

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairperson Eleanor Vaughn, on January 23, 1991, at 10:10 A.M. in room 331.

ROLL CALL

Members Present:

Eleanor Vaughn, Chairman (D)
Bob Pipinich, Vice Chairman (D)
John Jr. Anderson (R)
Chet Blaylock (D)
James Burnett (R)
Bill Farrell (R)
Harry Fritz (D)
Bob Hockett (D)
Jack Rea (D)

Members Excused: Senator Bernie Swift

Staff Present: David Niss (Legislative Council).

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

Announcements/Discussion: None

HEARING ON HOUSE BILL 85

Presentation and Opening Statement by Sponsor:

Representative Barry Stang, House District #52, said House Bill 85 was introduced at the request of the Department of Highways. The bill is an act establishing a time period of 180 days in which an employee of the Department of Highways may file a personnel grievance with the Board of Personnel Appeals; barring grievances filed late and amending section 2-18-1001, MCA. The Highway Department has a history of people filing grievances in a lengthy period of time. This brings the Highway Department into agreement with the National Labor Relations Board whose regulation is 180 days to file a grievance.

Proponents' Testimony:

Jack Holstrom, Attorney for the Department of Highways, supports House Bill 85. A time period of 180 days is enough time to file a grievance. This bill further specifies that if they don't file within 180 days, they lose their right to go through that particular grievance. The reason this bill is necessary is

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Jack Holstrom, Attorney for the Department of Highways, supports House Bill 85. A time period of 180 days is enough time to file a grievance. This bill further specifies that if they don't file within 180 days, they lose their right to go through that particular grievance. The reason this bill is necessary is that the sections relating to grievances filed by department employees with the Board of Personnel Appeals do not provide any limiting time period, when an employee will be precluded from filing a grievance. Examples of the problems were given. It creates a hardship on the department both financially and administratively. Please pass this bill.

Opponents' Testimony:

None

Questions From Committee Members:

None

Closing by Sponsor:

Representative Stang closed by saying that the lawyer from the Department has done a good job of explaining the case and asked Senator Fritz to carry the bill to the Senate floor.

EXECUTIVE ACTION ON HOUSE BILL 85

Motion:

Senator Fritz made a motion to DO CONCUR IN HOUSE BILL 85.

Recommendation and Vote:

The VOTE was UNANIMOUS to DO CONCUR IN HOUSE BILL 85. Senator Fritz will carry it to the Senate floor.

HEARING ON SENATE BILL 149

Presentation and Opening Statement by Sponsor:

Senator Gerry Devlin, Senate District 13, is bringing Senate Bill 149 at the request of Department of Fish, Wildlife and Parks. It is an act simplifying the grievance procedure for employees of the Department of Fish, Wildlife, and Parks.

Proponents' Testimony:

other departments, they simply will have the right to go through an appeal to the director, who probably made the decision to terminate in the first place, and he will then either reaffirm his decision or overrule it. Obviously, in the majority of cases, he will reaffirm his decision that he's already made. The process here is exactly the same process as the Department of Highways. They are the only 2 departments that have these processes, so they are different than other agencies. The major problem in each one is the fact that there is no limit on the time an employee has to file a grievance. He doesn't oppose a 180 limit to file a grievance.

Questions From Committee Members:

Senator Pipinich asked why State Administration Committee got these 2 bills, since they are grievance bills and should be in the Labor Committee? No one knows.

Senator Blaylock asked Tom Schneider about the language the Department wants stricken on page 1, line 20, "The action of the department resulting from such a hearing constitutes final administrative action for purposes of filing a grievance with the board of personnel appeals as provided in 87-1-205." The Department has testified that they do have a grievance procedure elsewhere.

Tom Schneider responded that the grievance procedure they have now is a process where you can appeal to the director of the department. It does not go outside the department. With this law in place, the employees have the right to appeal the director's decision to the Board of Appeals. That's how the process works.

Senator Blaylock asked Dave Mott to respond to Mr. Schneider's point that the employees need a right to appeal outside the department.

Dave Mott said their agency has happy satisfied employees. They have only had 2 grievances filed in the agency in the last 2 years. Both of those went through the state policy developed by the Department of Administration. He clarified that the state policy for serious disciplinary actions, kicks it out to a fact finding group, a hearings officer that would either be the Board of Personnel Appeals or a person from the Attorney General's office. Their role would be similar to what it presently is under the current law, except for the fact that the hearings officer would advise the director on the proper course of action to take. A serious offense is more than 10 days off without pay, demotion or termination. Those instances involve someone else coming in that's independent reviewing and advising the director on how to proceed. The director still makes the final decision, but with the advise of someone outside the agency. Under current law the Board of Personnel Appeals would be ruling on the matter. Their role is limited to fact finding, as he understands it.

Bob Lane, Attorney for the Department of Fish, Wildlife and Parks, explained that the essence of protection for employees under either grievance process is to have an independent fact finder. Both processes have that. Under the state grievance process for those serious offenses of disciplinary matters, there is an independent, impartial hearings examiner chosen by one of two methods. The duty of that examiner is to make independent fact finding and a nonbinding recommendation of the course of action for the department to take. In essence those facts are binding on the director in making his decision. The Board of Appeals functions much the same way. The examiner gives his recommendation to the Board of Appeals and there authority is limited by case law. They do not make a decision for the department ultimately on what should be done. They decide if the department has abused it's discretion or whether there is just cause for the department's action. The protection is in the independent fact finder and are binding in essence. This is a duplicate process. That's why they want to simplify this, not take away the rights of the employee or his ability to protest through an independent fact finder.

Senator Blaylock asked if in the process within the department for those serious offenses, who is it that appoints this independent group that is going to look at the facts?

Bob Lane said they get a hearings examiner from the Attorney General's office or the hearings examiner is chosen from a list from the Board of Personnel Appeals. He said there are several examiners considered and you have a striking process whereby each side deletes until you have one examiner.

Senator Blaylock asked if it was the director appointing the hearings examiner? No, it's done by the process already outlined.

Senator Pipinich asked Tom Schneider about the 3 tier system for grievances?

Tom Schneider responded that they have a 3 tier system of their own that the employee goes through. Ultimately the director still makes the final decision. When it goes to the Board of Personnel Appeals, they will issue an order and that order will be binding on the department. It will be a neutral body order, not another finding of fact back to the director. That's the difference in the 2 processes.

Senator Pipinich asked Dave Mott if the system is working now why change it? With only 2 cases in 2 years you don't have a problem.

Dave Mott responded they are trying to prevent some problems. Perhaps the most serious is there is no time limit on grievances. And secondly, the confusion factor in teaching employees about the 2 different processes that essentially do the same thing

detracts from managing. This is preventive maintenance on the codes.

Senator Rea asked Mr. Mott if he is concerned about the length of time, why isn't that addressed in this bill?

Dave Mott responded that is contained in the state policy developed by the Department of Administration. Those rules would be the ones they would follow and there is a time limit. A further point is personnel management is very complicated. It seems as though there are more rules and regulations to follow and they depend on the Department of Administration to develop those rules and policies for the agency to follow. This is one of the few policies that is written in the code.

Senator Hockett asked Tom Schneider about the statement that procedures the department has now are redundant and confusing to both employee and management? Do you agree with that?

Tom Schneider responded that he's dealt for 25 years with agency grievance policy and it always goes to the director and the director is free to do what he wants to do. He's had cases where the fact finder finds one thing and the director still does another thing. If it's a termination case, you then have the right of wrongful discharge, but if it's not a termination case that's the end of the grievance process. This process goes to the Board of Personnel Appeals. If they rule, they rule and it is binding on the director of the department. It is a step further than this other process. Don't be confused by the fact that it takes much the same steps to get to the judgment.

Senator Vaughn asked Mr. Schneider if the Board of Personnel Appeals gives a binding order to the director, can the director still make his decision?

Mr. Schneider said he cannot, it is a binding order. It would be the same as a court decision.

Senator Blaylock explains there are 2 different stories here. On one hand the department is saying that the Board of Personnel Appeals is fact finding and that they do not make recommendations. Then on the other side, if it's handled within the department, Mr. Schneider says, that the neutral fact findings are not binding on the department. That is a conflict.

Bob Lane explained that both systems are both closer together than what they might seem at first. He talked about the case law that restricts the Board of Personnel Appeals. They can not substitute their opinion of what should happen for that of the director. They can only determine whether the director had just cause for carrying out what he thought was appropriate action and not abusing their discretion. If they eliminated the appeal to the Board of Personnel Appeals, the next remedy would be district court. The difference between what Mr. Schneider and he's saying

is that basically the power of the Board of Personnel Appeals is restricted to reviewing their discretion.

Senator Farrell asked Tom Schneider if he and Mr. Lane were talking about 2 different things?

Tom Schneider responded that the Board of Personnel Appeals deals with case law. Whenever they have a case to hear, they look to case law to see how that was handled in the past. All labor boards deal that way. When you talk just cause you are in a whole new process of employee protection. In the end the Board of Appeals can order an employee reinstated and it has to be done. The Board has those powers. In the other process that does not occur.

Senator Farrell asked how other agencies handle this just cause proceedings?

Tom Schneider responded that all unions basically have just cause clauses. The other agencies do not have the statutory provision to go to the Board of Personnel Appeals. They go through the other process to the director for the final decision.

Closing by Sponsor:

Senator Devlin feels confused about the conflicting testimony. This legislation does put the Department of Fish, Wildlife and Parks on the same playing field as the rest of the agencies of state.

Discussion:

Senator Pipinich asked if we could hold back taking action on Senate Bill 149 until both interested parties in the legislation can agree on what the law should say.

ADJOURNMENT

Adjournment At: 10:50 A.M.


ELEANOR VAUGHN, Chairman


DOLORES HARRIS, Secretary

EV/dh

ROLL CALL

STATE ADMINISTRATION COMMITTEE

DATE 1-23-91

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR ELEANOR VAUGHN	X		
SENATOR BOB PIPINICH	X		
SENATOR JOHN ANDERSON	X		
SENATOR CHET BLAYLOCK	X		
SENATOR JAMES BURNETT	X		
SENATOR "BILL" FARRELL	X		
SENATOR HARRY FRITZ	X		
SENATOR BOB HOCKETT	X		
SENATOR JACK "DOC" REA	X		
SENATOR BERNIE SWIFT			<i>excused</i>

Each day attach to minutes.

DATE

January 23, 1991

COMMITTEE ON

State Administration

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Tom Schneider	MPEA	HB 85	X	
Tom Schneider	MPEA	SB 149		X
Jack Johnston	Mt. West. of HI 611499	HB 85	X	
Dave Matt	FUP	SB 149	X	
Doug DENNE	FUP	SB 149	X	
Bob Lane	FUP	SB 149	X	

(Please leave prepared statement with Secretary)

**Montana Department
of
Fish, Wildlife & Parks**

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 1-23-91

BILL NO. SB149



SB-149

January 23, 1991

Testimony Presented by Dave Mott, Dept. of Fish, Wildlife & Parks

It is important for all employees in state government to have a mechanism available to address working conditions to contest disciplinary actions and other concerns. The Department of Fish, Wildlife and Parks is in a unique situation. This department has two grievance procedures that are redundant and confusing to both the employee and management. This Department is proposing to simplify the process by eliminating the statutory grievance procedure contained in the laws codified under the Department of Fish, Wildlife and Parks.

There are two primary reasons why the statutory grievance procedure should be eliminated. The Department of Administration has published a model grievance procedure which is available to all agencies. The Department of Fish, Wildlife and Parks has adopted this policy which consists of a three step process that allows for full disclosure of the facts and guarantees due process for the grievant. The policy gives clear guidelines and specific information on the filing, processing and disposition of grievances, and is fair and equitable to the department and it's employees.

Under current law, the employee can take the grievance, once it has gone through the state procedure, to yet another level - the Board of Personnel Appeals. The grievance process before the Board of Personnel Appeals is essentially identical to the agency grievance process that has already been completed.

The second item of concern is that the statutory procedure contains no time-limits for when an employee can take a grievance to the Board of Personnel Appeals. The longer a grievable condition exists with no action, the more difficult it is for the grievance to be resolved or adjusted at a later time. As time passes it becomes more difficult to reconstruct the circumstances that lead to the grievance. In addition, there is an unknown liability to the agency as grievances from the past could be filed irrespective of when the event happened in the past.

In summary, the Department of Fish, Wildlife and Parks is committed to sound personnel management practices within the agency. The

proposed legislation will simplify the grievance process, and will allow employees to voice their concerns about working conditions or disciplinary actions.

We urge your support and passage of SB-149.

SENATE STANDING COMMITTEE REPORT

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MR. PRESIDENT:

We, your committee on State Administration having had under consideration House Bill No. 85 (third reading copy -- blue), respectfully report that House Bill No. 85 be concurred in and unaimously recommend that it be placed on the Consent Calendar.

Signed: *Eleanor Vaughn*
Eleanor Vaughn, Chairman

JJA 1-23-91
Am. Coord.

JK 1-23-91
Sec. of Senate