

MINUTES

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

Call to Order: By Chairman William E. Farrell, on March 17, 1989, at 10:00 a.m., 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 Tom Rasmussen, Senator Eleanor Vaughn.

Members Excused: Senator Paul Rapp-Svrcek

Members Absent: None

Staff Present: Eddy McClure

HB 336

Discussion:

Chairman Farrell indicated Senator Rasmussen has some amendments to HB336, and that he also has some amendments. Senator Rasmussen indicated he has not read his amendments yet, and asked Ms. McClure or Anne MacIntyre to run through this to refresh the committee on what they are doing there.

Ms. McClure indicated that the federal statute has a lot of exemptions, and that Senator Rasmussen wanted the federal exemptions regarding prohibition against discrimination put into the bill. She indicated the problem, noting that she and Ms. MacIntyre talked about it, is that they are difficult to read, there are a lot of provisos, and she asked Ms. MacIntyre to explain about how they tried to make them into Montana english.

Ms. MacIntyre stated that the exceptions contained in the federal law are essentially for small property owners, and that amendment #2, new subsection (5), provides that prohibitions of this section against discrimination, because of age and familial status, do not extend to any single family house sold or rented by a private individual owner, unless, and

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noted that the provisos Ms. McClure was referring to are the list of (a) through (f). She indicated that, essentially, if the private individual owner owns more than three single family houses, the statute would apply; if an individual sold one or more single family houses in the previous 24-month period, the statute would also apply; if the owner is not a bona fide private individual owner, the statute would apply; if the owner owns an interest in or title to more than three single family houses, it would apply; if the owner uses a real estate broker or sales person, or other type of agent, the statute would apply; if the owner sells or rents the house with publication, posting, or advertisement or written notice, then it would apply. Ms. MacIntyre indicated the second major provision is in (7), which provides that, for owner-occupied 4-plexes, and smaller, those persons would be excepted from the provisions of the statute. She indicated they limited this to discrimination based on age and familial status, not the other areas of the statute, which race, sex, religion, and those things that they are concerned about. She stated that Chairman Farrell had asked, in earlier deliberations on this bill, that they come up with some information about the impact of these amendments, if they were adopted. She reported that the only information available concerning the impact, that she is aware of, is from the 1980 census. She indicated that, in 1980, there were 89,162 renter-occupied dwelling units in Montana and that, of those, 44,149, or 50%, were single-family houses. She noted there is no way to correlate how many of those single-family houses are owned by someone who may own more than three single-family houses, but indicated her guess would be that it is probably not the majority of those 50% of rental units in this state.

Ms. MacIntyre indicated that, regarding owner-occupied 2, 3 and 4-plexes, it would appear that about 12% of the rental units in the state are 2, 3 and 4-plexes. Chairman Farrell asked if that is 12% of 89,000. Ms. MacIntyre responded that is correct, that it is 11,000, 11,005. She stated that the effect of these amendments, it appears to her, is to exclude somewhere between 50% and 62% of the rental units from the coverage of the law. Chairman Farrell restated that is around 50% to 60%, with these amendments, noting that is under the federal constitution, and asked Ms. McClure if, with these amendments, they are opening themselves up to a suit from the state constitution.

Ms. McClure responded that she does not think so, but indicated it is hard to tell. Ms. MacIntyre stated that, in the equal protection clause of the state constitution, there are no references to age, or to protection of children. She

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indicated that all of her research indicates the courts will not apply a level of strict scrutiny, or heightened scrutiny, to age-based extensions, that the court will look at age-based extensions with a rational basis test, so that, if it is felt there is a rational basis for the exceptions, which are, typically, in constitutional law, a pretty easy standard, there is not an equal protection problem. She stated the only other constitutional provision in the Montana Constitution, that she is aware of, which might apply here, is the one she referred to in her testimony, which is Article 2, Section 16, which provides that children are, under the law, under the constitution, to be accorded the same rights as adults, except when the Legislature enacts statutes to enhance their protection.

Chairman Farrell indicated that the question is do they want to exempt 60%, or what his amendment does, about 20%, or 25% of the people, for 4-plexes. Ms. MacIntyre responded that the amendment they prepared for him was for 2-plexes, which are owner-occupied. She indicated that would exempt, under the same statistics from the 1980 census, about 4,500 units, or 5%. Senator Bengtson stated that she thinks to exempt 50% to 62% is a little much.

Senator Rasmussen stated that he would support his amendment, because it seems reasonable, to him, to have the state and the federal language relatively the same. He indicated that it does not seem wise to have the federal standards one thing, and the state the other because, then, the owners are really getting whip-shawed back and forth. He stated that he thinks it is logical to have them the same, and he thinks there is some sentiment for being concerned about the small property owner, noting that maybe there are not that many that are small. He indicated he thinks that is reasonable, if this bill is going to pass, and that is the way he would like to see it pass, noting that he thinks it is a reasonable form to have it in.

Chairman Farrell asked Senator Rasmussen if he has moved his amendments. Senator Rasmussen offered a motion that the amendments be adopted.

Senator Harding stated that she would agree with the amendments, indicating that, as she stated before, she thinks it is awful when people exclude families with children, but added that she thinks we need to protect the small private owner who only rents to one, noting that this amendment, as she understands it, would include up to 4-plexes, which is just a 4-family unit. She further indicated she agrees that it is

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wise to be in conformity with what the feds do, and does not think they need to be any stricter than that.

Senator Vaughn indicated that Section A states a private individual owner who owns more than three single-family houses, and asked if that is only rental houses; if that is not talking about the one that they might live in themselves, and includes just those three rentals. Ms. MacIntyre responded that she thinks it would include the one they live in. Chairman Farrell explained that they could have two rentals, plus the one they live in.

Senator Abrams asked if he understands correctly, regarding the prohibitions of this section against discrimination because of age. He read the amendments, and indicated that, if they decide to rent it, and put it in the newspapers, they are back to discrimination. Ms. MacIntyre responded that is correct. Senator Abrams indicated that, if an older couple wants to rent the house, and a gal with five kids wants to rent it, too, and the owner decides to rent to the older couple, he is subject to a law suit. Chairman Farrell indicated he is not sure, if they both come at the same time. Senator Abrams noted whichever one is first. Ms. McClure indicated if they have refused, on the basis of the child.

Chairman Farrell asked Ms. MacIntyre to respond to that. Ms. MacIntyre responded that, if the owner of the property is renting it, and makes a decision to rent it for legitimate, non-discriminatory reasons, for example, the older couple came first, and they rented to the first one that came along, or they did reference checks on the competing prospective tenants, and the older couple had better references, or the family had bad references, when the owner makes the decision to rent on that basis, it is a legitimate non-discriminatory reason, and would not constitute discrimination.

Senator Abrams asked, if the ad is running and, all of a sudden, they have about five people, and say the older couple looks like a pretty good deal, is that discrimination, noting it could be. Ms. MacIntyre responded that it is hard, in these kinds of cases, to get at the subjective reasoning a landlord might go through in selecting who he or she wants to rent to, but, if the landlord claims he has a legitimate non-discriminatory reason for making that decision, the burden of proof is with the person who is claiming there is discrimination, to show that the reason the landlord comes up with is a pretext, or is not true. She indicated that anyone can file a claim. Senator Abrams added that then they have to protect themselves.

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Senator Bengtson stated she is concerned about the additional cases which will be brought before the Human Rights Commission. She pointed out that there is bound to be, noting they do, in her opinion, have a lot of cases, a lot of backlog. She added that she can not understand how in the world they can handle any more discrimination cases. Ms. MacIntyre responded that she recognizes there are some legitimate concerns about their case load, but indicated that, on the other hand, bringing state law into conformity with federal law, by adding the familial status provision, assists them because, when those complaints are filed, they can get federal support for processing the complaints.

Senator Rasmussen stated that he is not comfortable with subsection (f), in that it seems like that negates. He asked Ms. MacIntyre, even if they have just one apartment, if they advertise, will they fall under the provisions of this act. Ms. MacIntyre responded that is correct. Senator Rasmussen indicated it would appear to him that it negates all the other exceptions. Ms. MacIntyre responded she thinks that is correct.

Senator Rasmussen indicated that, to follow on with his thoughts, everybody has to advertise, if they are in the rental business, at one time or the another, and he really does not like that. He stated that he thinks they should leave it, indicating he would like to eliminate (f), and he would like to make a substitute motion that these amendments be accepted, except for (f). He asked Chairman Farrell if it made sense to him, and if that is the correct parliamentary procedure. Senator Rasmussen offered a motion that this group of amendments be adopted, except that (f) be struck.

Chairman Farrell asked Ms. MacIntyre if that would still conform to the federal. Ms. MacIntyre responded it would not. Chairman Farrell indicated he thinks it is in violation of the federal constitution, noting there are some rights that renters have. Senator Rasmussen indicated that, then, all these exceptions mean nothing. Chairman Farrell responded that is why he drafted the amendments he did. Senator Rasmussen stated that Chairman Farrell's amendments would seem to be not in compliance either. Chairman Farrell explained that his amendments will not exempt as many homes.

Senator Bengtson asked Chairman Farrell if there is any real reason it has to be in compliance with the feds, except that it is the recommendation of the Department of Labor. Chairman

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Farrell responded if we would lose our housing and urban development grant money.

Senator Rasmussen indicated the feds relate to the family status, and, as he understands it, that has to be brought in to our statutes, if we don't want to lose this money, noting they have done that, it just doesn't mirror the federal statute. Ms. McClure pointed out that the state law can be tougher, that more protection can be provided in the state constitution. She stated that the federal constitution is the floor, and they can not go under the federal constitution, but that the state can provide more protection, if they desire. She indicated that they do not exactly know what Article 2, Section 16 means, that they have not had any cases on that.

Senator Abrams asked if the federal regulations apply to every individual, or if they apply to federal monies involved. Ms. MacIntyre responded that they apply to everyone, both public and private housing.

Senator Hofman stated he would rather not have (f) in, either, but indicated, if that is going to be a real problem, he does not think it is an insurmountable problem, because it states if an individual advertises to rent a home. Senator Hofman indicated that he would imagine most of the houses in Montana, at least in rural areas, are not advertised anyway, noting they are probably rented by word of mouth, although maybe he is wrong about that. Senator Rasmussen noted that rural is such a small amount but, even if it were not, that is maybe 10% of the housing, noting the cities is where the impact will be, and they are talking about snarling people, who have one little apartment, in all this red tape.

Chairman Farrell indicated he understands that, and asked Ms. MacIntyre how landowners or tenants would know about this list, how they would know if they were in violation, or not in violation, and if that would be through the county attorney. Ms. MacIntyre responded that she does not think the county attorney would provide them any advice about the coverage of this law. She indicated they would either have to have private counsel, or could contact her office, who would assist someone in knowing if they are subject to the provisions of the law. She indicated that is assuming it was someone already sophisticated enough to know that they need to find out if they are subject to the provision of the law.

Senator Rasmussen pointed out that they would know when they got hit with a law suit, and that is probably the only time.

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Chairman Farrell asked if landlords and tenants are pretty well versed on what the law is, right now. He noted that Senator Bengtson stated they have a tremendous backlog, and asked if that is on rental, landlord cases.

Ms. MacIntyre responded that about less than 10% of their case-load, at the present time, is housing discrimination, indicating that most of their case-load is employment discrimination, which is what they deal with, primarily. She reported that they have been doing some particular work in the housing discrimination area, lately, and that there are some associations, landlord associations, realtors associations, which pretty well keep up to date with the law, changes in the law, and how it affects their members. She indicated they have been doing some research and testing of the rental market, using private non-profit groups in different communities, and are finding that there are pretty serious problems with race discrimination in the rental market. She stated that, whether the landlords are aware of the law, and are just ignoring it, or trying to circumvent it, or whether they are just ignorant of the law, she is not sure.

Senator Bengtson asked how real is the threat of losing HUD money. Ms. MacIntyre responded that HUD has made it very clear to them, and it is in the statute, the fair housing amendments act of 1988, that they have to bring state law into conformity with the federal law, or they can not contract with them, anymore, for discrimination cases. She noted they have a certain amount of time to do that, indicating she thinks it is 40 months from September 13 of last year, when the law was enacted, to bring state law into conformity with the federal law. She further indicated they have been very adamant that they will lose their ability to contract with them at all.

Senator Bengtson asked how much do they get from them. Ms. MacIntyre responded it was about 25% of their budget in the last fiscal year. Senator Bengtson asked how much money is that. Ms. MacIntyre responded \$100,000.

Senator Rasmussen indicated he guesses they have to deal with (f), one way or the other, that they will either leave it in, or pull it out. He asked, if they take (f) out, and it passes that way, what happens, if someone brings suit, and our law is held unconstitutional. Ms. MacIntyre responded that she does not think the law would necessarily be held unconstitutional, but that, for purposes of their ability to have a work-sharing relationship with the federal government in this area, they would just say our law does not provide the same coverage that the federal law provides and, therefore, they

will do all the enforcement activities for this law in Montana.

Senator Rasmussen asked if we would not lose any money in this scenario, then. Ms. MacIntyre responded that, with the amendments as drafted, with (f) in, they would not, noting that, if (f) is taken out, they would. Senator Rasmussen asked if that is their budget she is talking about. Ms. MacIntyre responded yes.

Senator Vaughn asked Ms. MacIntyre if she feels that low-income renters and single families are becoming more and more aware of the rules and regulations, and they are apt to have more discrimination suits filed, pointing out the committee has heard the two young people, and asked if there are more of them becoming aware of this. Ms. MacIntyre responded that she thinks there probably are more people becoming aware, but indicated that, on the other hand, she thinks it is balanced out, and there would be a certain amount of voluntary compliance with the law, noting that she does not think the average landlord, if they are aware of the law, are going to flaunt it.

Senator Hofman asked, regarding the two different amendments, if Rasmussen's amendments are adopted, will it comply with federal law. He further asked if they would be in compliance with federal law, if Farrell's amendments were adopted. Ms. MacIntyre responded yes, because the state can be broader than the federal law, but can not be more restrictive. Senator Hofman asked if Farrell's is more. Ms. McClure responded that there are fewer exemptions. Ms. MacIntyre reiterated there are fewer exemptions, that Farrell's amendments would be in conformity, and added that Rasmussen's amendments would be in conformity, with (f) in.

Senator Anderson asked, if (f) is left in, or taken out, will it eliminate discrimination suits either way. Ms. MacIntyre responded that, either way, some landlords could be subject to suits. Senator Anderson indicated that leaving (f) in there complies with the federal law, and he does think there is much concern.

Senator Rasmussen stated he would like to, reluctantly, leave (f) in, but indicated he would speak to that, rather than the other one, because he would rather touch as many people as possible, noting it sounds like it would, although, if they advertise, they are not exempted. He indicated he would like the opportunity to exempt as many of the small people with renters as they could.

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Senator Hofman reported that he has a friend, in Chicago, who owns a whole bunch of apartment complexes. He indicated that he asked him about this, last year, when he was out there for a while. Senator Hofman indicated he asked him if he ever advertises, how he gets more people into his apartments, and how he controls who he gets in, noting he had talked about some abuses he had. Senator Hofman indicated that his friend does not advertise, that he solicits people to come to him for a house, and, that way, he screens. He noted that, evidently, he knows all about this law, because he gets around that, noting that, if we got to this point in Montana, the people would learn fast.

Chairman Farrell stated he is going to oppose it, noting that he thinks, constitutionally, it is probably correct. He further stated that he thinks young families, who happen to be blessed with kids, should have a fair shot at housing, and he does not think discrimination, based on kids, is fair. Chairman Farrell reported that he rents some houses, and they go through references, pointing out that some of the best renters they have had were families with children, that they take care of the houses. He indicated he can pick, on either side, any number of bad renters they have had, but he happens to think it is more or less discrimination against younger families, and it ends up forcing those younger families into a neighborhood, maybe run-down areas, that will accept kids. Chairman Farrell stated that is his impression, and that is why he had the other amendments drafted. He indicated he understands the landowners' concerns, but that most landowners have the resources to find out what the laws are, and use the exemptions to their advantage, noting they are usually more affluent than the kids are who are trying to raise families.

Senator Bengtson stated they are cutting off too many, 50% to 60%.

Senator Anderson asked, regarding HUD, and having to meet the requirements of the federal constitution to continue to get HUD money, would Farrell's amendments meet those requirements. Ms. MacIntyre responded yes, they would.

Recommendation and Vote:

Chairman Farrell called for a vote on Senator Rasmussen's amendments. Because the voice vote was unclear, Chairman Farrell called for a roll call vote. The result of the roll-

call vote was Senators Abrams, Harding, Hofman, and Rasmussen in favor, and Senators Anderson, Bengtson, Farrell, and Vaughn opposed.

Discussion:

Chairman Farrell then offered a motion to adopt his amendments. He asked Ms. MacIntyre if 5% to 10% would be exempted. Ms. MacIntyre responded yes. Chairman Farrell asked Ms. MacIntyre if that is closer to what our law is right now. Ms. MacIntyre responded yes. Chairman Farrell indicated he is providing about 5% more exemptions than present law in the State of Montana. Ms. MacIntyre stated that state law, at the present time, does not have the familial status provision, and this amendment only speaks to the age and familial status provisions of the law.

Senator Rasmussen stated he would speak against this, in the hopes that someone would change their mind. He indicated that it seems like younger people often go into larger places, and are, more often, in the cities where these larger places are. He stated that is not to say people still don't rent to them, but that he thinks it occurs more in the university towns. He indicated they would all be covered, under his amendment, so they are still rooting out this discrimination, adding that he is trying to protect the little property owner, who gets ensnarled in suits, noting that he hates to see these people, who own just one or tow apartments, become the target of suits. He further stated that he would hope the Farrell amendments could be defeated, that someone would change their mind, and redo the other amendments.

Recommendation and Vote:

Chairman Farrell called for a vote on the Farrell amendments. Because the voice vote was unclear, Chairman Farrell called for a roll call vote. The result of the vote was Senators Anderson, Bengtson, Farrell and Vaughn in favor, and Senators Abrams, Harding, Hofman and Rasmussen opposed.

Discussion:

Senator Abrams indicated he has no problem with renting to families with children, but noted that, if they have someone they can not get rid of, they run into discrimination, and the tenant will contact Ms. MacIntyre's office, who carries the

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law suit. He indicated the landlord is then stuck in a no-win situation because it will cost the tenant nothing, but the landlords must defend themselves and, whether they win or lose, they lose.

Ms. MacIntyre responded that, with all due respect, she has to take issue with his characterization of the process. She reported that the Human Rights Commission is a neutral administrative body and that, when someone files a complaint with the Commission, they do an impartial investigation. She stated that it does not really cost either side anything to have a case before the Commission, unless they choose, of their own accord, to have counsel. She indicated they do not carry the law suit, they are the neutral ones in the process.

Senator Abrams asked if they do the investigation, but do not carry the law suit. Ms. MacIntyre responded they do not carry the law suit, noting they may do that in very limited situations, after they have made a determination that there is discrimination and if, for some reason, the plaintiff drops the ball.

Chairman Farrell indicated that, if a tenant does not file a complaint with Ms. MacIntyre's office, but goes to the County Attorney to file a complaint, and if there is a law suit where they use their own private lawyer, the landlord has to hire an attorney to defend himself, without going through the Human Rights Commission at all, if a civil action was brought, based on this law.

Ms. MacIntyre responded that, based on this law, to bring a civil action, someone has to come to the Human Rights Commission, or go to federal court, that those are their only options. She stated that, if the complainant starts out by going to federal court, then, obviously, the plaintiff is going to have to have counsel, and the defendant is going to have to have counsel, as well. Chairman Farrell asked if the only other option they have is to go through the Human Rights Commission.

Ms. MacIntyre responded that is right, indicating they file their complaint, and their office does an impartial investigation. She indicated that, if they find there is discrimination, they try to resolve the complaint through conciliation with the parties. She further indicated that, if they are unable to do that, the claimant takes the case on to hearing before the Commission, noting that is typically done by the claimant, him or herself, and usually they have their own counsel. She stated that, if they have found, in the inves-

tigation, what they consider to be a pretty serious discrimination problem, and, for the some reason, the claimant dropped out of the case, they might continue to pursue the case at that point, to make sure that the defendant, respondent, is complying with the law. She noted that is a pretty limited exception to their general rule of only acting the forum for the complaint to be resolved. Ms. MacIntyre added that she thinks it is, overall, a more inexpensive forum for both sides, both the claimant and the respondent.

Senator Hofman pointed out that, if the committee passes Senator Rasmussen's amendments, that will not mean that everybody will be discriminated against. He indicated there will be a whole lot of people who will have no problem getting housing, even though they have children, because, if they are known in the community, or are a friend of the family, and all these kinds of things, they can sell themselves to that landlord as being responsible, and will not have any problem getting housing. He stated that he thinks it is a very small minority who will feel like they have been discriminated against, and that it will probably be people who have had problems.

Senator Bengtson stated she will change her mind, to get it out on the floor. Chairman Farrell asked Senator Bengtson which one she is referring to. Senator Bengtson responded that she is referring to the Rasmussen amendments, that she will support the Rasmussen amendments. She stated she thinks they can bring this up on the floor.

Senator Rasmussen offered a motion that the committee reconsider their action, and adopt the Rasmussen amendments. He indicated that, with (f) in, it is so full of holes that he does not think the exemptions will apply very often, noting that just about everybody has to advertise. He added that he does not think they are creating that much of a road block, that it is not that strong of an amendment, as far as exemptions go.

Senator Harding stated that she agrees with Senator Rasmussen, adding that she does think there are those very few numbers of people who should have a right to exempt, if necessary. She noted that she also thinks Senator Hofman is right, that people will go through this review process, recommendation process, more than they are going to be concerned about not renting to children. She indicated they still have the recommendation process, and she thinks they should leave some rights with the owner, noting it is not going to create any more problems for the renters.

Recommendation and Vote:

Chairman Farrell called for a vote on the motion to reconsider the committee's action on the Rasmussen amendments. Chairman Farrell then called for a roll call vote. The result of the vote was Senators Abrams, Bengtson, Harding, Hofman and Rasmussen in favor, and Senators Anderson, Farrell and Vaughn opposed. Chairman Farrell announced that the Rasmussen amendments have been adopted by the committee.

Discussion:

Senator Hofman offered a motion that HB336 be concurred in as amended. Senator Rasmussen indicated he can see this is going to possibly be a real hassle on the floor, and asked, regarding the HUD money, if they are talking just about HUD money related to the Human Rights Commission, or if there is other HUD money flowing into housing that they could lose.

Ms. MacIntyre responded they are only talking about HUD money flowing into the Human Rights Division. Senator Rasmussen further asked if there is no other money at stake here. Ms. MacIntyre responded not that she is aware of.

Senator Rasmussen asked what about all the money that goes into the housing area, and if there is federal money going into the housing. Ms. MacIntyre responded that she thinks there is a great deal of HUD money going into public housing programs, but, as far as she is aware, they will not be affected. Senator Rasmussen asked what that figure was, again, if she said they get \$100,000 of their budget in federal money. Ms. MacIntyre responded no, that was in the last fiscal year. Senator Rasmussen asked what their total budget was. Ms. MacIntyre responded it was about \$400,000.

Senator Bengtson stated it is going to be a hassle on the floor, because they will get in to the Human Rights Commission, and all of the surrounding programs that come with that. Chairman Farrell stated maybe it should be on the floor. Senator Bengtson indicated that is what she thinks, adding that it is something that will get on the floor, anyway, unless they kill the bill, noting they can not do that.

Recommendation and Vote:

Motion passed by the committee that HB336 be concurred in, as amended, with Senator Farrell opposed.

HB 733

Discussion:

Chairman Farrell indicated there has been a misunderstanding regarding HB733. He reported he received a telephone call, regarding this bill, indicating that this a duplication. He reported that he discussed this with Ms. McClure, that there is a requirement for a test, which was passed in the 1987 legislature, in 53-21-106, and this bill is asking that clinical psychologists be removed from the requirement to take that test with the Department of Institutions. He asked Dr. Miller to explain what he thinks, and further asked if he was aware of a test with the Department of Institutions. Dr. Miller responded that he was not aware of the test. Chairman Farrell then asked Nick Rotering, attorney, Department of Institutions, if that is new.

Mr. Rotering responded that, under the 1987 legislation, the Department of Institutions amended its administrative rules to include a written test for people who are requesting professional person status, noting a portion of the test deals primarily with the legal rights of the mentally ill, and what the authority is of the professional person, relative to ordering restraints, seclusion, time-out, and things of that nature.

Senator Harding asked if Mr. Waldron is aware of this, noting that he was an opponent to this. Chairman Farrell responded that this bill removes that requirement, and a clinical psychologist will automatically be determined to be a professional person. Senator Rasmussen noted that Mr. Waldron spoke to that, which is why he was opposed to it. Chairman Farrell agreed, and indicated the clinical psychologist, who was supposed to testify, wrecked his car, and could not get here, adding that he was not aware of the testing procedure.

Senator Rasmussen asked if he thought he could be certified to do that. Chairman Farrell responded that he thought, with this bill, they would automatically be certified because, in the test to become licensed, they had to have knowledge of the state laws, already.

Dr. Miller, testified that he is a licensed clinical psychologist, and a professional person, noting he has been for 6 or 7 years. He reported that, when he became a professional person, there was no competency examination requirements, that

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they just looked at a person's educational background, employment background, three references and, if they thought that was good enough, they gave the person a certificate. He stated that, apparently, starting last year, they do have a competency exam, noting he thinks that is very good. He added that licensed psychologists, which are all doctoral level, are now saying that they have a lot of expertise and training to get into their position, and get their doctorate, as well as to become licensed, and, to go through another certification process, on top of their licensing process, seems like duplication, and would be a hassle to them. He indicated that physicians, whether they have a three month rotation, or a six month rotation in psychiatry, are automatically certified as professional persons, and clinical psychologists have five years of training in this particular area.

Dr. Miller stated that, in their licensing examination, they have to take a written examination, as well as about an hour oral examination, and are required to know all state laws, noting they can get grilled, in their oral exam, about any laws, in terms of restraining people or committing people to a psychiatric hospital. He indicated they see it as a duplication, and would like to be recognized as professionals who have competency in this area, already.

Senator Rasmussen indicated he guesses the hearing is reopened, and asked permission to ask Dr. Miller a question. Chairman Farrell responded he could, noting he did not really want to get into that, but that he could not get to the hearing because of a legitimate wreck.

Senator Rasmussen asked Dr. Miller how long the test is, by the Department of Institutions. Dr. Miller responded he is a professional person, himself, but has never been informed that they have a test, and he does not know. Senator Rasmussen then asked if Mr. Rotering would know if they are talking about a two-day test, or a one-hour test. Mr. Rotering responded that it is probably less than an hour, and is an open-book test. He indicated he has always laughed about it, that it is like the bar exam test, and indicated they ask the professional person how aware is he, or if he knows where to find the mental health code, and what the rights are of the mentally ill, on either evaluation or commitment to inpatient treatment. He added that there are questions relative to the resources available, regarding where outpatient and inpatient beds are, noting that, as far as the law questions, they do allow an open book. He stated that Dr. Miller was grandfathered in, that he was a certified professional person long

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before this new requirement came in. Senator Rasmussen indicated that it does not seem that stringent, to him.

Senator Bengtson asked where the test is given, and if they have to leave their place of employment. Mr. Rotering responded they have arranged to do it through the Job Service in various areas. He indicated they will give it in Helena, for this immediate area but, for the rest of the state, it is through the Job Service.

Senator Rasmussen indicated that this bill just exempts them from having to go through this test and, if this bill fails, they have to go through the test. Senator Hofman stated he is opposed to this, because he thinks maybe they should take this test. He noted they come into the state, that they are going to school, and have a few references, but maybe somebody should sit down with them, and go through this test, to determine whether this person has the common sense. He indicated that person may have lots of degrees, and lots of other things, but we need to know that person is qualified, and he thinks that test would bring that out.

Senator Bengtson asked, other than the harassment, or the unnecessary testing, what other reason is there for wanting to be exempted. She pointed out that these are clinical psychologists, who have five years of training, and asked what does a professional person get to do, that they can not do as a clinical psychologist.

Dr. Miller responded that there is a list of privileges, and read them, as follows: Approve applications for voluntary admissions; go through commitment procedures in a court of law; in an inpatient facility, to ask for restraints, and put people in seclusion; supervise treatment plans of inpatients; authorize certain restrictions on patient rights; request a court order to release to alternative treatment. He indicated that most of them are not legally oriented, that most of the privileges of a professional person with a certificate is for treatment, adding that he thinks the law is a very small part of it.

Chairman Farrell offered a motion that HB733 be placed on the table. Upon advice that the motion is non-debatable, Chairman Farrell withdrew his motion, to allow for discussion by the committee. He stated he does not think the people who drew this bill up knew there was a test available, and indicated he agrees with Senator Hofman that maybe somebody should take a look at these people, noting that, if it is an open-book test, he does not think it is that hard to do. Chairman

Farrell indicated that he does not think there is a real need for the bill, that he does not want to send it out on the floor, and he would just as soon lay it on the table.

Senator Bengtson indicated she agrees, adding that, since the test was instituted in 1987, they should see if it accomplishes something. Chairman Farrell indicated that it bothers him that they automatically allow medical doctors, noting he is not sure all medical doctors are well-versed in clinical psychology and, if they are going to change something, maybe they should change the whole requirement. Senator Bengtson indicated there is a question as to who will prescribe treatment, commit and release a person who is mentally ill, and that is not protection for the mentally ill.

Chairman Farrell again offered a motion that HB733 be tabled.

Recommendation and Vote:

Motion passed by the committee that HB733 be tabled.

HB 148

Discussion:

Senator Harding offered a motion that HB148 be amended to provide that, if there is no grant money, it would disintegrate, noting that Ms. McClure could probably put it into better language. Ms. McClure asked if she would like it to sunset, and Senator Harding indicated that is correct, noting that they testified to a \$406,000 grant. Chairman Farrell pointed out that was just for the local center at Montana State University. Senator Harding indicated that is to set up this commission to help local government, but added that, if they put something in that has a grant, then the state will be asked to take over that grant money, and somehow finance it, either through state coffers, or local coffers. Ms. McClure asked, if they do not receive a grant by next session, does she want it to terminate, and Senator Harding responded yes, noting that a date would have to be put in, because they would have to make application.

There was general discussion regarding grant monies. Senator Bengtson indicated there is a termination section, on page 2. Chairman Farrell noted it is not termination, and Senator

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Bengtson indicated that is their term of office on the commission.

Senator Harding asked for clarification on the \$406,000 they are talking about. Senator Bengtson indicated that was Ken Weaver, who is with the local government center in Bozeman. She further indicated she has another amendment which would take out that language, that it would just say the Montana University System, and not use the research center, or name that center in Bozeman. She stated that, frankly, there are a lot of people who are experts in local government, in the university system, including Eastern Montana College. Chairman Farrell noted the people at the University of Montana also know something about that. Senator Bengtson responded that is true, and indicated this is a built-in bill for Ken Weaver and the local government center at Bozeman. Senator Hofman noted he was the only one here, and did a pretty good job. Senator Bengtson agreed that he did, but indicated she would bet there are a lot of others out there who are just dying to be here, too, telling about their wonderful research in local government.

Senator Harding asked, regarding what Senator Bengtson has proposed, who applies for the grant, adding that, then, her amendment would not fit. Senator Bengtson responded that she knows Dr. Craig Wilson was on the local government advisory review committee, a couple of years ago, and does a lot of research on local government, noting that is flawed, right there, in how it is put together.

Senator Vaughn asked, if they do not have somebody designated to be responsible for looking for these grants, noting she agrees that the entire university system resources should be used, who will be responsible for heading this up to get these grants. Senator Bengtson responded that she thinks they could ask Gordon Morris, because, obviously, this is the catalyst of the whole program and, when they cut the rug from under, they are essentially disintegrating the program. Senator Harding noted that she thinks this bill has come from the National Conference of State Legislators, who are organizing a push to put in statutes to have an organization dedicated to studying state and local issues, and resolving problems, either a state advisory commission on intergovernmental relations, or a legislative commission on state and local relations. She added that, notwithstanding what Senator Bengtson said about this being for just Bozeman or Missoula, noting she would agree with that, this move has come from the university at Bozeman for this grant, to do what the National Conference of State Legislators is recommending.

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Senator Bengtson indicated there really does have to be a focus, and maybe that local government center is the place for it, but she does not know if they want to put that in statute. She pointed out that, if they do that, they will have to put in some other language to tie in some of the other units, as well. She then indicated that you can just about imagine the morale at the university, and the morale at Eastern Montana College, when they find out that we have enhanced that particular entity, that they are going to be very upset.

Senator Bengtson offered a motion to amend HB148 by deleting the language, on page 5, line 4, after "system", to the end of line 7, noting she is referring to that language in caps. Chairman Farrell indicated that leaves it "the primary research arm of the commission is the Montana University System". Senator Rasmussen asked what happens from there, if the commissioner will make a recommendation as to where they will have offices. Senator Bengtson responded she does not know.

Senator Rasmussen indicated that he missed the hearing on this bill, and asked if this is supposed to enhance local government, and further asked if there is a two-sentence capsulization anybody can make of this bill, and why it is needed. Senator Hofman suggested that, to satisfy Senator Rasmussen, since he was not here, he would ask Gordon Morris to make a two-sentence statement.

Mr. Morris indicated he accepts that challenge. He stated that, first of all, the concept comes directly to the committee courtesy of their own National Conference of State Legislators. He further indicated that it is modeled after the federal Advisory Commission on Intergovernmental Relations, that it is recommended by the NCSL, and also supported by both the league and MACO, further assisted through the bureau, Ken Weaver's department at MSU.

Senator Rasmussen asked what it is going to do for Montana, and Montana government. Senator Bengtson responded that it will do everything that needs to be done, as far as cooperation between local and state government. Upon Senator Rasmussen's statement regarding taxes being involved, Chairman Farrell indicated that it does not saying anything about tax dollars.

Senator Rasmussen noted the disintegration amendment is still hanging. Chairman Farrell indicated there is a motion to

amend, offered by Senator Bengtson, on page 5, lines 4 through 7.

Recommendation and Vote:

Motion to amend HB148, by striking the language on page 5, lines 4 through 7, passed by the committee, with Senator Harding opposed.

Discussion:

Senator Rasmussen indicated the Harding amendment would apply to Section 8, that it would just about take out Section 8. Chairman Farrell indicated that is what he was asking, regarding the grant money, if it is state, federal, private, county grants. Senator Harding indicated that her amendment would apply to what was just removed, which is why she voted no, adding that, now, she has a problem with this bill passing without it having funding. She stated that the legislature has a really bad name for passing things out to local government, and not providing funding and, unless she knows where the funding is going to come from, now that this has been removed, there is no way she is going to go for this bill. Chairman Farrell asked Mr. Morris to respond to that.

Mr. Morris reported that, during the hearing before the House Local Government committee, one of the things that concerned them was similar, funding. He indicated the intent, as stated during that hearing, which did not come out during the hearing before this committee, was that Ken Weaver and the Kellogg money could be used, noting he has already gotten endorsement for this, to provide some initial seed money. He noted that the seed money is to enable this commission to be created, and at least be convened, for purposes of adopting an initial agenda to go forward with a grant proposal to the Northwest Area Foundation.

He indicated that what they are looking at doing, noting he would certainly endorse this, would be to get the concept off the ground, with the Kellogg funding through Ken Weaver's department, and the bureau at MSU, in the initial phase and, at that point, to endorse a grant proposal from the Northwest Area Foundation for long-term grant purposes. He stated that it was not the intent to seek an appropriation from the legislature, during this particular session. He indicated he thinks the intent, and Senator Harding's disintegration amendment, would be to provide a sunset on this, effective, he would suggest, July 1, 1991, so that they could not come

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back before the legislature without getting an extension on the enabling legislation, itself, and they can not get any state funding, noting they would not be looking for any state funding, but would be open to in-kind contributions from MACO, the league, or in-kind contributions from any outside private source. He added that they have had some indication that Sunshine Mining would be interested in providing some additional funding for it.

Mr. Morris stated there are so many avenues that it is hard to be specific, and they think that, the way the bill stands, in terms of the Section 8 references to finances, it really leaves the door wide open, with only one avenue being closed, with the passage of the bill, which would be any current state appropriation. Mr. Morris added that, if they put the sunset in, that would mean there would be no possibility for a state appropriation in 1991, without coming before the legislature and asking for removal of the sunset.

Chairman Farrell indicated he is still concerned about page 5, "local government units are authorized to appropriate money", and pointed out that, whether they get a private grant, or not, if the local governments want to appropriate enough money to get this thing going, and then decide they can not do it, the legislature is going to be on the hook, two years from now, or four years from now. He asked Mr. Morris if this would eliminate his job, if MACO is not going to be lobbying this, if the cities are not going to be working on this, noting they have added a local intergovernmental group that will be working on this. He noted those concerns were brought out, and further asked Mr. Morris if he is going to quit, or what.

Mr. Morris responded that he thinks Mr. Hanson stated it well, and he will re-state that he would not be before the committee, any more than Mr. Hanson would, if he was looking at the possibility of eliminating his own position, noting that is not the intent. He reported they have seen this ACIR legislation in at least 28 other states, and, in those other states, it works very nicely in working in conjunction with the respective state associations, both municipal and county associations. He stated it is an adjunct, a liaison, not a supplement, that it is another linkage to put in place a permanent sounding board, a permanent spokesperson, somebody who has an objective point of view, in terms of what the big picture is, in terms of the relationship between the state and the local government.

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Chairman Farrell indicated that Mr. Morris also saw the chart about how the seed money starts them up, and then the seed money and the private money goes down, and they get to where they have state appropriations, and federal appropriations. Mr. Morris responded that he is very mindful of that, but he thinks that a sunset provision, as suggested by Senator Harding, would eliminate that possibility, because it would bring it back before the legislature, two years from now, and, at that point, they could simply say no. Chairman Farrell noted they could say that right now. Mr. Morris responded they could, but he would simply urge the committee to at least give this concept a foothold, so that it has a period to at least demonstrate the advantages.

Senator Vaughn asked if it would be a help if, on page 5, starting with line 24, they eliminated "Local government units are authorized to appropriate money", and just leave that first paragraph in, and she further asked what would that do with it. She further asked, if applying for funds is going to make so much difference, if they left that in, and added, at the end of it, "in cooperation with all other university systems", would it cover that. Senator Bengtson responded no. Chairman Farrell stated that it would not satisfy him. Senator Rasmussen indicated that, regarding what Senator Vaughn said, they have all that subsection (1), right above what they are talking about, which says they can receive grants or appropriations, State of Montana, local government, federal government. Senator Vaughn indicated they can, but it does not say that local governments are authorized to appropriate monies, that it is just, if they can get grants through local government, they can appropriate it. Senator Rasmussen stated that any grant from government is tax money, that there is no other money, and he does not even think they should use the word "grant" from the government, that it is just an appropriation. He indicated that, if they vote for it now, they are going to be back in two years wanting taxpayer's money at the state level and, once something is in existence, it is very hard to destroy it, so it is either going to go right now, and be supported by general fund money, down the road, or it will die.

Senator Bengtson asked Senator Vaughn if she is going to offer an amendment to delete that language on lines 24 and 25. Senator Vaughn responded that she thinks it might help to delete lines 24 and 25, noting that first paragraph does say local government grants, and things like that. Senator Rasmussen stated "appropriations", and Senator Vaughn agreed. Senator Bengtson said that is fine with her, too, but she would like to switch back to its roles and purposes, which is

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in Section 5. She indicated it is very extensive, and the point she made is that those problems are not so hard to identify, that they have been over them many, many times. She noted that it involves some consolidation of services, elimination of government, how many counties, school districts, that they have been over it many, many times. She indicated it is the people from the single member districts who just are not ready for this change. She stated she thinks that, rather than coming in with ordinances and resolutions, there has to be an outreach and an educational program done by somebody, rather than approaching it from the governmental aspect. She further stated that people are just not ready for these wonderful ideas that we all come up with.

Senator Harding offered a motion that HB148 be amended to provide that Section 8 sunset July 1, 1991. Senator Rasmussen asked Ms. McClure what she interprets this to mean, noting she will write this, and asked what is she going to write. Ms. McClure responded that Section 8 terminates. Senator Rasmussen asked if this commission will die in 1991. Ms. McClure responded the finances, and Senator Harding responded the advisory commission. Senator Rasmussen asked if this commission will exist for two years, and then disintegrate. Senator Bengtson responded if they don't have any grant money. Senator Rasmussen asked if that is private grant money, and further asked what kind of grant money. Senator Harding indicated that the \$406,000 is Kellogg, and asked if that is private. Senator Rasmussen indicated that is private, that it is not governmental. Mr. Morris reported that Kellogg is the Kellogg cornflake company. Senator Harding noted that is private. Senator Vaughn asked, if they have funding, they don't necessarily want it to sunset, do they. Senator Harding pointed out that it allows for any kind of participation.

Senator Hofman stated that he would like to see this commission go in, as long as we are not going to end up paying for it out of state funds, or from local government funds, in any which way. He indicated that, if they can be self perpetuating, in that they can acquire grants, as they go on, and get the job done for the State of Montana, he thinks it is a real good idea. He further indicated that, if it is going to cost us money, down the road, then he is not so sure it is a good idea, and he would like to leave some kind of language in that says if they can get the funding somewhere else. Senator Rasmussen asked if he means private funding. Senator Hofman responded not necessarily, that, if there is some other outfit that wants to give them money, let them have it, and that, as long as it does not come from us, or from our local government entities, he would say let them have at it. Senator Rasmussen

stated it is either taxpayer money, or private money, that there is no other. Senator Hofman indicated, then, private money. He noted that, if he understood Mr. Morris correctly, he stated they would be looking for funding, and asked Mr. Morris to explain that.

Mr. Morris reported that, in November of 1988, they did, in fact, prepare a grant proposal for the Northwest Area Foundation, which has already been reviewed by the Northwest Area Foundation. He indicated he is optimistic in believing that they would fund that for a two-year period, noting the amount of the grant proposal was something in excess of \$200,000. He further reported they have also approached Sunshine Mining, who expressed interest in this, and have indicated that, if they did, in fact, have the enabling legislation passed, they would be interested in taking a look at it, from the standpoint of providing some private seed money, as well. He indicated they have a variety of options, adding that, as he indicated previously, noting it might be a stretch in terms of Senator Rasmussen's problem with taxpayer dollars, both MACO and the league did indicate, in the House hearings, they would be looking to provide what he would characterize as in-kind assistance, through his own participation, and through office contributions on behalf of both MACO and the league.

Chairman Farrell read "the advisory commission on inter-governmental relations is authorized to apply for, contract for, and receive and expend for its purposes any appropriation or grant from the", and here he indicated strike "state of Montana, local government subdivisions, the", leaving in federal government or any ", striking "public or", and leaving in "private source". Senator Rasmussen asked why not take out federal, also, and further asked why should we have to pay through our federal dollars.

Senator Harding indicated that, usually, and they see that through Human Services, it is about a 30/70 match, noting that she thinks what Senator Rasmussen is saying is, if it is federal dollars, we would probably be asked to submit some of our own. She indicated that, if there is some kind of language, or a statement, it would exclude that, if they got federal dollars, and asked Ms. McClure if it would. Ms. McClure asked if she is trying to exclude matching funds, and if she does not want any federal grant which requires matching funds. Senator Harding responded yes, that's it. Senator Bengtson indicated they could match the federal money with private sources. Senator Harding indicated what she really wants to exempt is state and local government dollars, so that, if the federal were matched with private, they could

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still use federal, noting she thinks the amendment is good. Ms. McClure indicated she does not know if, in Section 9, they have to statutorily appropriate the money, noting that subsection (2) would probably go. Chairman Farrell indicated they would have to remove "local government entities are authorized". There was discussion regarding deleting subsection (2). Ms. McClure read "funds received pursuant", and asked if they will be statutorily appropriated, noting it is a totally private effort, and they would not be appropriated. She pointed out that, under Section 9, they would not stick it in a state fund, she would not think. Chairman Farrell asked if this goes through state funding. Ms. McClure responded if they put it in. Senator Hofman stated they do not want to put that language in. Ms. McClure stated that, if funds are received pursuant to this section, they are appropriated to the commission as provided, noting that was earmarked, under Section 9, that they were going to create a little fund for them. She indicated she does not think they need that, if it is private. Chairman Farrell asked if she would strike Section 9, and Ms. McClure responded she needs to check on that, but that it might have to be done, as well.

Mr. Morris indicated he thinks they will need an identified fiscal agent who is, with the creation of the advisory commission, the authorized person to receive monies and to make expenditures, noting that is why they thought the university, that the university is identified, in the bill. Senator Harding asked if it could not go through the state treasury. Ms. McClure indicated it possibly could, but she does not know exactly how that would work. Senator Harding asked if Ms. McClure could check that out.

Chairman Farrell asked if the committee wants to take executive action on the bill. Senator Rasmussen stated that maybe it will just lay here, forever. Senator Harding asked, since Chairman Farrell is not going to be here Monday, if they have to do something today. Chairman Farrell asked if they could meet Monday morning, that he will not leave until Monday afternoon. The committee agreed to meet Monday morning to take action on HB148.

Chairman Farrell asked Ms. McClure to look it up, and have it prepared for the committee on Monday. Senator Hofman indicated that, as far as he is concerned, they could meet at 8:00. Senator Rasmussen said he can get here about 9:00. Senator Bengtson indicated there must be something else that has the puzzle on this, too. Senator Rasmussen asked what are they researching. Ms. McClure responded exactly how to do the statutory appropriation, if they take all the state interest

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out and, if they collect private and federal money, where to put that, and who would appropriate it out.

Senator Rasmussen offered an amendment that they only accept private money, noting he does not know whether it will fly, but that he does not see that much reason for looking to the federal government. He pointed out that the federal funding will just be jerked away, one day, and he thinks they should just go with private funding. Senator Rasmussen further indicated that is, if the committee is all of the mind that they do not want government in there, who would eventually jerk the money away, and have them coming to the state general funds. Chairman Farrell asked if the committee wants to go with this bill. Senator Rasmussen stated that he is prepared right now, to offer a motion that it do not pass. Senator Bengtson asked how about tabling it.

Senator Rasmussen offered a motion that HB148 be tabled. Senator Rasmussen then withdrew his motion, indicating he does not like that rule, and asked for a brief discussion, if someone wants to speak to the coming motion. Senator Hofman stated he would oppose that motion, that he does not want to table it, he wants to pass the bill out, and leave the funding the way it is, right now. He pointed out they have taken out the State of Montana, and they have taken out local government, which are the things they were concerned about. He asked that they be given the latitude to at least go wherever they can to get the money, as long as it does not cost the taxpayers of the State of Montana, and let them try and do their thing. He pointed out that, if it works, there are a lot of people who are going to be on this, that there will be a wide diversity of people on this advisory board, and they should let those people work, noting he does not see any problem with it.

Senator Rasmussen responded that he thinks Senator Bengtson spoke to that, which made sense to him. He indicated he thinks many of us know a lot of these problems, and he does not know if there will be new ground plowed up, that the people are not interested in consolidating these little counties, and school districts, that those things make sense from certain perspectives, and he does not see there is that much this commission is going to do which is not already being done. Senator Vaughn asked if a commission like this could act like a good education tool to inform the people of these things. Senator Harding stated she does not want to see this tabled, as long as the state and local government funds have been taken out. She indicated there is a sunset provision, and she thinks, if they can match federal dollars with private

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dollars, it is a good way to give it a chance. She stated that she agrees with all of these things, but that she thinks local government needs a chance to work to serve us, and would like to see the committee make the necessary amendments, and pass this bill.

Senator Hofman pointed out that one of the things they brought up, in the hearing, is that they would study the jails. He indicated there is a problem, in the counties, with jails, that they do not know where to go with the young people, and these things have to be addressed. He further indicated there is not a better agency to do that, than a board something like this, because they will cover more area than just each individual county, and he thinks that would be the way to go. Senator Rasmussen stated that he does not think they have to create another bureaucracy, noting that is what they are doing, for the cities and towns to get together and talk about jails, or whatever. He noted that they can already do that, and this is a problem, but they are creating another bureaucracy, and he does not think they need to do that, to allow them to discuss these problems.

Senator Bengtson stated that she agrees with everybody, noting that it comes about like they do not understand local government, and they should be in this together. She indicated there is no doubt in her mind that this is the right thing, that they have been accused of not being in support of local government but the reason for that is because of the makeup of this state. She pointed out that they can not deliver, to each of these entities of local government, as state leaders, as state lawmakers, the things that they want. She indicated she does not know if they can change the system, unless they change the mentality of the public. Senator Bengtson stated that, regarding all these lofty goals and purposes, she would swear they have done this before; review recommendations of national state intergovernmental advisory agencies; make recommendations concerning the resolutions of intergovernmental; craft and disseminate model legislative bills. She stated this is a model bill, but noted that she gets the creepy crawlies, when she thinks of doing this, that it is not going to amount to a hill of beans, because they can not deliver, they do not have the money. She indicated she thinks they have the brains to do it all, noting how many times the county commissioners and the city council have people sat on exactly those same kinds of things, shot the breeze, and pointed out the problems. She indicated they know what the solutions are, but does not know how much they have to talk, in this state.

Senator Rasmussen again offered a motion that HB148 be tabled.

Recommendation and Vote:

Chairman Farrell called for a roll call vote. The result of the roll call vote was Senators Abrams, Bengtson, Farrell and Rasmussen in favor, and Senators Anderson, Harding, Hofman and Vaughn opposed.

Chairman Farrell announced the committee would take this up next Monday.

HB 284

Discussion:

Chairman Farrell stated that HB284 does not meet sunrise. Ms. McClure indicated that, during the hearing, there was discussion that they had been told, at an earlier date, that they did meet sunrise. She further indicated that she got the letter from the auditors office, and the letter they wrote to the auditor, with the attachment, which is not the bill, but an overview of what they were proposing, at the time. She indicated the last page was a letter sent from the auditor's office saying that, under several assumptions that they see, they do not think it comes under sunrise. Ms. McClure noted that, when the bill came, it was broader than it was to start with.

Senator Harding asked if it does fall under sunrise. Chairman Farrell responded yes, it does. Senator Harding then indicated that the reason does not matter, and Chairman Farrell responded, not in his estimation, if they are to be consistent, as the Senate has been.

Senator Bengtson offered a motion that HB284 be tabled.

Recommendation and Vote:

Motion passed by the committee that HB284 be tabled.

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Discussion:

Senator Rasmussen stated that sunrise is an illusive thing, that sometimes it applies, and the next time it doesn't apply. He indicated he is getting bounced around as to whether it applies, or not, noting that it did not apply on a couple of them.

HB 396

Discussion:

Senator Bengtson offered a motion that HB396 be concurred in.

Recommendation and Vote:

Motion passed by the committee that HB396 be concurred in.

HJR 16

Discussion:

Senator Harding offered a motion that HJR16 be concurred in. Senator Rasmussen indicated it does not say umbrella board, noting that is the only way it could be handled. Chairman Farrell noted that he asked the question as to why they struck that, and it was because of sunrise.

Recommendation and Vote:

Motion passed by the committee that HJR16 be concurred in.

HJR 21

Discussion:

Senators Vaughn and Bengtson offered motions that HJR21 be concurred in.

Recommendation and Vote:

Motion passed by the committee that HJR21 be concurred in.

HJR 28

Discussion:

Senator Bengtson offered a motion that HJR28 be concurred in.

Recommendation and Vote:

Motion passed by the committee that HJR28 be concurred in.

ADJOURNMENT

Adjournment At: 12:00 noon


WILLIAM E. FARRELL, Chairman

WEF/mhu
HB336.317

ROLL CALL

STATE ADMINISTRATION COMMITTEE

51ST LEGISLATIVE SESSION

DATE: March 17, 1989

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

SENATE STANDING COMMITTEE REPORT

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MR. PERSICBERT:

We, your committee on State Administration, having had under consideration HR 336 (third reading copy - blue), respectfully report that HR 336 be amended and as so amended be concurred in.

Sponsor: Bilscoll (lynd)

1. Page 4, line 1.

Following: "BECAUSE OF"

insert: "age and"

2. Page 4, line 14.

Following: line 13

Insert: "(2) The prohibitions of this section against discrimination because of age and familial status do not extend to any single family house sold or rented by a private individual owner unless:

(a) the private individual owner owns

more than three single family houses at any one time;

(b) in the case of the sale of a single-family house by a private individual owner not residing in the house at the time of sale or who was not the most recent resident of the house prior to sale, the owner has sold one or more other single family houses in the previous 24 month period;

(c) the owner is not a bona fide private individual owner;

(d) the owner has an interest in, or title or any right to all or a portion of the proceeds from the sale or rental of more than three single family houses at any one time, including an interest that has been acquired or received on his behalf under any express or voluntary agreement;

(e) the owner sells or rents the house with the use in any manner of:

(i) the sales or rental facilities or services of any real estate broker, agent, or salesperson;

(ii) the facilities or services of any person in the business of selling or renting dwellings; or

(iii) any employee or agent of the broker, agent, salesperson, or person; or

(f) the owner sells or rents the house with the publication, posting, or mailing of an advertisement or written notice.

(6) Nothing in subsection (5) prohibits the use of attorneys, escrow agents, abstractors, title companies, or other professional assistance necessary to perfect or transfer title.

(7) The prohibitions of this section against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner actually maintains and occupies one of the living quarters as his residence."

Renumber: subsequent subsection.

AND AS AMENDED BE CONCURRED IN

Signed: _____
William B. Parrell, Chairman

J.C. 1/18/79
2/1/79
2/1/79

SENATE STANDING COMMITTEE REPORT

MARCH 17, 1905

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 396 (third reading copy - blue), respectfully report that HB 396 be concurred in.

Sponsor: Davis (Cage)

BE CONCURRED IN

Signed: W. E. Feltwell
WILLIAM E. FELTWELL, Chairman

410-89
3/17/05
W. E. Feltwell

SENATE STANDING COMMITTEE REPORT

March 17, 1959

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HJR 16 (third reading copy blue), respectfully report that HJR 16 be concurred in.

Sponsors: Hannah (Jacobson)

BE CONCURRED IN

Signed: William W. Farley
William W. Farley, Chairman

W.C. Farley
3/17/59

SENATE STANDING COMMITTEE REPORT

March 17, 1933

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HJK 21 (third reading copy - Blue), respectfully report that HJE 21 be concurred in.

Sponsor: Spaeth (Bangson)

BE CONCURRED IN

Witness my hand and seal this 17th day of March, 1933.

*W. C. ...
3:30 P.M.*

SENATE STANDING COMMITTEE REPORT

March 17, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HJR 28 (third reading copy - blue), respectfully report that HJR 28 be concurred in.

Sponsor: Stickney (Rok)

BE CONCURRED IN

Signed: William H. Carroll
William H. Carroll, Chairman

*H.C.
3/17/89
J.P.M.*

ROLL CALL VOTE

STATE ADMINISTRATION COMMITTEE
51ST LEGISLATIVE SESSION

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 3/17/89

BILL NO. HB 336

DATE: March 17, 1989 BILL NO. HB 336 TIME: 10:40 AM

NAME	YES	NO
HUBERT ABRAMS	✓	
JOHN ANDERSON, JR.		✓
ESTHER BENGTON		✓
WILLIAM E. FARRELL		✓
ETHEL HARDING	✓	
SAM HOFMAN	✓	
PAUL RAPP-SVRCEK		
TOM RASMUSSEN	✓	
ELEANOR VAUGHN		✓

Man Upchurch
Secretary

William E. Farrell
Chairman

Motion: To adopt amendments to HB 336 proposed by Senator Rasmussen, which would conform with federal statutes.

ROLL CALL VOTE

STATE ADMINISTRATION COMMITTEE
51ST LEGISLATIVE SESSION

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 3/17/89

BILL NO. HB336

DATE: March 17, 1989

BILL NO. HB336

TIME: 10:45 AM

NAME	YES	NO
HUBERT ABRAMS		✓
JOHN ANDERSON, JR.	✓	
ESTHER BENGTON	✓	
WILLIAM E. FARRELL	✓	
ETHEL HARDING		✓
SAM HOFMAN		✓
PAUL RAPP-SVRCEK		
TOM RASMUSSEN		✓
ELEANOR VAUGHN	✓	

Max Lynch
Secretary

William E. Farrell
Chairman

Motion: To adopt amendments proposed by
Chairman Farrell to exempt certain
property owners, but not others who are
exempted in federal statutes.

ROLL CALL VOTE

SENATE STATE ADMIN.

EXHIBIT NO. 3

STATE ADMINISTRATION COMMITTEE
51ST LEGISLATIVE SESSION

DATE 3/17/89

BILL NO. HB336

DATE: March 17, 1989 BILL NO. HB336

TIME: 11:05 am

NAME	YES	NO
HUBERT ABRAMS	✓	
JOHN ANDERSON, JR.		✓
ESTHER BENGTON	✓	
WILLIAM E. FARRELL		✓
ETHEL HARDING	✓	
SAM HOFMAN	✓	
PAUL RAPP-SVRCEK		
TOM RASMUSSEN	✓	
ELEANOR VAUGHN		✓

Max Lynch
Secretary

William E. Farrell
Chairman

Motion: To reconsider the committee's action
on Senator Rasmussen's amendments,
and adopt said amendments

Amendments to House Bill 336
Third reading copy
Requested by Senator Rasmussen

For the Senate Committee on State Administration

Prepared by Eddy McClure
March 14, 1989

1. Page 4, line 1.
Following: "BECAUSE OF"
Insert: "age and"

2. Page 4, line 14.
Following: line 13
Insert:

"(5) The prohibitions of this section against discrimination because of age and familial status do not extend to any single-family house sold or rented by a private individual owner unless:

(a) the private individual owner owns more than three single-family houses at any one time;

(b) in the case of the sale of a single-family house by a private individual owner not residing in the house at the time of sale or who was not the most recent resident of the house prior to sale, the owner has sold one or more other single-family houses in the previous 24-month period;

(c) the owner is not a bona fide private individual owner;

(d) the owner owns an interest in or title or any right to all or a portion of the proceeds from the sale or rental of more than three single-family houses at any one time, including any interest that has been made or reserved on his behalf under any express or voluntary agreement;

(e) the owner sells or rents the house with the use in any manner of:

(i) the sales or rental facilities or services of any real estate broker, agent, or salesperson;

(ii) the facilities or services of any person in the business of selling or renting dwellings; or

(iii) any employee or agent of the broker, agent, salesperson, or person; or

(f) the owner sells or rents the house with the publication, posting, or mailing of an advertisement or written notice.

(6) Nothing in subsection (5) prohibits the use of attorneys, escrow agents, abstractors, title companies, or other professional assistance necessary to perfect or transfer title.

(7) The prohibitions of this section against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by

SENATE STATE ADMIN.

EXHIBIT NO. 4

DATE 3/17/89

BILL NO. HB 336 092

no more than four families living independently of each other if the owner actually maintains and occupies one of the living quarters as his residence."

Renumber: subsequent subsection.

HB033601. AEM

SENATE STATE ADMIN.

EXHIBIT NO. 5

DATE 3/17/89

BILL NO. HB 336

Amendments to House Bill 336
Third reading copy
Requested by Senator Farrell

For the Senate Committee on State Administration

Prepared by Eddy McClure
March 14, 1989

1. Page 4, line 1.
Following: "BECAUSE OF"
Insert: "age and"

2. Page 4, line 14.
Insert: "(5) The prohibitions of this section against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other if the owner actually maintains and occupies one of the living quarters as his residence."

Renumber: subsequent subsection

HB033602.AEM

NATIONAL CONFERENCE OF STATE LEGISLATURES
TASK FORCE ON STATE-LOCAL RELATIONS

SENATE STATE ADMIN.

EXHIBIT NO. 6

DATE 3/17/89

BILL NO. HB148

SUMMARY OF RECOMMENDATIONS
August 1986

We are on the brink of a period of significant change in the way state and local governments interact, caused in part by the continuing reduction of federal financial support. These recommendations are intended as guides to states as they reassess their policies toward local governments in a period of "fend-for-yourself" federalism. We recognize that each state must develop state-local policies consistent with its unique traditions and that no grand design for state-local relations can be developed for all states. We feel that the recommended policies deserve serious consideration and that the issues raised ought to be debated.

1. Legislators should place a higher priority on state-local issues than has been done in the past. The time has come for states to change their attitude toward local governments--to stop considering them as just another special interest group and to start treating them as partners in our federal system of providing services for citizens. Likewise, local governments should resist a "go-it-alone" attitude and should participate in the process as partners.

Improving the State-Local Policy Development Process

2. Each state needs an organization dedicated to studying state-local issues and resolving problems, either a state advisory commission on intergovernmental relations or a legislative commission on state-local relations. It should be created by statute, have strong legislative representation, and have an adequate budget and staff.
3. States should develop systems to monitor local fiscal developments and to inform the public about significant trends in local finance.

Improving State-Local Policies

4. States should give localities more discretion in raising revenues. Sales and income taxes should be among the options available to local governments. Safeguards should be enacted to facilitate use of these taxes and to mitigate problems associated with them.
5. States should provide technical assistance to help local governments implement user charges.
6. The property tax should be made more acceptable by improving assessment systems, adopting state-financed relief programs to shield the poor from excessive burdens, and enacting "truth-in-taxation" provisions.
7. States should evaluate their system of limitations on localities to assure that it does not prevent local revenue per capita from rising at least as fast as the inflation rate.

SENATE STATE ADMIN.

EXHIBIT NO. 7

DATE 3/17/89

BILL NO. HB148

ROLL CALL VOTE

STATE ADMINISTRATION COMMITTEE
51ST LEGISLATIVE SESSION

DATE: March 17, 1989 BILL NO. HB148 TIME: 11:45am

NAME	YES	NO
HUBERT ABRAMS	✓	
JOHN ANDERSON, JR.		✓
ESTHER BENGTON	✓	
WILLIAM E. FARRELL	✓	
ETHEL HARDING		✓
SAM HOFMAN		✓
PAUL RAPP-SVRCEK		
TOM RASMUSSEN	✓	
ELEANOR VAUGHN		✓

Mary Lynch
Secretary

William E. Farrell
Chairman

Motion: To table HB148

DEPARTMENT OF COMMERCE
DIVISION OF BUSINESS REGULATION

SENATE STATE ADMIN.

EXHIBIT NO. 8

DATE 3/17/89

STILL NO. HB284 #1



TED SCHWINDEN, GOVERNOR

1424 9TH AVENUE

STATE OF MONTANA

(406) 444-3737

HELENA, MONTANA 59620-0407

March 4, 1988

Mr. Scott Seacat
Office of the Legislative Auditor
State Capital, Room 135
Helena, Montana 59620

RECEIVED

MAR 09 1988

MONTANA LEGISLATIVE
AUDITOR

Dear Mr. Seacat:

As a follow-up to our telephone conversation of February 29, 1988, I am asking your opinion as to changes to MCA Title 37, Chapter 14 which may or may not be subject to the Sunrise statute.

The Board of Radiologic Technologists wishes to add some clarifications pertaining to radiation therapy, technologists to insure that only qualified persons may perform radiation therapy.

The existing statute contains a reference to therapy in MCA 37-14-301(2) in so far as therapy is related to x-radiation. However, radiation therapy now utilizes x-rays for simulation, radioactive materials (i.e., Cobalt-60), and linear accelerators which are capable of producing x-radiation and electrons. Some of the scope of radiation therapy is probably not covered by the existing statute and therefore requires clarification.

I have enclosed a copy of the original draft of proposed changes which will clarify the gray areas within the existing statute.

Please advise me if the proposed legislation is or is not subject to the Sunrise statute.

Please feel free to contact me at 444-3671 if I may be of assistance.

Sincerely,
MONTANA STATE BOARD OF
RADIOLOGIC TECHNOLOGISTS

Handwritten signature of Adrian C. Howe in cursive.

Adrian C. Howe
Board Chairman

Proposed

SENATE STATE ADMIN.

EXHIBIT NO. 8

DATE 3/17/89

BILL NO. HB 284 pg 2

37-14-102. Definitions.

- (3) "License" means an authorization
- (a) "License" means an authorization issued by the department to perform therapeutic radiation procedures on persons.

- (6) "Performance of x-ray procedures" means a
- (a) "Performance of therapeutic radiation procedures" means the involvement or completion of any portion of a therapeutic procedure that may have an effect on the prescribed radiation dose, including simulation, treatment positioning, treatment aids, treatment delivery, treatment calculation, port film acquisition and darkroom procedures.

- (8) "Radiologic technologist" means a
- (a) "Radiation Therapy Technologist" means a person other than a licensed practitioner who is qualified under the provisions of this chapter for the issuance of a license to perform therapeutic procedures on persons and who performs the following functions in connection with the therapeutic procedure:

- (i) operates x-ray simulator for placement of the treatment fields;
- (ii) prepares and positions patients for simulation and treatment;
- (iii) performs calculations to determine the amount of time/MU's to deliver the prescribed dose at the prescribed depth;
- (iv) selects proper ancillary equipment to be utilized during the therapeutic procedure;
- (v) selects proper film/cassette combinations and exposure to produce simulation and port films;
- (vi) prepares film processing solutions and develops or processes the exposed x-ray film;
- (vii) performs machine warmups and pretreatment quality assurance checks;
- (viii) inspects, maintains and performs minor repairs to therapeutic equipment;
- (ix) assesses patients daily to determine whether treatments should be withheld until a radiation oncologist determines appropriate action;
- (x) possess knowledge of critical organ doses so that treatments are not delivered above these doses without the radiation oncologists prescription;
- (xi) delivers therapeutic radiation which includes but is not limited to gamma rays, x-rays, electrons, protons and neutrons.

Licensing PART 3

37-14-301. Limitation of license authority--exemptions.

- (1) No person may perform.....
- (a) Licensure is not
- (iv) No person may perform a therapeutic procedure on a person unless licensed under this chapter with the following provisions:
 - (a) Licensure is not required for:
 - (i) a student enrolled in and attending an AMA approved school of radiation therapy who performs therapeutic procedures on persons under the specific direction for planning procedures and direct supervision for therapeutic procedures of a person licensed to deliver such procedures;
- (2) A person licensed as a radiologic
- (a) A person licensed as a radiation therapy technologist may perform therapeutic procedures on persons under the specific direction of a person licensed to prescribe such procedures.

37-14-302. Qualifications.

(1) Each applicant for.....
(a) Each applicant for licensure as a radiation therapy technologist shall have satisfactorily completed:

- (i) a twelve month AMA approved course of study in radiation therapy technology and hold certification in radiologic technology;
 - (ii) a twenty-four month AMA approved course of study in radiation therapy technology;
 - (iii) a forty-eight month AMA approved course of study in radiation therapy technology/ or
- 2 years*
23 years
- < a licensed radiologic technologist with five years of full time employment under the direct supervision of an ACR certified radiation oncologist and/or radiologist
 - < holding ACR therapy boards and/or a registered radiation therapy technologist.
- grandfather clause*

(2) Each applicant for licensure

- (a) Each applicant for licensure as a radiation therapy technologist shall:
- (a) be of good moral character;
 - (b) be at least 19 years of age;
 - (c) not be addicted to intemperate use of alcohol or narcotic drugs.

37-14-304. Licensure by endorsement.

The board

The board may accept in lieu of its own examination, a certificate of the American Registry of Radiologic Technologists or a certificate, registration or license issued by another state/country whose qualifications are at least equal to those set forth in this chapter.

37-14-306. Permits.

(4) The board shall.....

- (a) There will be no limited permits for Radiation Therapy Technologists.

- did for regular rad techs

SENATE STATE ADMIN.

EXHIBIT NO. 8

DATE 3/17/89

BILL NO. HB 284 pg 4

March 21, 1988

Adrian C. Howe, Chairman
Board of Radiologic Technologists
Professional and Occupational Licensing Bureau
1424 9th Avenue
Helena, MT 59620

Dear Mr. Howe:

This is in response to your letter asking if your proposed changes to Title 37, Chapter 14, MCA, are subject to the Sunrise law. We have discussed the issue and decided the proposed changes do not appear to be subject to a Sunrise review. Our opinion is based on the assumption Radiologic Technologists are currently licensed to perform therapeutic procedures. Therefore, the proposed changes would not add a new profession for licensure by your board.

Our legal counsel briefly reviewed your proposed amendments and made some suggestions you may wish to consider. Your proposal is difficult to understand in places and might be improved if the proposal was in the form of a draft bill. Department of Commerce or Legislative Council attorneys could help you with bill drafting. You may also want to expand your list of definitions. Some definitions to consider are diagnostic procedure, therapeutic procedure, and the various professional titles and certifications used under your amended section 37-14-302, MCA. One other area to clarify is the proposed educational requirements. We assume that any one of the four listed educational requirements is sufficient for licensure. A different numbering system or a change in punctuation may be necessary.

If you have any questions, or need further information, please call.

Sincerely,

Scott A. Seacat
Legislative Auditor

2/1/89