

MINUTES OF THE MEETING  
STATE ADMINISTRATION COMMITTEE  
MONTANA STATE SENATE

March 9, 1987

The thirty-third meeting of the State Administration Committee was called to order by Chairman Jack Haffey on March 9, 1987 at 10:00 a.m. in Room 331 of the State Capitol.

ROLL CALL: All committee members were present except for Senator Rasmussen who was excused.

The hearing was opened on House Bill 767.

CONSIDERATION OF HOUSE BILL 767: Representative Harry Fritz, House District 56, Missoula was sponsor for the bill entitled, "AN ACT PERMITTING THE DIRECTOR OF ADMINISTRATION AND AFFECTED STATE AGENCIES TO ENTER INTO AGREEMENTS PROVIDING CERTAIN FINANCING ARRANGEMENTS FOR THE ACQUISITION, RENOVATION, AND ENERGY MODIFICATION OF STATE BUILDINGS; PERMITTING THE DIRECTOR TO ADOPT RULES CONCERNING ACQUISITION, RENOVATION, AND ENERGY MODIFICATION OF STATE BUILDINGS USING THESE FINANCING ARRANGEMENTS; AND REPEALING TITLE 18, CHAPTER 3, PART 1, MCA." He stated this bill would authorize the Department of Administration to enter into lease purchase arrangements as a way of acquiring property and is intended to give the state a little more flexibility in the ways in which they acquire property in cases where additional space is required. He felt it might incur some savings also if it could be determined that a lease purchase was a cost savings measure. He noted it is not intended to encourage construction or acquisition of new space. The main key would be whether or not it would incur a state debt and if this were the case it would then require a two-thirds vote of the legislature in order to authorize creation of a state debt which is existing law he added. He noted it may be that most lease purchase agreements might be viewed as a state debt and therefore they would still need legislative approval but the Department of Administration would be able to engage in negotiations in the acquisition of property and then have the approval confirmed. He felt they were not being given free rein however. A copy of the laws this proposal would affect was given to the committee. (EXHIBIT 1)

PROPOSERS: Mr. H. S. Hansen, representing the Montana Technical Council, stated they were in support of this bill primarily because of the energy modifications and renovations portion. It would allow them to develop plans and specifications for energy reduction modifications within existing facilities that could perhaps be funded by the savings that would be incurred because of the modification. It might even bring in outside funding to encourage the renovations also he felt. He noted he felt it was important that rules be developed in the administration of this proposal.

OPPOSERS: Representative Charles Swysgood, House District 73, Beaverhead County opposed the measure and also stated that Representative Bob Thoft, House District 63, Ravalli, also opposed the bill

but was unable to be present for the hearing. He noted the bill came before the House on one of the last days before transmittal. One of the major concerns he had was the repealer. He stated it appeared to supercede current statutory requirements governing acquisitions, renovation, repair and modification of state buildings. It also eliminates statutory limitations applying to a lease with an option to purchase a state building. He noted a maximum of statutory construction is that each act of the legislature is complete in itself and that you may not insert what has been omitted or to omit what has been inserted. In general principle the latest declaration enacted by the legislature prevails over a prior act. When a subsequent act is wholly or partially inconsistent with prior statute, the inconsistent parts of the statute are treated as being repealed or amended by implication. He noted that a bill must have an effect on its own merits and this bill does not amend or repeal certain laws but appears to do so by implication. It would amend or repeal provisions of Title 17 and Title 18 that require state agencies to receive legislative approval for acquisition, renovations and construction of state buildings. It would allow the Department of Administration to enter into lease purchase agreements or renovations for energy modifications and the only limitation is if there is a state debt incurred they need legislative approval. Standing alone this bill does not require legislative approval for any agreements or acquisitions and appears to amend or repeal existing law he felt. He stated it might also repeal current law that requires a two-thirds vote for approval of a contract to lease a building with an option to buy and repeals other laws imposing limitations on the term and conditions of such lease purchase options. He offered the committee amendments he would like to see added to the proposal if the bill were to pass.  
(EXHIBIT 2)

QUESTIONS ON HOUSE BILL 767: Senator Haffey asked Rep. Fritz to explain the reasons for the bill. Rep. Fritz stated the bill is a repealer which eliminates a very lengthy and cumbersome procedure for acquiring buildings through a lease purchase agreement which has never been used. He felt the current statute was written to cover a particular situation and has never been utilized since. It just gives the Department of Administration the flexibility to enter into an arrangement and then have the legislature approve of the agreement. Senator Haffey asked if this repeals any other part of the statutes and was told by Rep. Fritz that he did not feel that it did. Senator Haffey asked Rep. Sysgood about his concerns and he stated he was concerned about circumventing current statute by having the Department enter into an agreement without legislative approval. He feared the Department might even circumvent long range planning because there was no cap on this proposal. Ellen Feaver felt the need arose when the Lottery Division recently tried to purchase or rent a building within a

very restricted timeframe. The Department did not have adequate time or personnel to check into whether or not the building was one that the state would even want to be purchasing. She was also concerned about energy retrofit plans being paid for through energy savings. She did not feel it was wise to be looking at financing in this manner. She felt the legislature guards their ability to direct where agencies should be placed and this bill would allow them more discretion in this area she felt.

Senator Lynch noted the law was enacted in 1974 because of some questionable lease arrangements in the Bozeman area and wondered if this proposal might open things up to possible scandalous situations again. Rep. Fritz felt the procedure still has legislative review and would just allow the Department to make recommendations to the legislature and still give them the flexibility to enter into agreements. Senator Lynch wondered if the Department could enter into agreements without consulting the legislature first and Rep. Fritz felt they would still need legislative approval. Ms. Feaver understood the proposal to say they could enter into an agreement with an option to buy but could not exercise the option to buy if it were to incur state debt without getting legislative approval. If the lease terms were such that final payment for the building was within the operating budget of that agency then the state could perhaps own a building without first getting legislative approval.

Rep. Fritz then stated in CLOSING he was surprised there was opposition to the bill from the Appropriations Committee since this was the committee who wanted more flexibility in the first place. He felt it just gives the executive branch the ability to offer to the legislature alternative solutions to the building needs of the state agencies. He felt there was still adequate oversight from the legislature to prevent misuse. The hearing was closed on HB 767.

EXECUTIVE ACTION ON HOUSE BILL 767: Senator Hofman made a MOTION THAT HOUSE BILL 767 NOT BE CONCURRED IN. Senator Hirsch seconded the motion. Sen. Hirsch stated he felt committing future operating budgets to payment for energy renovations could cause some real problems. Senator Farrell noted recent examples where he felt more study needed to be done. He noted often the legislature does not approve of a director's decision and it might be that the director would not want to make the decision anyway. He felt by having the current statute in place it may have prevented problems. The motion passed unanimously.

EXECUTIVE ACTION ON HOUSE BILL 450: Representative Pistoria had written a letter with additional information regarding his bill which was distributed to committee members. (EXHIBIT 3) Senator

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Lynch MOVED THAT HOUSE BILL 450 BE CONCURRED IN. He stated Envirotech had bid work in other cities and could see no reason why they should not bid this work either. He felt the bid specifications could be written in such a way that it would prevent anyone without the proper qualifications from obtaining the bid and might even be a tax break for the citizens. Senator Haffey also felt that bidding was a reasonable approach and perhaps should be considered. Senator Farrell had talked with city officials in Missoula and was told they could not see why there would be problems with a bid process for such a contract. Senator Haffey felt that "fly-by-night" type of operators would not be able to obtain the bid if there were stringent standards in the bid proposal. Senator Anderson wondered why Envirotech did not want to bid the contract. Senator Harding wondered if it might be taking away some of the city's governing powers and Senator Farrell stated he felt it would not. Senator Lynch stated if it were a problem he felt the League of Cities and Towns would have been at the hearing. On a vote TO CONCUR IN HOUSE BILL 450, the motion passed unanimously. Senator Lynch will carry the bill on the Senate floor.

The meeting was adjourned at 10:40 a.m.

cd

  
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SENATOR JACK HAFFEY, Chairman

ROLL CALL

SENATE STATE ADMINISTRATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/9/87

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NAME	PRESENT	ABSENT	EXCUSED
SENATOR JACK HAFFEY	X		
SENATOR WILLIAM FARRELL	X		
SENATOR LES HIRSCH	X		
SENATOR JOHN ANDERSON	X		
SENATOR J. D. LYNCH	X		
SENATOR ETHEL HARDING	X		
SENATOR ELEANOR VAUGHN	X		
SENATOR SAM HOFMAN	X		
SENATOR HUBERT ABRAMS	X		
SENATOR TOM RASMUSSEN			E

Each day attach to minutes.



**Part 1  
General Provisions**

RECEIVED STATE ARCHIVE  
 FILE NO. 1  
 DATE 3-9-87  
 BY 14 B 267

**Part Cross-References**

Lease of University of Montana property for stadium authorized, 20-25-441.

**18-3-101. Authority to lease with option to purchase.** When authorized by a vote of two-thirds of the members of each house of the legislature, the department of administration shall have the authority, as part of the long-range building program, to enter into a rental contract which provides an option to purchase a building to be used by the state or any department of state government.

History: En. 82-3315.1 by Sec. 1, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.1.

**Cross-References** General powers and duties of Department of Administration, 18-2-105.  
 Long-range building program bonds, Title 17, ch. 5, part 4.

**18-3-102. Appointment of architect.** The department of administration may appoint an architect to draw plans and specifications for the construction of a building authorized by this chapter, subject to the approval of the board of examiners.

History: En. 82-3315.4 by Sec. 4, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.4.

**Cross-References** Appointment of architects and consulting engineers, 18-2-112.

**18-3-103. Awarding contract.** In awarding a contract, the department of administration shall follow the same procedures that are required for the award of a contract to construct a state-owned building. The department shall have the authority to reject any and all bids.

History: En. 82-3315.7 by Sec. 7, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.7.

**Cross-References** Bids required -- advertising, 18-2-301.  
 Construction contracts -- general provisions, Title 18, ch. 2, part 1.

**18-3-104. Contract provisions.** The rental contract shall be for a period not to exceed 20 years with an option to purchase at the end of specific periods determined by the department of administration and clearly defined in the contract for each individual project. The option to purchase at the end of the contract period shall not exceed the amount of \$50,000. The contract shall provide for the appointment of a trustee with sufficient powers to protect the state's interest in the building and any property conveyed as a building site. The contract shall contain such other provisions as determined by the department of administration to be necessary.

History: En. 82-3315.5 by Sec. 5, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.5.

**Cross-References** Trustees' Powers Act, Title 72, ch. 21.  
 Contracts -- formation and interpretation, Title 28, ch. 2 and 3.

**18-3-105. Location of building.** The building shall be located as determined by the terms of the call for bids. If any such contract requires the sale

or lease of any interest in state lands, the contract must have prior approval of the board of land commissioners.

History: En. 82-3315.2 by Sec. 2, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.2.

**Cross-References** Board of Land Commissioners -- power to sell, lease, or exchange certain state lands, 77-1-204.

**18-3-106. Security pledge.** To insure an adequate security provision for the lessor, the full faith and credit and taxing powers of the state of Montana are pledged in the amount necessary for the payment of rent incurred pursuant to a contract authorized by this part.

History: En. 82-3315.3 by Sec. 3, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.3.

**Cross-References** Taxation, Title 15.  
 Tax power inalienable, Art. VIII, sec. 2, Mont. Const.

**18-3-107. Rent payments.** Each month the department or departments occupying the building shall pay rent in an amount determined by the department of administration to be sufficient to pay the total cost of renting and maintaining the building. All rents collected shall be deposited in a separate account and are hereby appropriated for the purpose of paying the contracted rental payments and the expense of maintaining the building. At any time the amount in the account is insufficient to pay a rental payment that is due, the department of administration is authorized to transfer from the general fund an amount sufficient to make the payment.

History: En. 82-3315.6 by Sec. 6, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.6.

**Cross-References** Rights of tenant for years or at will, 70-16-104.  
 Fund structure, 17-2-102.

AMENDMENT TO STATEMENT OF INTENT  
( HB 767 )

1. Page 2.

Following: line 11

Insert: "It is the intent of the legislature that no state building be acquired, renovated, or modified without the consent of the legislature, as provided in 18-2-102. The legislature further intends that information determining the need for a state building acquired through the financing arrangements provided for in section 1 be submitted to the legislature as required in 17-7-202 through 17-7-204."



2  
3-9-89  
HB 767

AMENDMENT TO HB 767

1. Title, line 8.

Following: ";"

Insert: "AND"

2. Title, lines 11 and 12.

Following: "ARRANGEMENTS" on line 11

Strike: remainder of line 11 through "MCA"  
on line 12

3. Page 1, line 17.

Following: "(1)"

Strike: "Except as provided in subsection (2)"

Insert: "When approved by the legislature"

4. Page 2, lines 1 through 4.

Following: "," on line 1

Strike: remainder of line 1 through "approval"  
on line 4

Insert: "the financing must be approved by a vote of  
two-thirds of the members of each house of the  
legislature"

5. Page 2, lines 15 and 16.

Strike: section 3 in its entirety



*The Big Sky Country*

SENATE STATE ADMIN.

3

3-9-87

HB 450

## MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE PAUL G. PISTORIA

HOUSE DISTRICT 36

HOME ADDRESS:

2421 CENTRAL AVE.

GREAT FALLS, MONTANA 59401

COMMITTEES:

LOCAL GOVERNMENT

STATE ADMINISTRATION

March 5, 1987

Jack Haffey, Chairman  
Members of  
Senate State Administration Committee

Dear Mr. Haffey and Members:

Due to the length of the hearing yesterday morning in your committee on my House Bill 450, I forgot to mention an important item in my testimony that all of you should know.

On July 18, 1985 I was tipped-off that Envirotech who has the contract with the City of Great Falls was at Vaughn, Montana, twelve miles west of Great Falls and was working on their sewer system.

I immediately drove out there at about 3:00 p.m.. Yes, to my surprise I did see Envirotech with their employees and two city licensed trucks cleaning out the sewer system. The trucks used were city owned that were in the 1982 contract. In fact, if you will read the 1982 contract on the last page you will see that city trucks listed are licensed and tax free. Why? Earlier, several times I brought this up, why should the City give Envirotech these trucks to use tax exempt? This was terrible. But, by me making an issue of this in the new amended contract of October 2, 1986, which I gave you yesterday morning, you will read where Envirotech bought the four trucks from the City of Great Falls.

After I brought this issue up I found Envirotech working on the Vaughn sewer system. At the city's next meeting they were alarmed and the city manager would have Envirotech compensate the city.

Envirotech later paid the City approximately \$4,200.00 for which an agreement was worked out. It probably was even higher.

I imagine Envirotech was making extra money on the City's

Jack Haffey, Chairman  
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contract using some employees and the city trucks. I have heard of everything but nothing like this, making extra money with some employees on this contract.

This all was written up in the Great Falls Tribune at the time. They also mailed a copy of the bill to me, the \$4,200.00 itemized bill from Envirotech. It so happens that I did not bring this file to Helena. But if you desire to see this material I will drive to Great Falls and get it for your committee.

Now, the main reason for me mentioning this to you, it definitely proves that this is not PROFESSIONAL work. How could it be, because their employees used pumps, shovels, tools and trucks. Hell, any ordinary workman can do this work.

Probably if I had not caught them, Envirotech would continue to do this to make money on the City's contract. This is terrible, making extra money from the City's contract.

Thank you.

Sincerely yours,



Paul G. Pistoria  
Representative

PGP/lb

# STANDING COMMITTEE REPORT

MARCH

9

37

19.....

MR. PRESIDENT

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

having had under consideration..... **HOUSE BILL** ..... No. **767**

third reading copy ( blue )  
color

**ALLOW USE OF ALTERNATIVE FINANCING ARRANGEMENTS TO ACQUIRE STATE BUILDINGS Fritz**

**HOUSE BILL**

**767**

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

NOT BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

.....  
**SENATOR JACK HAFPEY**

Chairman.

# STANDING COMMITTEE REPORT

MARCH

9

37

..... 19.....

MR. PRESIDENT

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

having had under consideration..... **HOUSE BILL** No. **450** .....

third reading copy ( blue )  
color

**LIMITING USE OF MUNICIPAL PROFESSIONAL SERVICES CONTRACTS**  
**Pistoria (Lynch)**

**HOUSE BILL**

**450**

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

**BE CONCURRED IN**

~~DO PASS~~

~~DO NOT PASS~~

.....  
**SENATOR JACK HAFPEY**

Chairman.