

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIR JAN BROWN**, on January 9, 1991, at 9:00 a.m. The meeting was turned over to the **VICE-CHAIR COCCHIARELLA** while **CHAIR BROWN** introduced the bill she was sponsoring.

ROLL CALL

Members Present:

Jan Brown, Chair (D)
Vicki Cocchiarella, Vice-Chair (D)
Beverly Barnhart (D)
Gary Beck (D)
Ernest Bergsagel (R)
Fred "Fritz" Daily (D)
Ervin Davis (D)
Jane DeBruycker (D)
Roger DeBruycker (R)
Gary Feland (R)
Gary Forrester (D)
Patrick Galvin (D)
Harriet Hayne (R)
Betty Lou Kasten (R)
John Phillips (R)
Richard Simpkins (R)
Jim Southworth (D)
Wilbur Spring (R)
Carolyn Squires (D)

Staff Present: Sheri Heffelfinger, Legislative Council, and Judy Burggraft, Committee Secretary.

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 94

Presentation and Opening Statement by Sponsor:

REP. BROWN, House District 46, Helena, introduced HB 94 which is a code commissioner bill that she was carrying for the Council.

REP. BROWN introduced Greg Petesch, Director of the Legal Services Division for the Legislative Council, who explained the bill as follows: Mr. Petesch distributed an amendment to the committee. **EXHIBIT 1** There are two parts to the bill which is

based on a similar law that was enacted in Colorado last year to protect their copyright. The purpose of the bill is to codify what has been a practice of the Legislative Council for the past five years. The Montana Codes Annotated (MCA) is copyrighted in the state of Montana as the MCA requires. Mr. Petesch said that when other people want to publish and distribute the Code, such as licensing boards, and sell the copies to their members, they are required to write for permission. The bill is necessary in order to protect the state's copyright. He has never denied anyone permission to copy the Codes, as long as they acknowledge the state's copyright. Codifying the law will allow the public more access.

Mr. Petesch reported that a group called Mead Data Central from Dayton, Ohio, has an on-line data base of all states' codes. These codes may be accessed from a computer terminal and the first item on the screen would be the copyright information for the state of Montana. Just this winter, he said, the MCA was released in CD format, meaning that anyone with a CD computer is able to download code text. With the passage of this bill, the Montana code copyright will appear on the CD. Those wishing to copy the code information for a profit must still get the Council's permission. Anyone with Desktop publishing capabilities may now easily publish large volumes of the Montana Revised Codes without crediting the state's copyright.

The second portion of the bill provides that the M.R.C. prepared by the Code Commissioner's office is the official version and the only code publication entitled to be considered as evidence in Montana courts. Many publications have been printed in other states that are unofficial versions of other state's codes. This has not been done in Montana, but if it were, this bill would allow the court to only consider the official version. Mr. Petesch talked to the Chief Justice who said he would have no problem with the issue and thought it a good idea.

Proponents Testimony: None

Opponents Testimony: None

Questions From Committee Members:

REP. KASTEN asked if an attorney could give you a copy of a requested portion of the codes without first requesting permission. MR. Petesch said yes.

Closing by Sponsor:

REP. BROWN stated that the legislative council agreed to have the bill sponsored by one of its members on behalf of the code commissioner and the council. REP. BROWN said she believed that Mr. Petesch had "covered the bases carefully" on the bill. The bill is a housekeeping bill, and she asked the committee's support.

EXECUTIVE ACTION ON H.B. 94

Motion: REP. DAILY moved H.B. 94 DO PASS.

Amendments, Discussion, and Votes: REP. DAILY moved H.B. 94 DO PASS AS AMENDED (see Exhibit 1).

Recommendation and Vote: The motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 16

Motion: REP. SOUTHWORTH moved HB 16 DO PASS.

Discussion: REP. KASTEN questioned if the bill was written in a manner to make it cost effective and if there was a procedure to allow the printing to be done out of state if it could not be produced by the Montana firm receiving the bid. Sheri Heffelfinger, the legislative researcher, said there was no provision in the bill for either, but her understanding was that the "lowest responsible bidder" was awarded to whoever turned in the lowest bid and could do the work.

REP. PHILLIPS questioned if there were many "jobber types" that would bid contracts in Montana. Marvin Eicholtz, Director of Administrator of the Printing Division, Department of Administration, responded that he thought the bill would basically eliminate buy outs or jobbing because if a printer or agent were going to job it out, it would normally go out of state. Very seldom is work jobbed out in state. There are agents within the state that act solely as jobbers. Often times jobbing out allows an instate printer to complete the job on time.

REP. SIMPKINS asked Ms. Heffelfinger for clarification on the following: If there is no printer that has the capability of printing a publication within the state, then this law would prohibit the printing of the publication. He was told that was correct.

Recommendation and Vote: REP. SPRING moved TO TABLE the bill. The motion failed 8 to 11. EXHIBIT 2

REP. SIMPKINS stated that he thought the committee should know what they were dealing with as the following could not be printed within the state: Montana Highway map, Montana University catalog, Montana snowmobile catalog, Montana travel planner, Montana vacation guide, Montana Revised Codes (500,000 copies printed). The last instate bidder on the MCA was in 1983. The price differential of the instate versus the out-of-state bid was \$100,000 in state and \$50,000 out of state. The reason -- the

special envelopes that must be included, and the Montana printers do not have the capability of doing this.

REP. DAVIS said that it was his understanding that if a Montana responsible bidder received the bid award, then the printing must be done in Montana. He said he would be willing to insert an amendment to add the word "Montana" following "responsible." It would read, "a responsible Montana bidder." That way if we had no Montana responsible bidder, then the lowest out-of-state bidder could be awarded the job.

Amendments, Discussion, and Votes:

REP. DAILY made the following motion: after the words "responsible bidder" insert a "period" and then insert the following sentence: "if no responsible bidder is available in Montana, the printing may be performed outside Montana by a nonresident printer." REP. DAILY said his purpose was to clarify the point that if there is no responsible bidder available, then it can be done out of state.

REP. COCCHIARELLA asked if Rep. Daily wanted to include some language concerning the lowest bidder. REP. DAILY responded saying he did not think it was necessary because it would go to the lowest responsible bidder outside the state if there wasn't one within the state.

REP. BERGSAGEL asked Rep. Daily if he would be receptive to the provision to adding a 3 percent margin that had been discussed. REP. DAILY said he would be willing to do so but that he thought it was not needed because if there were a responsible printer in Montana he would get the work.

REP. SQUIRES asked Rep. Driscoll, the sponsor of the bill, if he agreed with the amendment and for him to clarify his intent for the committee. REP. DRISCOLL said, "that is exactly my intention. If it cannot be done in Montana, then it has to go out of state."

REP. SIMPKINS thought that "if a bid has not been received" it might need to be added. He said that if a Montana qualified bidder is overworked and decides not to bid, this wording would indicate that there is a qualified bidder in the state and the bid would still go out.

SHERI HEFFELFINGER said she would like to review any amendments overnight. For clarification she asked REP. SIMPKINS if the following was his intent: If there were no bidder at all in the state, that a bidder out of state would receive the bid.

REP. SIMPKINS said that if you receive no bid in state, then technically it should be required that the Department of Administration should check the records to verify that there is no instate qualified print shop. If there is a responsible

bidder in the state of Montana that did not bid, then technically we still cannot accept his bid, the way the bill now reads.

MS. HEFFELFINGER stated that her understanding was that if they are within the state and a responsible bidder but do not bid, they are not considered a bidder. A bidder implies that they have actually bid. You cannot go look and find another print shop that might be able to do the job.

REP. SIMPKINS asked if we receive a bid for \$100,000 for a job from an instate bidder and \$50,000 from the out-of-state bidder, would the bid be awarded to the instate bidder. **REP. DAILY** said "that is absolutely correct. That is what we are trying to do here."

REP. KASTEN said that then we would be making a policy statement that we do not care what it costs as long as it is done in Montana. **REP. DAILY** said we obviously do care. He felt that the printers in Montana were responsible people and would not bid way over.

REP. KASTEN replied that it is her understanding that any printer in Montana acting as an agent can bid whatever he wants and have it printed wherever he wants.

REP. PHILLIPS stated that would give printers a license to steal.

REP. DRISCOLL said that the scenario is possible, but if there is no money, they would not print it. He said that he didn't feel that there wasn't anything that needed to be printed that was so "earth shattering" that it couldn't wait until next session to be printed.

REP. FORRESTER said that he could not believe that within the state of Montana that there would not be some entrepreneur that wouldn't jump in and obtain the equipment if they were able to do this after the "one shot" bid.

REP. SQUIRES commented that printers have been asking for this particular piece of legislation as they were not capable of competing. She stated her belief that if the Montana printers thought that the out-of-state bidders would obtain the bids, they would not invest in an expensive piece of equipment to do only one job every few years. This bill would allow the printers to expand their capabilities.


REP. DAILY felt that if this bill was abused by the printers, it would be changed next session. He remarked, "It is a good jobs bill."

REP. BROWN informed the committee that Ms. Heffelfinger had requested time to work on the amendments. With the committee's permission, executive action on the bill would be deferred until the next day.


REP. KASTEN said she would like to have something to ensure cost effectiveness in the amendments.

ADJOURNMENT

Adjournment At: 9:47 a.m.



JAN BROWN, Chairman



JUDY BURGGRAFF, Secretary

JB/jb

HOUSE OF REPRESENTATIVES
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE 1-9-91

NAME	PRESENT	ABSENT	EXCUSED
REP. JAN BROWN, CHAIR	✓		
REP. VICKI COCCHIARELLA, V.- Chair	✓		
REP. BEVERLY BARNHART	✓		
REP. GARY BECK	✓		
REP. ERNEST BERGSAGEL	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ERVIN DAVIS	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. GARY FELAND	✓		
REP. GARY FORRESTER	✓		
REP. PATRICK GALVIN	✓		
REP. HARRIET HAYNE	✓		
REP. BETTY LOU KASTEN	✓		
REP. JOHN PHILLIPS	✓		
REP. RICHARD SIMPKINS	✓		
REP. JIM SOUTHWORTH	✓		
REP. WILBUR SPRING	✓		
REP. CAROLYN SQUIRES	✓		

1:40 pm
BJH

STANDING COMMITTEE REPORT

January 9, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 94 (first reading copy -- white) do pass as amended.

Signed: J. Brown
Jan Brown, Chairman

And, that such amendments read:

1. Page 3, line 22.
Following: "publication"
Insert: ", as defined in 17 U.S.C. 101,"

EXHIBIT 1
DATE 1/9/91
HB 94

Amendments to House Bill No. 94
First Reading Copy

Requested by Representative Brown
For the Committee on State Administration

Prepared by Greg Petesch
January 8, 1991

1. Page 3, line 22.
Following: "publication"
Insert: "as defined in 17 U.S.C. 101,"

separately from, and are capable of existing independently of, the utilitarian aspects of the article.

A "pseudonymous work" is a work on the copies or phonorecords of which the author is identified under a fictitious name.

"Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work "publicly" means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

"Sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

"State" includes the District of Columbia and the Commonwealth of Puerto Rico, and any territories to which this title is made applicable by an Act of Congress.

A "transfer of copyright ownership" is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A "transmission program" is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To "transmit" a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

The "United States", when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government.

EXHIBIT 2
DATE 4/9/91
HB 16

HOUSE OF REPRESENTATIVES
STATE ADMINISTRATION COMMITTEE

ROLL CALL VOTE

DATE 1-9-91 BILL NO. HB 16 NUMBER 1

MOTION: To table HB 16

NAME	AYE	NO
REP. VICKI COCCHIARELLA, VICE-CHAIRMAN	✓	
REP. BEVERLY BARNHART		✓
REP. GARY BECK		✓
REP. ERNEST BERGSAGEL		✓
REP. FRED "FRITZ" DAILY		✓
REP. ERVIN DAVIS		✓
REP. JANE DEBRUYCKER		✓
REP. ROGER DEBRUYCKER	✓	
REP. GARY FELAND	✓	
REP. GARY FORRESTER		✓
REP. PATRICK GALVIN		✓
REP. HARRIET HAYNE	✓	
REP. BETTY LOU KASTEN	✓	
REP. JOHN PHILLIPS	✓	
REP. RICHARD SIMPKINS	✓	
REP. JIM SOUTHWORTH		✓
REP. WILBUR SPRING	✓	
REP. CAROLYN SQUIRES		✓
REP. JAN BROWN, CHAIR		✓
TOTAL	8	11

VISITORS' REGISTER

COMMITTEE

DATE 1-9-91

SPONSOR Rep. Jan Brown

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.