

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman William E. Farrell, on January 23, 1989, at 10:00 a.m. in Room 331, Capitol.

ROLL CALL

Members Present: Senator Hubert Abrams, Senator John Anderson, Jr., Senator Esther Bengtson, Senator William E. Farrell, Senator Ethel Harding, Senator Sam Hofman, Senator Paul Rapp-Svrcek, Senator Eleanor Vaughn

Members Excused: Senator Tom Rasmussen

Members Absent: None

Staff Present: Eddy McClure

HEARING ON SB 171

Presentation and Opening Statement by Sponsor:

Senator Dick Pineseault reported SB171 was requested by the Department of Justice. He turned the podium over to Peter Funk, and waived his opportunity for a closing statement.

List of Testifying Proponents and What Group they Represent:

Peter Funk, Assistant Attorney General, Department of Justice

Testimony:

Mr. Funk reported the Attorney General's office refers to this bill as a clarification bill, that it does not change existing statutory language, and deals with the forensic science laboratory in the Forensic Sciences Division in Missoula. He stated the bill attempts to clarify the roles of the different players involved in the Forensic Science Division. The Attorney General, the State Medical Examiner, and what will be known as, if this bill becomes law, the Manager of the State crime lab in Missoula. Mr. Funk then explained the changes indicated by the bill. He noted that, in Section 1, the language to be added is to clarify that the State Medical Examiner is also the administer of the Forensic Science Division, which is made up of the office of forensic pathology

and the laboratory of criminalistics. In Section 2, the change is to make clear that the State Medical Examiner provides direction and leadership to both of those subsets of the Division of Forensic Science. In Section 3, language has been added, subject to the approval of the Attorney General, under the duties of the State Medical Examiner, to make it clear that the State Medical Examiner is directly subordinate to the Attorney General. Mr. Funk further indicated that the change in Section 4 is a grammatical change to include the language "photographs and diagrams", which are to be included in the records to be preserved at the State crime lab. Sections 5, 6 and 7 change the title from Laboratory Director to Laboratory Manager, and language is inserted in Section 6 which makes it clear that the State Medical Examiner is the Laboratory Manager's boss, and that the duties of the Laboratory Manager are exercised subject to the State Medical Examiner's control.

Mr. Funk further indicated that Attorney General Marc Racicot and the current State Medical Examiner, Dr. Larry Godfrey, have both reviewed this legislation, and felt that the changes embodied in this bill would help clarify things as to the three roles, the Attorney General, the State Medical Examiner and the laboratory.

Questions From Committee Members:

- Q. Senator Bengtson stated that, obviously, there are problems as far as who is in charge, and asked if that is the reason for the change in language.
- A. Mr. Funk responded that is not the case. He stated they have not have any kind of supervisory problems arise. Mr. Funk indicated that Dr. Godfrey is fairly new as the State Medical Examiner, he has been there less than a year and, after his review of the existing statutes that relate to the Forensic Science Division, he proposed that some of these changes be made. Mr. Funk reiterated that he has not heard of a problem either in supervision of the State Medical Examiner by the Attorney General, or in supervision of the laboratory manager by the State Medical Examiner, that actually caused this legislation.

DISPOSITION OF SB 171

Senator Bengtson offered the motion that SB171 do pass.

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Recommendation and Vote:

Motion passed by the committee that SB171 do pass.

HEARING ON SB 165

Presentation and Opening Statement by Sponsor:

Senator Bob Brown indicated SB165 is very straight-forward, and is similar to a piece of legislation that was before the Legislature in 1981. He explained that the bill provides that deputy directors and division administrators serve at the pleasure of the department head, who is a member of the Governor's cabinet. Senator Brown stated this is different from the bill that was before the Legislature in 1981 and that employment protection is provided for deputy directors and division administrators. He indicated Section 1 reads, "a deputy director or division administrator who is hired after the (the effective date of this act) serves at the pleasure of the department head." Senator Brown further noted that the second provision is taken care of in subpart (b), which reads "a deputy director or division administrator removed pursuant to subsection (2)(a) may retain employment with the department at the same grade level and step . . ." He stated that, obviously, this bill is designed to make it possible for the new administration to carry forth the transition from the old administration. He indicated it is an effort on the part of the new administration to build responsiveness to the policies of state government at a level below the cabinet level. He noted that department heads are members of the Governor's cabinet, and are the only people that now serve at the pleasure of the Governor. The bill is designed to have the deputy directors and the division administrators also serve at the pleasure of the new administration. Senator Brown indicated the bill is also designed to protect division administrators and deputy directors in a way that they are not protected now. If the Governor should decide to replace any of them, the person who is replaced would be laterally transferred to another position in state government. This essentially gives them tenure. Senator Brown stated it is not designed to be any kind of a partisan political purge, but is designed to give the Governor control of the upper echelon of bureaucracy so that the people who hold those positions are committed to the policies and rules of the new administration. He noted that, in 1981 when Governor Schwinden proposed a similar piece of legislation, it went all the way down to the bureau chief level, and there was some concern about that in the Legislature. Senator Brown indicated that, when the

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incoming administration spoke to him about this bill before Christmas, he told them it was not a good idea to take it to that low level, as he thinks bureau chiefs very often are not policy-makers. Senator Brown added that he thinks division administrators can be, especially in some of the more politically sensitive departments. He noted it is not the position of the administration to wholesale replace division heads. In fact, Senator Brown reported he did some research, and there are 14 departments, and 87 divisions within the departments of state government. He noted approximately 8 of these positions have been filled since the Stephens administration came into power. At that rate, approximately 8 a month, Senator Brown stated Governor Stephens would have to be re-elected before he could replace every division administrator with a new person of his own, even if he wanted to do that. Senator Brown stated the Governor does not want to do that, but there may be some, from time to time, that he may want to replace, and he is entitled to have his own team on base, if he wants to bring that about.

Senator Brown reserved the right to close, and quoted John LeFever, who was Director of the Department of Revenue under Governor Schwinden, and who testified as a proponent to a similar bill in 1981. Mr. LeFever said "This is one of the most important pieces of legislation to give a new administration the levers of government." Senator Brown indicated he thinks that is true, although, in that particular piece of legislation, there was job protection for existing state government employees, division administrations, deputy administrators, and it went down to the bureau chief level. He noted those are the two significant differences between this piece of legislation and that one. It should not be partisan, it was not intended to be partisan, and Senator Brown indicated he hopes it does not become partisan. He noted it may be that the administration will change in 4 years from now and, if it does, the new administration coming in would want this same opportunity. Senator Brown indicated he thinks, in fairness, they ought to have it. If the people elect a different administration, the new governor should be entitled to have people on his team in the top levels of the bureaucracy, and that is what the bill is designed to bring about.

List of Testifying Proponents and What Group they Represent:

Wayne Phillips, Legislative Liaison, Governor's Office
Ken Nordtvedt, Director, Department of Revenue
Mike Micone, Director, Department of Labor and Industry

Testimony:

Mr. Phillips stated that Governor Stephens has proposed this bill, is interested in this bill, and would like to ask for the committee's support. He noted that Governor Stephens campaigned on change, and one of the things the public demands is that they see policy directions implemented in state government based on the change they elected in the Governor's office. Mr. Phillips indicated this bill would allow Governor Stephens to have that policy direction implemented in the different departments of state government and, as Senator Brown mentioned, it would also allow any future Governor to have that same policy prerogative. Mr. Phillips indicated that policy is really the issue here. He noted that deputy directors and division administrators are setting policy, are involved in policy discussions and policy communication in their departments, and it is policy the Governor needs to have control over. Mr. Phillips further stated they pledge to the committee that any individuals chosen for any of these positions by Governor Stephens will have the expertise and the background in professional leadership that they need for the particular position. He noted that, in the appointments the Governor has made to department director levels, he has emphasized those kinds of qualities, and will continue to do so through deputy department directors, as well as division administrators. Mr. Phillips emphasized the tenure provisions of the bill. He stated they feel this follows through on due process requirements, protects the individuals who are there, and would also make sure there is a thorough review before there is any wholesale replacement of individuals. Mr. Phillips thanked the committee, and indicated he would be available to answer any questions.

Testimony:

Mr. Nordtvedt indicated his support of this bill. He noted he has had about 4 weeks of experience in what is involved in taking over a department, trying to understand what is going on, and getting policies implemented. Regarding the issue of policy, Mr. Nordtvedt indicated that, if you read the statutes, the director in each department is the only person who has statutory authority to set policy, and the statutes say that he does this with the approval of and interaction with the Governor. He noted the reality is that no director can be an expert on the thousands of little questions that come up in a large department with many divisions. He indicated that, when he is faced with a question, and a decision he has to make, i.e., set policy, he writes a memo to his division heads, who are experts in that particular

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question, and asks what are the options; what are the pros and cons of the various ways to decide this. Mr. Nordtvedt stated the director ultimately makes the decisions setting policy, serving the Governor, but these other key management people in the top levels of the department participate in that policy-making process by bringing the information, and offering the options, through the director. He noted that, in the real world, it could not be any other way. Mr. Nordtvedt indicated that, if we are going to have departments that carry out the policies of our Governor, whoever he or she may be, it seems that the management leaders of the departments should be on the same wave-length. He noted he thinks this kind of bill is a step in the direction of making state government more accountable. As for the political implications, Mr. Nordtvedt indicated that, if the Governor can essentially appoint deputy directors and division heads, as well as directors, then people can hold him more accountable after a few years for what his government accomplishes, or does not accomplish. There is always the cloud, now, that the Governor has insufficient ability to staff state government to really implement his policy, and Mr. Nordtvedt indicated he thinks this is a step towards greater accountability in state government, no matter who has been elected to that office. Mr. Nordtvedt stated the grandfather clause is an important one because they are having trouble staffing the top management positions of state government. He noted the pay levels are not extremely competitive with the private sector, and a lot of people who reach the level of division head or deputy director, through a career in public employment, are very employable in the private sector. He stated if we did not give career protection by finding lateral employment, if a department wanted to reorganize and find someone else for a particular position, they would have an even harder time filling these positions, and Mr. Nordtvedt indicated he is glad this is a feature of this bill. He also pointed out how limited the tools of management are under the present system. Not only can the Governor not appoint many people throughout state government, there is essentially no merit system in the state pay plan. The workers who are producing and are being effective can not be rewarded as distinct from other workers. He noted there are very few tools to properly organize the department, and every tool we can get we need. Mr. Nordtvedt indicated there will not be, if this bill passes, a wholesale replacement of deputy directors and division heads. Directors would be foolish, when they have to successfully manage a department, to terminate the employment of people who have been on the job for many years, and have been effective in carrying out the day-to-day management of the department. Mr. Nordtvedt

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indicated that, if he came in and tried to replace his top-level management team, he would immediately pay the price of tax collections not being made, and essentially chaos growing in his department. He noted that any director is going to use the prerogatives of this bill very carefully, and particularly focus on those positions that are directly related to formulating and implementing policy on behalf of the Governor. Mr. Nordtvedt indicated he thinks this is a long-overdue bill that will increase accountability in state government.

Testimony:

Mr. Micone indicated he also supports this piece of legislation, and asked for the committee's concurrence. Mr. Micone reported he spent 10 years in local government as Mayor and Chief Executive and, during that period of time, there were a number of management positions within departments of local government. He noted all of those individuals serve at the pleasure of that department head or, particularly, the Mayor. Mr. Micone stated the Federal Government has recognized the need to have positions below cabinet-level serve at the pleasure of the cabinet-level position, and noted it is important to recognize the responsiveness of individuals in management positions. Mr. Micone indicated he thinks that, if you look at the private sector, any business, whether it be large or small, has to bring in their own management team, and that management team is important for the survival of the philosophy of the particular chief executive and for the success of that business. Mr. Micone indicated he also thinks the legislative branch of government functions very similar to this. Every employee within the legislative branch is an exempt employee and, although there are differences within the various committee structures, the department heads and division administrators within the various segments of the legislative branch do serve at the pleasure of the particular committees. Mr. Micone stated he supported the legislation in 1981. Mr. Micone added that, in 1980, he was a classified employee and was in a particular position that, towards the end of Governor Judge's term, he de-classified himself because he thought it was very important that Governor Schwinden have the opportunity to appoint his management team. He further stated that he thinks the management philosophy is important to the success of any management team, and it is important that management staff not only be evaluated on qualifications and performance, but also on their commitment to the policies and goals of the chief executive. Mr. Micone indicated he believes that, in the Department of Labor and Industry, there are some very fine administrators and it would not be his intention to go in there, if this bill passes, and replace

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every division administrator because that would not be responsible on his part, and would be detrimental to the operation of the state. But, Mr. Micone added, it is important that they have that option. Since he has held his current position, Mr. Micone indicated there was a problem where they had to discipline someone within a management level, not a division administrator. He noted that, in the process that must be followed in disciplining individuals within state government, it becomes very difficult to dismiss any individual. The process is long, and it must be detailed. The circumstances in that particular case could have warranted dismissal, but they went as far as they could without invoking that, because they did not want to find themselves in the first instance before the board of appeals. Mr. Micone indicated he would hope that this committee would look upon this piece of legislation, not as one that is going to have wholesale dismissal of individuals, but one that will provide the management tools necessary for the operation.

List of Testifying Opponents and What Group They Represent:

Jim Jenson, Executive Director, Montana Environmental Information Center

Stan Bradshaw, Montana State Council, Trout Unlimited

Jo Brunner, Montana Water Users Association

Robert Lane, President, Montana Association of Conservation Districts

Janet Ellison, Montana Audubon Legislative Fund

Testimony:

Mr. Jenson indicated that, on its face, this change looks like a way for a Governor to, in fact, have more power to implement the will of the people, which is what he gets elected to do. Testimony here today has argued that point. Mr. Jenson noted that, from an organization representing the interests of the public in environmental matters, exactly the opposite is most likely to happen. He stated that, as you have seen with the Stephens administration coming in to the Governor's office, people without that protection leave because they see that, within a month, they will not have a job, or they may not have a job. Therefore, the Governor is faced with a more difficult situation than the one which exists today, with 8 to 14 department heads having been selected, which is that those departments won't have administrators in the divisions, let alone deputy directors, let alone directors, for what could be months during the transition period between one administration and the next. Mr. Jenson indicated, as a practical matter, that could be a very difficult problem for the

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Legislature. Mr. Jenson recalled that, in his short stint as a Legislator, they had to depend on the administration to provide them with important information right up front, during the session, in order to get going and get work done. Without those key people who understand how the agencies are managed, it would be much more difficult for the Legislature. Also, there are certain of these division administrators in various natural resources agencies who have technical expertise that is extremely important to their ability to manage the agency. It makes sense to have someone with those qualifications. Mr. Jenson stated, in this bill, what we have is completely contrary to the idea that we should have patronage so far down the line. He indicated the question before the committee is do they want a patronage system, or do they not. Do they support professional, well-managed, well-run government. Mr. Jenson referred to Mr. Nordtvedt's comments that he had to ask for information from people in his department. Mr. Jenson noted that, if those people were not protected, if those managers were not there to be available, Mr. Nordtvedt would not be able to get that kind of information, and it would be a more significant disadvantage than he may find at the moment. Mr. Jenson stated that, for those reasons, this committee should look very carefully at the depth to which this bill reaches into the management of government, into the bureaucracy, before passing it. Mr. Jenson urged that the committee at least eliminate the division administrators from this recommendation.

Testimony:

Mr. Bradshaw indicated that this bill is of great concern to Trout Unlimited. He stated their concern is that this bill resurrects the patronage system, and takes it down into department government. Mr. Bradshaw stated he worked for many years in government, and division administrators generally are not policy-makers. They are precisely what their title says they are. They are administrators. He noted that, if there are, in fact, division administrators making policy in state government, that is the fault of the particular director. Policy is not inherent in a division administrator's position. Quite the contrary. Their particular value is in their management skills, their knowledge of the programs and the particular subject within which they have to deal. They are the people that provide continuity and direction in programs. They don't provide policy direction. Mr. Bradshaw indicated that, as such, he thinks it is important they have that experience in their field and knowledge of the programs. Under current law, when a division administrator is hired, there are specific hiring criteria; specific kinds of ex-

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perience that qualify him to handle the position. Under the terms of this bill, virtually any hack could be a division administrator, without regard to whether he is qualified to handle this position. Mr. Bradshaw discussed the assurance of employee protection in this bill. He stated he thinks the assurance of continued employment for those who would be removed from division administrator positions is largely illusory. He indicated that, on one hand, the administration is pledging to cut government and to cut government spending. On the other hand, we have a bill in front of us now which is suggesting that we will put new division administrators and deputy directors in, without cutting these people loose, and we are going to find something for them, and put them somewhere. Mr. Bradshaw stated that these two things are fundamentally contradictory, and what he suspects is that a year or 2 down the road, these people are going to disappear from state government under the auspices of reduction in force. He noted there is nothing in the bill which would preclude that kind of thing, and Mr. Bradshaw further indicated he thinks the protections there are illusory. He added he thinks it is rather cynical to suggest that, in fact, these people have any real protection over the short-term. He noted the tragedy is, in many cases, we are dealing with employees who have spent many years in those positions in state government, developing expertise and giving the best years of their life, in fact, to those agencies. Now we have a bill that is saying we will move them to positions unknown, in effect, for which they are qualified. There is no real assurance of protection for these people. Mr. Bradshaw indicated that what he thinks we have here is a bill that, far from enhancing good government, is very likely to encourage bad government. Mr. Bradshaw indicated that Senator Brown suggested he opposes this bill because he is comfortable with the Democrats who are in power. Mr. Bradshaw stated he did not like this bill in 1981, when a Democrat proposed it, and he doesn't like it now. Mr. Bradshaw indicated there is a surprising number of division administrators who are not Democrats, but who are where they are because of the particular skills and experience they brought to the job. That's what we need. Not more of the old-time spoil system. Mr. Bradshaw urged the committee to kill this bill.

Testimony:

Ms. Brunner reported the Water Users Association has a great concern for the building of a so-called bureaucracy within the various departments by the department heads and the assistant directors. But, she indicated, there is a greater concern in the time element that it would take to replace the people who

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are knowledgeable in the various programs that they work on. She noted that, to say these two gentleman and her organization have not been at logger-heads over the makeup of the people in the Department of Natural Resources would be understating it, but the fact is that those are knowledgeable people, and she would not look forward to having to wait 6 months to a year for someone to catch up on the programs that they feel need to be implemented immediately. Ms. Brunner further noted that their greatest concern is the time lag and the change in direction that would come about; much different from the one that they can expect now. They believe there are very knowledgeable people as department heads and, although it would be nice to pick and choose, they certainly would not like to see that happen in the departments that they have worked so hard and so long on. She indicated she thinks that Mr. Nordtvedt, in all due respect, gave a lot of good reasons why this should not come about. He has the knowledge there and, in their instance, they need the knowledge immediately, not several months down the road. Ms. Brunner indicated they ask that the committee do not pass this bill.

Testimony:

Mr. Lane stated he would also like to speak in opposition to SB165, and that the Association of Conservation Districts has several reasons. They feel that, currently, the Governor has the power to appoint over 1100 people to various boards and division heads, and that should make quite an impact on the direction that our state government will take. Some positions in various departments are going unfilled because of lack of qualified applicants. Pay is one reason, but they feel that, with the uncertainty of political changes which could come about every 4 years, qualified and dedicated people will be less willing to serve in state government. Mr. Lane indicated he thinks, as Ms. Brunner stated, there are people they work with all the time at DNRC who are knowledgeable and dedicated people. Although they assume these people would not be removed at this time, political winds can change.

Mr. Lane indicated he has written testimony from Ms. Michelle LeFurge, a partner in Montana Market Development Company, and read portions of that testimony. A copy of Ms. LeFurge's testimony is attached as Exhibit 5.

Testimony:

Ms. Janet Ellison indicated the Audubon Fund opposes SB165. Ms. Ellison's written testimony is attached as Exhibit 6.

Questions From Committee Members:

- Q. Senator Vaughn asked Senator Brown where would those people be put, and how long would their jobs would be left for them. She further asked what protection would these people have, and how long would they have a job.
- A. Senator Brown read page 2 of the bill, subparagraph (2), and explained that this means the administration is not going to, on a wholesale level, transfer 87 division administrators. He noted most of the positions are not political, and those individuals will not be moved. But, Senator Brown noted, there may be some in politically sensitive positions that the administration might feel better served if someone with a genuine commitment to the administration's policies were to fill that position. Senator Brown stated that what would happen is the current division administrator would be transferred to another job where he or she would be qualified, and would stay there unless there was ever good cause to remove that person. Senator Brown pointed out the job protections in the existing law are not changed in regard to people being summarily removed from a position where they are doing a job. Senator Brown further stated he does not see this as a return to the spoil system, and he thinks these people are seeing ghosts and making a mountain out of a mole hill. He stated it gives the administration flexibility to do what it might want to do, if it might want to do it. He indicated he does not think the effectiveness will be great, but it gives the Governor the power to reach a little further down into the bureaucracy to have what he needs, if he wants it.

Mr. Phillips added that one of the things that should be kept in mind is the due process requirement for removal of any State employee. He indicated that, in order to remove employees due to reduction in force, there are various steps to go through, and requirements that have to be met, and it is not something undertaken lightly.

- Q. Senator Harding asked Mr. Jenson if he thinks, if this bill were put into place, people that were moved into another position, maintaining the same grade level, step and step increases, would be so disenchanted with a different position they would quit. She further asked if they were not in control of the division, as they had been, would that be a reason for them to quit, and is that the Environmental Information Center's concern.

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- A. Mr. Jenson responded that this is not as great a fear as the one of people who have been managers, and are moved to a position of other than manager. He stated that this is not in concert with their career thinking, and a move from a management position to a non-management position tends to make people less happy with their career goals. He indicated that the bigger concern is that people without this job security are likely to leave before the new administration comes, and that person will not be there to move around; there will be a vacancy. 4 years or 8 years from now, there could be a change in administration and people will leave. Department heads, division administrators and directors will be gone all at once. They will go out and try to find other work that has some continuity and security.
- Q. Senator Bengtson asked Senator Brown, regarding the emphasis on policy, how this bill puts so much power in the policy-makers, whether it be the Governor's office or the agencies, and how far down that policy goes. She further asked what role the Legislature will play in trying to be an effective check on the executive branch of government, and if he feels having that much power invested in policy cripples the Legislature, as they represent the people.
- A. Senator Brown responded that the Legislature is the policy-maker for the State of Montana. What the Legislature approves by their vote, and is signed into law by the Governor, becomes the policy of the State of Montana. He stated that, in an election campaign, certain issues are discussed, the results of those issues are percolated through the Legislative process, and signed into law by the Governor. They then need to be carried into effect. If upper echelon decision-makers in key government positions of the bureaucracy are committed to past policies, they are in a position to handicap the new policies from taking effect. Senator Brown cited some examples. He noted that, of the almost 12,000 State employees in Montana, this affects 101 of them. The Governor now has the power to hire and fire the 14 department directors. Those 101 people that he would have the power to hire and fire, that he does not have now, are protected by the tenure provision of the law. Senator Brown indicated he does not think this would be used very much, but stated he feels the new Governor should be given the opportunity to put key people in sensitive positions to carry out his policies.

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- Q. Senator Bengtson then asked, going back to 1981 when this same legislation was defeated, if Senator Brown feels that the Schwinden administration was handicapped as far as implementing policy.
- A. Senator Brown responded no. He reported that he voted against the bill in 1981 and, at that time, told the Schwinden administration that he thought the bureau chief level was too low. Senator Brown indicated he also had a problem with the division administrators. He pointed out the tenure provision was placed in the bill to cover not only division administrators, but also deputy department directors, and he felt more comfortable with it. Senator Brown pointed out the 2 things that were not contained in the 1981 bill, that are contained in this one and which he thinks are significant, are (1) it does not go all the way down to bureau chief; it stops at division administrator, and (2) it protects them even if they do need to be moved.
- Q. Senator Rapp-Svrcek indicated he is concerned about the tenure provision for current administrators. He cited an example where an administrator is replaced, is placed in a position for which he or she is qualified and then, at some point, assuming it would be an upper-echelon position, that person might come at logger-heads with the person who had replaced him. Senator Rapp-Svrcek asked if, at that point, because of the disagreement there, would that not be good cause to let this person go.
- A. Mr. Phillips responded that, as he understands the process, which is very complex, there has to be more than just disagreement. There has to be people who refuse to carry out requests of an administrator, this has to be documented, and there has to be notice of that. Mr. Phillips indicated it is about a 3 or 4 tier process, and an individual can not be let go just because there happens to be a disagreement.
- Q. Senator Rapp-Svrcek then asked what kind of positions do they anticipate putting these administrators in that have been removed from management.
- A. Mr. Phillips responded that, assuming these individuals have some technical expertise, the ideal would be to use that expertise to the best advantage. There can not be a wholesale assumption that these individuals with expertise are going to be replaced. Mr. Phillips stated that, if you draw a line between those who are genuinely

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making policy and those who are genuinely providing almost exclusively technical expertise, there would be very little likelihood that the technical people would be replaced, as they are hard to find.

- Q. Senator Rapp-Svrcek then asked if Mr. Phillips anticipates creating new positions for those people who are replaced.
- A. Mr. Phillips indicated he is not educated enough to know how each department director would want to approach that in order to answer the question effectively. He indicated the department directors would look at the lay-out of their department, where the needs are, and what kinds of individual expertise is needed in a particular area. He pointed out this is not a decision that will be made by the Governor or the Governor's staff, but is to be made by the department director.
- Q. Senator Abrams asked Mr. Micone to respond to the same question.
- A. Mr. Micone indicated the individual that may or may not be replaced, and they are only talking about those individuals in administrative positions today, are being grandfathered, or guaranteed a job. Each department will be looking at where can they best fit that particular individual to best serve the department. That is the only avenue they are looking at.

Mr. Micone added, in response to a question asked earlier by Senator Bengtson, that he felt Governor Schwinden was handicapped because a bill of this nature was not passed. He referred to the claims that were filed against Governor Schwinden by personnel that filed grievances. He indicated that Governor Schwinden did not have the flexibility to staff his administration as he wished, and had to go through a number of procedures. Mr. Micone referred to the fact that some individuals who testified today, and are heads of associations, were talking about career development. He indicated that he and Mr. Jenson, as well as others who have been in the association business and appointed by boards, have become instant experts. He indicated this is a situation that is important to management policies, and administrators are definitely a part of the management policy decisions.

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Mr. Jenson reported that he studied public administration in graduate school, and does have some expertise beyond mere appointment by a board of directors.

- Q. Chairman Farrell asked Mr. Tom Schneider, if there was a reorganization in a department, is there any protection for those administrators now.
- A. Mr. Schneider asked that the record show he is in attendance as an observer only, and is not testifying on this bill. He then responded to Chairman Farrell's question by reporting that, currently, anyone not covered by a collective bargaining agreement is covered by the wrongful discharge statutes of the State of Montana. Therefore, everyone, except perhaps the department directors, has access to that statute, and Mr. Schneider noted it has been used a lot.
- Q. Chairman Farrell asked if there is any other statute that protects the administrators now, other than wrongful discharge.
- A. Mr. Schneider responded no, that the same statute that protects the private sector is in place for all employees, but that is the only statute, per se, that has an effect. He added, however, there are some individual statutes in different places, but no other over-all statutes.
- Q. Chairman Farrell asked Mr. Bradshaw, referring to his testimony regarding reduction in force, if it is possible now for a new director to reorganize an agency, and simply remove these people.
- A. Mr. Bradshaw responded that, to some extent, the ability to reduce force is already in place. He added that there would be no rationale to eliminating a division administrator but that, theoretically speaking, yes, that can happen. Mr. Bradshaw indicated that, practically speaking, there would have to be some rational basis for doing it. He indicated the point he was trying to make is that this is a situation where a person will be taken out of an existing and, in most cases, necessary position, and put someplace else. He noted that there is not a lot of census as to where that person would go. Mr. Bradshaw stated the reduction in force process is a governmental process whereby an administrator can look at his operations and either determine they no longer have any money for a particular position, or no longer

SENATE COMMITTEE ON STATE ADMINISTRATION

January 23, 1989

Page 17 of 19

have a need for the position. They can then go through the process to eliminate the position. Mr. Bradshaw indicated this process is not subject to the wrongful discharge protections, or any of the other procedural protections in this bill. It is an operational process, and one that is needed from the standpoint of being able to keep the force to the size of the revenue. Mr. Bradshaw pointed out that, if revenue disappears for some reason, and people can not be kept on, they are not being gotten rid of because they were bad performers, but because the position wasn't needed, or the department couldn't afford it. He indicated his concern is that former deputy directors or division administrations will be placed in a position somewhere, and no one seems to know where at this point, and then, down the road in the budget crunch when the budget needs to be reduced, the division administrator will not be eliminated, and it is probably going to be the individual that was moved into this other position, whatever it may be.

Q. Chairman Farrell asked if it would be a consideration of the director in that department as to how many people he could have. Chairman Farrell further asked if, in the budget process right now, are they tight on personnel.

A. Mr. Bradshaw responded that you would hope so, but it raises the point of the seeming contradiction. He noted that if they are that tight, and if they do it, his contention is that the protections described in this bill are rather tenuous. Mr. Bradshaw added that, if they do that, when they don't really have the capability but want to get their own policy person in there, the logical way of dealing with that money crunch is to get rid of the position that you don't really need.

Q. Chairman Farrell then asked, with this bill, is there more protection than there is today.

A. Mr. Bradshaw responded no.

Closing by Sponsor:

Senator Brown indicated that he would like to comment on reductions in force. He stated this can be done, and this will continue under this bill, but he thinks what this bill proposes is an option to that. Senator Brown stated this bill makes it possible to keep someone who may have a lot of technical expertise, and can make a contribution to State government, still working for state government, by replacing

that person as a deputy administrator or division administrator. He indicated this gives a signal to the career State employee that he can accept a promotion as division administrator or deputy department director, and not have to assume that the next time the administration changes, his career may be wiped out forever because his job will be lost to political patronage. Senator Brown further indicated that this bill protects those people, and makes it possible for them to get promoted to that point, but it still gives the new Governor the flexibility to change the people in politically sensitive positions he wants to change.

Chairman Farrell announced the hearing on SB165 as closed.

DISPOSITION OF SB 165

Discussion:

Senator Bengtson offered the motion that SB165 do not pass. Senator Rapp-Svrcek asked that the committee not take executive action on SB165 at this time, and Senator Bengtson withdrew her motion.

OTHER BUSINESS SB 125

Discussion:

Senator Harding offered a motion that SB125 do pass. She indicated the bill would not cut down on the retirement, that they still have to work the 25 years, but are allowed to buy back 1 year for every 5 years. Senator Bengtson asked if there was a grandfather clause in the bill. Senator Harding asked if she was referring to the one in Section 3 on page 4, and Senator Bengtson replied yes.

Recommendation and Vote:

Motion passed by the committee that SB125 do pass.

HEARING ON SB 174

Presentation and Opening Statement by Sponsor:

Senator Dorothy Eck indicated that SB174 was requested by local landscape architects, and it does not change the membership of the Board of Landscape Architects, but provides that a public member does not necessarily have to be the chairman of the committee. She noted it is not a general

provision with boards that a public member has to be the chairman. The public members will still be on the board, but would rather not serve as chairman.

List of Testifying Proponents and What Group They Represent:

None.

List of Testifying Opponents and What Group They Represent:

None.

Questions from the Committee:

None.

DISPOSITION OF SB 174

Discussion:

Senator Hofman offered a motion that SB174 do pass.

Recommendation and Vote:

Motion passed by the committee that SB174 do pass

OTHER BUSINESS

HB 37

Discussion:

Senator Bengtson offered a motion that HB37 do pass.

Recommendation and Vote:

Motion passed by the committee that HB37 do pass.

ADJOURNMENT

Adjournment At: 11:30 a.m.


WILLIAM E. FARRELL, Chairman

ROLL CALL

STATE ADMINISTRATION COMMITTEE

51ST LEGISLATIVE SESSION

DATE: January 23, 1989

NAME	PRESENT	ABSENT	EXCUSED
HUBERT ABRAMS	✓		
JOHN ANDERSON, JR.	✓		
ESTHER BENGTON	✓		
WILLIAM E. FARRELL	✓		
ETHEL HARDING	✓		
SAM HOFMAN	✓		
PAUL RAPP-SVRCEK	✓		
TOM RASMUSSEN			✓
ELEANOR VAUGHN	✓		

SENATE STANDING COMMITTEE REPORT

January 23, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration SB 171 (first reading copy -- white), respectfully report that SB 171 do pass.

DO PASS

Signed: Farrell
William E. Farrell, Chairman

W.E. Farrell
1/23/89
1:13 P.M.

SENATE STANDING COMMITTEE REPORT

January 23, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration SB 125 (first reading copy -- white), respectfully report that SB 125 do pass.

DO PASS

Signed: *William E. Farrell*
William E. Farrell, Chairman

*y.c.
1/23/89
2:26 p.m.*

SENATE STANDING COMMITTEE REPORT

January 23, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration SB 174 (first reading copy -- white), respectfully report that SB 174 do pass.

DO PASS

Signed: William E. Farrell
William E. Farrell, Chairman

W.E.
1/23/89
1:11 P.M.

SENATE STANDING COMMITTEE REPORT

January 23, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 37 (third reading copy -- blue), respectfully report that HB 37 be concurred in.

Sponsor: Cohen (Farrell)

BE CONCURRED IN

Signed: William E. Farrell
William E. Farrell, Chairman

W.E.F.
1/23/89
1:11 P.M.

EXHIBIT NO. 1

DATE 1/23/89

BILL NO. SB171

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME: Peter Funk DATE: 1/23/89

Address: 510 W. LAWRENCE

Phone: _____

Representing whom? Dept of Justice

Appearing on which proposal? SB 171

Do you: SUPPORT? AMEND? OPPOSE?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 1/23/89

STATE ADMINISTRATION COMMITTEE

BILL NO. SB165

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME: Nordtveelt

DATE: 1/23/89

Address: DOR

Phone: X 2460

Representing whom? DOR

Appearing on which proposal? SB 165

Do you: SUPPORT? AMEND? OPPOSE?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

EXHIBIT NO. 3

DATE 1/23/89

BILL NO. SB165

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

DATE:

Jim Jensen / MEIC

1-23-89

Address:

Box 1164

Hlna 59624

Phone:

~~227 6920~~ 443-2520

Representing whom?

MEIC

Appearing on which proposal?

SB177 165

Do you: SUPPORT? _____ AMEND? _____ OPPOSE? X

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

EXHIBIT NO. 4

DATE 1/23/89

BILL NO. SB 165

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME: Stan Bradshaw DATE: 1/23/88

Address: 824 9th
Helena

Phone: 443-4171

Representing whom?
Forest Unlimited

Appearing on which proposal?
SB 165

Do you: SUPPORT? AMEND? OPPOSE?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



MONTANA MARKET DEVELOPMENT COMPANY

SENATE STATE ADMIN.

EXHIBIT NO. 5

DATE 1/23/89

BILL NO. SB165 pg 1

January 20, 1989

TO: State Administration Committee

RE: Senate Bill #165

BY: Michelle LeFurge, Partner, Montana Market Development Company

Mr. Chairman and Members of the Committee:

My name is Michelle LeFurge and I am a partner in the firm Montana Market Development Company, an economic development and market research firm in Butte, Montana. My partners and I formed our Montana business in 1976, after I and Dennis Winters moved to Montana from Washington DC where we operated a political research and analysis firm for ten years.

I am here today to express my opposition to the proposed amendment that would allow deputy directors and division administrators to become politically appointed.

Information is our business, and we often work closely with career public servants in the Montana state government and in the federal government in Washington, DC. Contrary to popular perception, we have found these "bureaucrats" to be dedicated, informed and active proponents of their departments functions. They provide important professional expertise and valuable information that far too often cannot be found in Montana's private sector.

To those of us who work with and/or utilize the services provided by our State departments, there are two important characteristics of government service we would lose if this bill were to be enacted: continuity in knowledge and continuity in expertise.

The knowledge and expertise senior public servants are hired to collect and provide is far too valuable to subject to the winds of political positions. If our senior public servants are asked to double-think each effort and action, knowing that their career is on the line, their focus would necessarily have to shift away from professional considerations and more toward political implications. It is a loss our State cannot afford.

Page 2
January 20, 1989

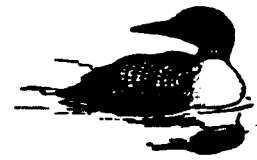
Montana is losing many of its professional people to jobs in other states. When our state government can attract and keep professional people who are willing to make public service their career, we should count ourselves doubly fortunate. The motivation toward a public service career certainly isn't money. The pay of deputy directors and administrators is often lower than what they might get in the private sector--were they able to stay in the State and in their chosen career.

To subject our senior public servants--those who have proven skills in their field and proven dedication to a public service career--to the uncertainty of political partisanship is not only unreasonable, it will make more difficult the State's ability to keep its best people in government.

We need to keep our senior career public servants. To take away any possibility of advancement to a senior decisionmaking level is to make public service less attractive to the up-and-coming, highly qualified young people of Montana. As Montana continues to lose population, what we are losing is our best and brightest young people. We don't need to close another door on their prospects of finding a satisfying career here at home.



Montana Audubon Legislative Fund



Testimony on SB 165
Senate State Administration
January 23, 1989

SENATE STATE ADMIN.

EXHIBIT NO. 6

DATE 1/23/89

BILL NO. SB165

Mr. Chairmann and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of nine Chapters of the National Audubon Socitey and represents over 2500 people statewide.

The Audubon Fund opposes SB 165. We feel that there is an adequate opportunity for a Governor to give direction to state departments through the current non-political process of determining deputy directors or division administrators. The current process allows the Governor to appoint the Department heads for a state agency, as well as commission and board members who then also help set agency policy (Fish and Game Commission or Borad of Natural Resources, as examples).

The Audubon Fund is a bipartisan group of citizens organized because we believe that an important state resource needs protec-
ion: Montana's environment. We are not organized because we support a particular state agency. We want the division adminis-
trators of the Department of Fish, Wildlife & Parks, as an example, to know about resources. We care that the Fisheries Division administrator knows fish and the Wildlife Division administrator knows wildlife. We do not care if the Division adminiestrators are Democrates or Republicans. If we cared about the politics of those individuals, the resource would suffer. Who will present resource information to the Department head - a politician or a qualified career individual who understands resources? We feel the passage of SB 165 would harm our environmental resources.

Please ask for a Do Not Pass on this regressive bill.

EXHIBIT NO. 7

DATE 1/23/89 STATE ADMINISTRATION COMMITTEE

BILL NO. SB165

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME: Jo Brunner DATE: 1/23/89

Address: 1712 Jerome Place
Helena. 59601

Phone: 442-7109

Representing whom?
Mont. Water Resources Assoc.

Appearing on which proposal?
SB 165

Do you: SUPPORT? AMEND? OPPOSE?

Comments:
Although we have a great concern for
the building of a so called permanent bureau
through continuity in department heads + as such
our greater concern is the cost to our programs
in time and in expertise at the whim of a
senator. We believe that many of these people are
more dedicated to their jobs and accomplishing the
work needed to be done than to certain able to
subject their philosophies -

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

