee on State Administration

having had under consideration Senate Bill No. 138

Third reading copy (Blue color)

DISALLOW INDIVIDUAL SURETIES ON PUBLIC WORKS PROJECTS

Respectfully report as follows: That Senate Bill No. 138

BE CONCURRED IN)

DO PASS

STANDING COMMITTEE REPORT

March 12

85

19

SPEAKER

MR.

State Administration

We, your committee on

Senate

having had under consideration Bill No.

137

Third

reading copy (**Blue**)
color

**LIMIT BOARD OF EXAMINERS APPROVAL OF ARCHITECT TO PROJECTS
OVER \$100,000**

Senate

Respectfully report as follows: That..... Bill No.

137

BE CONCURRED IN

DO PASS

3-12-85

SIB. 133	yes
134	yes
135	yes
136	yes
137	yes
138	yes

Rep. ~~Paul~~ Moore

Proposed Amendments to SB 10 (Blue Copy)

1. Title, line 8.
Strike: "RESTRICTIONS"
Insert: "CONSTRAINTS"

2. Page 2, line 24.
Strike: "restrictions"
Insert: "constraints"

3. Page 3, line 3.
Strike: "restrictions"
Insert: "constraints"

AMEND2/hm/SB 10

Proposed Amendments to SB 11 (blue copy):

1. Title, line 5.

Strike: "CONFORMING"

Insert: "REVISING LAWS CONCERNING"

2. Title, line 6.

Following: "PROGRAM"

Insert: ";

3. Title, lines 6 and 7.

Strike: "WITH" on line 6 through "REMOVE" on line 7

Insert: "REMOVING CERTAIN"

4. Title, line 8.

Strike: "PROVIDE"

Insert: "PROVIDING"

5. Title, line 9.

Following: "SECTIONS"

Insert: "17-5-609, 17-5-619,"

Following: "17-6-201,"

Insert: "17-6-203,"

6. Title, line 10.

Following: "17-6-211,"

Insert: "17-6-305, 17-6-308,"

Strike: "A DELAYED"

7. Title, line 11.

Strike: "DATE"

Insert: "DATES"

8. Page 1.

Following: line 13

Insert: "Section 1. Section 17-5-609, MCA, is amended to read:

"17-5-609. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-601 through 17-5-610 with moneys from the investment funds~~7-notwithstanding-the provisions-of-17-6-211.~~"

Section 2. Section 17-5-619, MCA, is amended to read:

"17-5-619. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-611 through 17-5-620 with moneys from the investment funds~~7-notwithstanding-the provisions-of-17-6-211.~~"

Renumber: subsequent sections

9. Page 3, line 1.

Strike: "LONG-TERM"

Insert: "Retirement"

10. Page 3, line 4.
Strike: "LONG-TERM"
Insert: "Retirement"

11. Page 3, line 6.
Strike: "LONG-TERM"
Insert: "Retirement"

12. Page 3, line 8.
Strike: "SHALL PREVENT"
Insert: "prevents"

13. Page 5.
Following: line 4
Insert: "Section 4. Section 17-6-203, MCA, is amended to read:

"17-6-203. Separate investment funds. Separate investment funds shall be maintained as follows:

(1) the nonexpendable trust funds, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in sections 2 and 10, Article X, of the 1972 Montana constitution and all money referred to in 17-2-102(8). The principal and any part thereof of each and every fund constituting the Montana nonexpendable trust fund type shall be subject to payment at any time when due under the statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system now or hereafter maintained by the state, including those now maintained under the following statutes:

(a) the highway patrolmen's retirement system described in Title 19, chapter 6;

(b) the public employees' retirement system described in Title 19, chapter 3;

(c) the game wardens' retirement system described in Title 19, chapter 8;

(d) the teachers' retirement system described in Title 19, chapter 4; and

(e) the industrial accident insurance program described in Title 39, chapter 71, part 23;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by 17-2-102;

(4) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise, or contribution on the part of the state of Montana to be observed. If such gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other such gifts, donations, grants, legacies, bequests, devises, or contributions.

(5) a fund consisting of coal severance taxes allocated thereto under section 5, Article IX, of the Montana constitution; the principal of this trust fund shall be permanent ~~and--invested--in--the permissible--investments--enumerated--in--17-6-211~~; in the event the legislature appropriates any part of the principal of this fund by vote of three-fourths of the members of each house, such liquidation may create a gain or loss in the principal; and

(6) such additional investment funds as may be expressly required by law or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source."

Renumber: subsequent sections

14. Page 10.

Following: line 6

Insert: "Section 6. Section 17-6-305, MCA, is amended to read:

"17-6-305. Investment of twenty-five percent of the coal tax trust fund in the Montana economy. (1) Twenty-five percent of all revenue deposited after June 30, 1983, into the permanent coal tax trust fund established in 17-6-203(5) shall be invested in the Montana economy with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, ~~as required by 17-6-201(1)~~, the long-term benefit to the Montana economy shall be considered.

(3) The legislature may provide additional procedures to implement this section."

Section 7. Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. The Montana in-state investment fund must be invested ~~in the securities authorized as permissible investments under 17-6-211 and in any other type of in-state investment~~ as authorized by rules adopted by the board."

Renumber: subsequent sections

15. Page 10.

Following: line 14

Insert: "NEW SECTION. Section 9. Extension of authority. Any existing authority of the Board of Investments and the Montana Economic Development Board to make rules on the subject of the provisions of this act is extended to the provisions of this act."

"NEW SECTION. Section 10. Coordination instruction. If Senate Bill No. 10, including the section of that bill amending Article VIII, section 13, of the Montana constitution, is approved by the electorate on November 4, 1986, the word "retirement" appearing three times in 17-6-201(2) is changed to "long-term"."

Renumber: subsequent section

16. Page 10, line 15.

Strike: "date"

Insert: "dates"

Strike: "This act is"

Insert: "(1) Sections 1 through 9 and this section are effective
October 1, 1985.

(2) Section 10 is"

SB-133
3/2/13

TESTIMONY
SB133

This bill has two purposes: to clarify the existing law to reflect current practice, and to amend 18-2-103 (1)(a). The bill requires the department of administration to "review and accept" rather than "review and approve" plans, specifications, and cost estimates. The purpose of this bill is to confer some responsibility for these documents on the architect or engineer who prepares them.

The current law is inadequate because it does not address the review of specifications or cost estimates and it is limited to documents prepared by architects. Furthermore, the use of the terms "plans" and "working drawings" in the existing law are redundant because working drawings are plans. The language in the current law does not address the department's responsibility for a substantial amount of the documents that are submitted to it for review. The department reviews all of these documents now, but the law does not give the department clear authority to accept or reject them.

The term "approve" was changed to "accept" to reflect current practice and to retain some responsibility for the plans, specifications, and cost estimates with the architect or engineer who prepared them. The department currently uses estimating reference materials to get a general idea of the reasonability of the cost estimates, and reviews the plans for consistency with the project as it was approved by the Legislature.

It appears that the word "approve" may be construed to confer enough responsibility on the department to make it prudent to conduct a detailed analysis of these documents to provide adequate protection to the state. The department does not have the staff to do this, and to increase the staff to undertake a detailed analysis would be a duplication of what the architect or engineer is paid to do. Even if the department undertook such an analysis, the result would be just another estimate and the time required for an intensive review could cause considerable delays in getting the projects out to bid.

SB-134
3/12/85

TESTIMONY

On SB 134

Under current law, if all responsible bids received on a project would cause the project cost to exceed the appropriation, the project must be rebid. This is an expensive process. All the staff time and advertising costs are incurred twice. If there is a large time lag before the project is rebid, or if the project is rebid late enough so it cannot be started because of the weather, substantial increase can be expected in the bids due to inflationary increases in labor, equipment, and supplies costs and increased costs to bidders to put the bid together twice which are ultimately passed on to the state or other owners. Competition may be reduced on a rebid because bidders, having shown their hand in the first bid opening may be reluctant to rebid the project, as a result bids may be higher. Permitting negotiation could eliminate the additional costs of rebidding. If bids cause the project costs to exceed the appropriation, negotiation could be used to reduce the costs. Considering the extra expense incurred in rebidding a project, the agency may get less for its money than if a price could be negotiated.

Negotiation would be necessarily confined to reducing the lowest responsible bidder's prices, because negotiation would only be permissible if all responsible bids cause the project to exceed the appropriation. In addition, negotiation is limited to 3% of the project cost and the award subject to approval by the Board of Examiners.

The words, "responsible bidder" are included in this bill so the department would not be prevented from negotiating with the second lowest bidder if the lowest bid was within the appropriation, but was either rejected as not responsible or was withdrawn by the bidder.

Negotiations are confined to the lowest responsible bidder or bidders when multiple contracts are used. There are three reasons for this:

1. The initial bidding process has satisfied the requirements for fair competition. If the bids had not caused the project cost to exceed the appropriation, the lowest responsible bidder would have been awarded the contract.

2. If all contractors who bid were allowed to negotiate, it would be a cumbersome job for the department to negotiate with all bidders.

If a price that would put the project cost within the appropriation cannot be negotiated with the lowest responsible bidder, the project can still be rebid.

There are at least two states that have laws permitting the state to negotiate. These are Colorado and Wisconsin. Neither of these states has had any litigation on application of these laws.

This bill specifically prohibits any negotiation that would substantially alter the scope of the project as approved by the Legislature.

SB-135
3/12/85

TESTIMONY

Approval of Change Orders

SB135

Background:

This bill eliminates the requirement for Board of Examiners' (the Governor, Attorney General, and Secretary of State) approval of change orders on all projects. Currently, the Board approves additive and deductive change orders exceeding \$2500 individually, or cumulatively of \$5000 or 5% of the project cost, whichever is less, and change orders for time extensions. Since 1976, there has been only one change order recommended by the department that was not approved by the Board.

A change order is a modification in the contract after the contract is awarded. These may be due to an owner requesting a change, unanticipated condition at the building site, corrections to the plans, or other reasons. For change orders subject to the Boards' approval, the changes must either be authorized at the Board's monthly meeting, or they must be taken to each Board member for signature individually which removes the opportunity for any Board discussion of the change order.

Change orders usually make modifications after construction is underway, causing a significant time loss during construction. Delays resulting from change orders, lasting from a few days to several weeks, may cause an adverse impact on other aspects of the project's progress.

Before a change order is approved by the Board, the architect or consulting engineer, the contractor, and the Department of Administration's A/E staff review the request for reasonability and then checks to see if there are sufficient funds to cover the cost of the change in the project budget and, if so, approves it.

Requiring the Board approval of change orders may cause additional delays of up to four weeks of time to process a change order if it is discussed at a Board meeting.

The current change order approval process is cumbersome and time consuming. Removing the Board from the approval process will save time.

A survey of surrounding states indicated that none required the level of approval for change orders as required in Montana for building construction. At the Montana Department of Highways and Department of Natural Resources & Conservation, the department directors may approve any change orders, and in some cases division administrators also have approval authority.

SB-136
3/12/85

TESTIMONY

SB136 Contract Awards

Background:

Currently, contract awards on all projects costing more than \$25,000 must be approved by the Board of Examiners (the Governor, Secretary of State, and Attorney General). Since state law requires the contract to be awarded to the lowest responsible bidder, deciding who should be awarded the contract is usually just a matter of determining which bid is the lowest bid.

This bill removes the requirement for the Board of Examiners to approve construction contracts unless there is a protest or the contract is awarded to someone other than the lowest bidder. This provision is included in this bill because occasionally, the responsibility of the lowest bid is called into question if the bid forms are not complete, the bidder is working past time on another public project, or due to other complications. The Board would continue to approve contract awards in these cases in which judgment calls are required.

Assessment:

Requiring the Board to approve award of contracts can add up to up to four weeks of delay in getting the construction started because the Board only meets monthly. Considering the short season for construction due to Montana's weather conditions, it is difficult to justify this delay when awarding a construction contract to the lowest bidder.

Making this change would give the department more flexibility in setting bid opening dates. As it is now, bid openings must be held close enough to a Board meeting so the contract can be awarded within 30 days of the bid opening date because this is the length of time a contractor must honor the price stated in his bid.

ER, P.S.
SB-137
3/12/85

TESTIMONY

SB137

Design Professional Appointments on Projects Under \$100,000

Under current law, all appointments of architects and consulting engineers must be made by the Department of Administration and all of these appointments are subject to the approval of the Board of Examiners. However, the Board has allowed the Director of the Department of Administration to make appointments on projects under \$25,000.

This bill would eliminate the Board from approving appointments of architects and consulting engineers on projects costing \$100,000 or less. The Board will still approve all appointments on projects over \$100,000.

About 50% of the appointments made are for projects under \$100,000. Therefore, removing the Board from approving these appointments would substantially reduce the Board's workload on architect and engineer appointments.

If the Board is not required to approve these appointments, the selection process on these projects would not be solely in the hands of the Department of Administration, because on all projects the user agencies select three firms and submit those names to the Department of Administration. Furthermore, the instances in which the Board has rejected a recommended appointment are rare, and in those cases, they were on projects costing over \$100,000.

The benefit of removing the requirement for Board approval of these appointments is that it will eliminate the delay between the time the department makes an appointment and the Board's approval of the appointment at their monthly meeting.

The directors of the Department of Highways and Department of Natural Resources & Conservation may appoint consulting engineers and architects, if they need such services, on all projects so giving authority to the Department of Administration on projects under \$100,000 has precedent in the executive branch and would save time.

EX-103
SB-138
3/12/85

TESTIMONY

ON SB138

INDIVIDUAL SURETIES

Background:

The purpose of this bill is to eliminate the provision in the law that allows state contracting agencies to accept individual sureties on state public works projects.

Individual sureties have been permitted by law since 1981 as have provisions allowing deposit of certain negotiable securities with the state contracting agency to guarantee performance of the contract and payment for all labor and materials. Until that time, only a surety bond was acceptable.

An individual surety is the signature of an individual rather than a licensed bonding company on the performance and payment bond forms certifying that the signator guarantees completion of the project according to the contract and that all labor and materials will be paid. The current law requires a minimum of two such signators.

State law requires all projects to be covered by a surety bond or negotiable security in an amount equal to 100% of the construction costs.

Assessment:

This law specifies that these individual sureties must be acceptable to the state contracting agencies. However, any agency that accepts such a surety must either have the resources to verify the financial responsibility of those persons acting as

sureties or take the risk of having inadequate coverage or no coverage at all if the contract fails to perform the contractor pay for labor or materials. There is also no limit on the size of project that can be covered by an individual surety, so the financial risks to the contracting agency could be considerable. The state receives bids from contractors located all over the state and from other states. Therefore, the contracting officer will be very unlikely to be familiar with, or be able to quickly determine, the financial stability of a contractor or persons who act as individual sureties.

Since a contractor may furnish negotiable securities in lieu of a surety bond, he is not limited to having to get a bond from a licensed surety company to work on any public works projects. A deposit of negotiable securities also provides more security to the contracting agency than an individual surety, because if the contractor fails to perform the contract or pay for labor and materials, the state may use the deposited securities to pay these costs.

VISITORS' REGISTER

COMMITTEE

BILL NO. SB 134, 135, 136, 137, 138

DATE _____

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Bill Lannan	Helena	✓	
PHIL HAUCK	HELENA	✓	
RALPH DECUNZO	Clancy	✓	
Barbara Martin	Helena	✓	
Marty Cronnan	Helena	✓	
Eugene Fenderson	Helena	✓	
Mark Bennett	Helena		

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.