

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By Senator Eleanor Vaughn, on January 11, 1993,
at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Eleanor Vaughn, Chair (D)
Sen. Jeff Weldon, Vice Chair (D)
Sen. Jim Burnett (R)
Sen. Harry Fritz (D)
Sen. John Hertel (R)
Sen. Bob Hockett (D)
Sen. Bob Pipinich (D)
Sen. Bernie Swift (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Council
Deborah Stanton, Committee Secretary

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

Committee Business Summary:

Hearing: SB 66, SJR 8
Executive Action: SB 66

HEARING ON SB 66

Opening Statement by Sponsor:

Sen. Grosfield, Senate District 21, presented SB 66, at the request of the Legislative Auditor. SB 66 would clarify offenses the Legislative Auditor reports to the Attorney General. The section 5-13-310 that this amends states the Attorney General shall prosecute public offenses disclosed by an audit. Reports to the Auditor's office regarding something illegal going on are at times technically not yet disclosed by an audit. The bill would close the loophole that a defense attorney may define.

Proponents' Testimony:

John Connor, Assistant Attorney General, prosecutor in AG's office spoke in favor of this bill. "My job is to train County Attorneys and to provide trial assistance in cases where they have a conflict of interest or where they don't have the resources to prosecute the case. We also prosecute cases referred by the Legislative Auditor under this statute. It is the position of the Attorney General's office that this does clear up an ambiguity in the law that requires the Legislative Auditor to actually be involved in an audit when something is referred to us before we have any authority to act. If that is the case, under the current law the Attorney General cannot take action until such time as an audit is conducted later on even though something is brought to our attention initially. If an audit is not conducted it precludes us from becoming involved in the prosecution unless the County Attorney specifically requests us. The problem with that is there is a provision in the statute that says we have to charge when we are special prosecutors at the rate of \$30.00 per hour. Sometimes these cases are complex and cross county lines so it does not make practical sense to have just one county attorney's office involved. The change this bill proposes would allow the Attorney General's Office to get in on the ground floor when something of a potentially illegal nature is brought to the attention of the Legislative Auditor. As with past Attorney Generals, Attorney General Mazurek will refer the cases to the local prosecutor initially to see if he or she wants to handle the case. But in cases that are complex, normally the prosecutor wants to defer it and it would give the Attorney General's office the authority to get involved early on without having to charge the counties. It's a good bill and won't have much effect on current practices except allowing us to get involved earlier and clarifying our authority to act.

Scott Seacat, Legislative Auditor, gave an example of a situation. Technically the Office of Legislative Auditor was not involved in a Department of Livestock audit but there was a major fraud associated with a Livestock helicopter. There was a state employee who used state time and equipment and built a helicopter with state resources. They called in the Attorney General's office and did enough work to support a court order to go in and seize those assets. They were concerned that a state asset would literally "fly away." In that case a good defense attorney might say the Legislative Auditor's office did not do a full audit of the department and therefore did not have the authority to refer to the Attorney General. We did the most efficient thing possible and worked jointly with the investigators at the Attorney General's office. We worked together and put together the data and the audit work that they needed to support the court order to go in and seize the assets. Ultimately, the individual involved pled guilty and the state literally sold the asset and received restitution.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Sen. Pipinich asked Mr. Seacat if the helicopter was made on state land or a private place.

Mr. Seacat said the helicopter was made at a private place. The individual had a hangar in Colorado Gulch. He was ordering parts and equipment and having them delivered to Colorado Gulch.

Sen. Swift asked about the language in Section 2 which says if the state declines to prosecute within a reasonable time then the county shall pursue the case. It could involve a heavy impact on the county and the Assistant Attorney General made a comment that it wouldn't be very heavy but who's to say how much impact it would have.

Mr. Seacat answered that when the Legislative Auditor's office makes a referral to the Attorney General's office they do the criminal side of the case and when appropriate a referral is made to local law enforcement. There has never been a problem with that. If the Legislative Auditor refers a case to the Attorney General's office and the Attorney General chooses not to investigate it, the Auditor has the authority to refer to local law enforcement.

Sen. Swift said the county attorney has to option to refuse it.

Mr. Seacat said the county attorney could not initiate prosecution and that has happened in cases. The Legislative Auditor does not pick and choose what to refer or what not to refer based upon the potential for success of prosecution. Under the Audit Act if there is a potential penal violation we refer and it is up to the prosecutor to determine whether or not there is a case.

Sen. McClernan asked Mr. Seacat about discipline of professionals on line 11 and who the professionals are.

Mr. Seacat said it was existing law and under the audit act it means state employees.

Closing by Sponsor:

Sen. Grosfield explained that prosecutors at the county or the Attorney General level always have the discretion whether or not to proceed with the case. It is a fairly simple bill and he urged support.

HEARING ON SJR 8

Opening Statement by Sponsor:

Sen. Pipinich presented SJR 8 on behalf of Sen. Lynch. SJR 8 would require that acid-free, alkaline-based paper be used on all state documents. Sen. Lynch finished the presentation explaining SJR 8 would protect state documents.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Sen. Tveit asked Sen. Lynch why it was a Senate Joint Resolution instead of a bill.

Sen. Lynch said the Dept. of Administration was requested to adopt rules and the rules could be reviewed at a future date. The Department needs direction to come up with the adequate rules. The Department needs to determine which of the documents need to be put on acid-free paper.

Sen. Hockett asked about a fiscal note for this resolution.

Sen. Lynch said the cost is incidental.

Sen. Weldon asked if the Department of Administration has received notice of this resolution.

Sen. Lynch said on any resolution affecting a department it is the responsibility of the department to follow the legislation.

Closing by Sponsor:

Sen. Lynch said "I close."

EXECUTIVE ACTION ON SB 66

Motion: Sen. Fritz moved SB 66 DO PASS

Discussion:

Vote: Motion that SB 66 DO PASS CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 10: 45 a.m.

Senator Eleanor Vaughn

SENATOR ELEANOR VAUGHN, Chair

Deborah Stanton

DEBORAH STANTON, Secretary

EV/ds

ROLL CALL

SENATE COMMITTEE STATE ADMINISTRATION DATE 1-11-93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Eleanor Vaughn	✓		
Sen. Jeff Weldon	✓		
Sen. Jim Burnett	✓		
Sen. Harry Fritz	✓		
Sen. John Hertel	✓		
Sen. Bob Hockett	✓		
Sen. Henry McClernan	✓		
Sen. Bob Pipinich	✓		
Sen. Bernie Swift	✓		
Sen. Larry Tveit	✓		
David Niss	✓		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 11, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Joint Resolution No. 6 (first reading copy - white), respectfully report that Senate Joint Resolution No. 6 be amended as follows and as so amended be adopted.

Signed: Eleanor Vaughn
Eleanor Vaughn, Chair

That such amendments read:

1. Title, line 7.

Strike: "BY 50 PERCENT BY THE YEAR 2000"

2. Page 2, lines 2 and 3.

Following: "spending" on line 2

Strike: the remainder of line 2 through "2000" on line 3

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 11, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Bill No. 66 (first reading copy -- white), respectfully report that Senate Bill No. 66 do pass.

Signed: *Eleanor Vaughn*
Eleanor Vaughn, Chair

DATE 1-11-93

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: SB 66, SJR 8

Name	Representing	Bill No.	Check One	
			Support	Oppose
John Connor	A.G.	66	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott Sorenson	Legislative Auditor	66	<input checked="" type="checkbox"/>	<input type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY