

MINUTES

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

Call to Order: By Senator Eleanor Vaughn, on January 13, 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. 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: Sen. Harry Fritz

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 100, HB 60
Executive Action: HB 60

HEARING ON HB 60

Opening Statement by Sponsor:

Representative Petersen, House District 1, explained HB 60 was an act clarifying the requirement of Dept. of Administration to approve the purchase of mail equipment in the capitol area. On line 16, page 1, the word "must" when a section is being opened the council is automatically making changes that have been approved in the past. Since there has been some awkwardness about whether you were saying "may" or "shall" it seems more people understood "must". The Department of Administration actually looks at equipment and gives emphasis on equipment buying and they need to do that on postal equipment that is within ten miles of the Helena area so postal equipment that is

purchased is the right size and the right amount, and they are not influenced unduly by the salesman who is trying to upgrade when really what they need is a smaller type of postal service.

Proponents' Testimony:

Debra Fulton, Administrator of General Services Division, gave written testimony (EXHIBIT #1).

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Sen. Weldon asked why the Department of Administration has designated a ten mile radius from the Capitol area. Debra Fulton said statutorily the Department of Administration is responsible for buildings within the ten mile radius.

Sen. McClernan asked if the bill was necessary or if this was something that could be done through administrative rules. Debra Fulton said while it could be done by executive order this seems a more efficient way to do it.

Sen. Hockett asked Ms. Fulton if Workers' Compensation went their own way, if there could be included large-volume-mail-people to make it even more efficient. Ms. Fulton said the intent was to choose the most cost-effective mechanism. There may be computer programs that would allow an agency to process their mail more efficiently.

Sen. Tveit asked Ms. Fulton if a fiscal note was necessary for this bill. Ms. Fulton said there were no costs associated with this bill. There could be potential savings but it is not known.

Closing by Sponsor:

Representative Petersen said she was carrying this bill because one day she was snooping around the mail room to see how it worked. She was impressed with Central Mail and they can bid lower than other services.

Sen. Swift volunteered to carry this bill on the floor.

EXECUTIVE ACTION ON HB 60

Motion: Sen. Hockett moved HB 60 BE CONCURRED IN.

Discussion: None.

Vote: Motion CARRIED Unanimously.

EXECUTIVE ACTION ON SB 95

Motion: Sen. Pipinich moved SB 95 be tabled.

Discussion: None.

Vote: Motion to table SB 95 carried 8 to 1 with Sen. Burnett opposing.

HEARING ON SB 100**Opening Statement by Sponsor:**

Sen. Gary Forrester, Senate District 49, presented SB 100, which is an act defining the term "designated smoking area" in state buildings in the State of Montana. He is carrying the bill for the Department of Administration. He stated second-hand smoke bears new significance as of the EPA report this week. Second-hand smoke has the same classification as asbestos-laden air.

Proponents' Testimony:

Debra Fulton, Administrator of General Services, gave written testimony (EXHIBIT #2, EXHIBIT #3, EXHIBIT #4).

Opponents' Testimony:

Jerome Anderson, attorney from Helena, represented the Tobacco Institute, an organization supported by the Tobacco Industry that makes appearances before Congress, State Legislatures, local and political entities with respect to legislation and regulations made to the tobacco industry. He appeared in opposition to SB 100 in the present form and asked consideration to customers in the industry who want an accommodation with regard to their choice and the use of the product which provides revenue to people in the state of Montana. Tobacco products provide revenue that has constructed and maintained the buildings that are on the campus in Helena and the university systems across the state. The present statute prohibits smoking in general office space, auditoriums, classrooms and conference rooms, elevators, corridors, lobbies, restrooms and stairways except as provided in the subsection. It prohibits medical care facilities, libraries, or hazardous areas. It prohibits smoking in almost all public buildings across the state. He said if this bill passes a single agency head can make the decision whether or not there will be an accommodation made for people who use a tobacco product. At the present time, the statute says that an agency shall establish at least one designated smoking area in each building except in the areas listed in the subsection and the areas that are suitable for that particular purpose. The statute as proposed by the Department of Administration says the Legislature may establish designed smoking areas. This building and other buildings in the

complex that have sealed windows have inadequate ventilation systems. The other things that create air pollution also are not addressed by the Department of Administration or by the state in any way. He referred to things such as formaldehyde from furniture and wall-boards, carbon monoxide, and nitrogen dioxide from heating systems, ozone from office copiers, cotton fibers and fiberglass fragments that are in the air from carpets and furniture. These substances are allowed to accumulate because of inadequate or inadequately maintained ventilation systems which is the predominate cause for the "sick buildings syndrome." If the Department of Administration is sincere about trying to protect the people in the public buildings from air pollution, they should look at a complete ventilation system and the proper maintenance of those systems. He is asking for a continuation of the accommodation provided under the existing statute. R.J. Reynolds has a brochure which is a technical document relating to the development of a smoking lounge. In this document, he explains, there are three ways of taking care of accommodation for smokers and nonsmokers. 1) Trying to work out an arrangement with employees of the workplace, 2) a facility within the building that can be a designated smoking area, 3) a smoking lounge.

John Delano, represented the Philip Morris Company in opposing SB 100. The Philip Morris Company is in agreement that the current statute is adequate. The Department of Administration should be looking at an adequate ventilation and air recirculation system.

Mark Staples, represented the Montana Candy and Tobacco Wholesalers Association. One of the main products at the wholesale and retail level in Montana are tobacco products. The obligation to provide a smoking place is eliminated in the buildings that do not have a place to smoke. The capitol does not have a room for smokers except for the second floor men's bathroom. The statute works fine and total discretion in the agency head could lead to personal prejudices.

Questions From Committee Members and Responses:

Sen. Pipinich asked Debra Fulton if she knew the history of the tobacco tax. Ms. Fulton said she did not.

Sen. Pipinich said the tobacco tax built half of the buildings in Helena. He said it also paid for the veterans of the Second World War and the Korean War. He said the tobacco tax brings in around \$21 million a year and if you do not provide a smoking area you will not receive any tobacco tax revenue. He is against this bill unless you change the word "may" to "must" on line 17.

Ms. Fulton declined to make those changes. If the committee wishes to make those changes rather than kill the bill entirely,

the bill would be better with the other changes that they would have made. To put "must" does not protect non-smokers. On the second page of the bill it says you may not smoke, (it is prohibited to smoke in corridors), on page three it says unless there is no place else to smoke and then you may. The current bill says "must" and the department would resist this change.

Sen. Pipinich asked Ms. Fulton if she felt she was discriminating against a lot of people and what would happen if a discrimination charge was brought against the State of Montana. Ms. Fulton said she is only a building facilities manager.

Sen. Pipinich said he would support the bill if the word "may" and "must" were changed.

Mr. Anderson said the existing statute provides that an agency head shall establish at least one designated smoking area in each building except for those areas listed in subsection 1. In order to to it, the designated smoking area must be suited by architectural design and functional purpose to be used as a smoking area.

Sen. Pipinich said the Department of Administration is forcing a fire hazard. He stated "you are forcing the men and women to go to the second floor in the two lavatories to smoke. So to put the cigarette out you throw it in the paper bin. As in the Capitol building in Idaho, an area for fire hazard is created." Ms. Fulton said she did not designate the smoking area in the Capitol building. Those rooms do not meet the definition of designated smoking areas.

Sen. Pipinich said designated smoking areas and designated non smoking areas are needed. He wants the same consideration that non-smoking people have.

Sen. McClernan asked Mr. Niss if this bill applies to buildings of the University System. Mr. Niss said it would appear to.

Sen. McClernan asked Ms. Fulton if, on the bottom of page one, designated smoking area means an enclosed area, why doesn't it say "room". Ms. Fulton said the area should be enclosed; anything that maintains negative pressure is sufficient.

Sen. McClernan asked Ms. Fulton about the corridor in her building. Ms. Fulton said it was an example of the confusion that exists. In one section of the statute it says that you may not designate a corridor, and then it says anything you designate has to be suited by architectural design and functional purposes. No one knows what that means. Then it goes on to say a corridor may be designated if you cannot find any place else. No corridor is architectural suited by design or functional purpose. So that is the dilemma that exists in trying to protect nonsmokers.

Sen. Hockett asked Ms. Fulton about the cost of implementing SB 100. Ms. Fulton said she did not know what the cost would be--it could be from \$500 to \$6000 per room, depending on the changes that would have to be made. She explained it was entirely appropriate to recirculate air. All the air handling systems are maintained by Johnson Controls, professional contractor. All federal standards are met and there are no "sick" buildings.

Sen. Weldon said he respectfully disagrees with Sen. Pipinich and does appreciate the effort to make work places more comfortable and more healthy. He asked about how state buildings, which are used by more than one agency, would decide which agency head would make the decision about the smoking areas. Ms. Fulton said the agencies would have to agree.

Sen. Weldon said there was some concern that an agency head who did not smoke might discriminate against employees who would like to smoke. Ms. Fulton said an agency head may always act discriminately but the current bill gives the agency head no discretion. An example is the Labor and Industry building. That cafeteria does not meet the current statute and if this statute were to pass there are a large number of smokers in that cafeteria, and she does not think Laurie Ekanger would shut off smoking in that building. What she would probably do is have a wall built and shut off the return air supply and ensure adequate ventilation.

Closing by Sponsor:

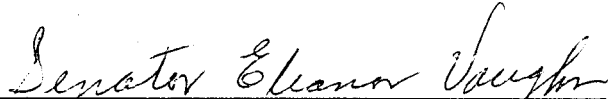
Sen. Forrester said he would challenge Sen. Pipinich on the amount of revenue that has been put into the state. In the capitol complex alone there are some significant historical items that cigarette smoke may damage. He used the Russell painting in the House of Representatives as an example. Since this bill has been put forth by the Department of Administration, cigarette smoke has been designated as class A air. EPA recognizes cigarette smoke as class A air. If the existing law is not changed the state may be sued in future years by people inhaling second-hand smoke. If the committee feels SB 100 cannot pass without the changes Sen. Pipinich alluded to, placing the "must" rather than "shall", he would go along with that.

Sen. Pipinich said the bill has some defects and has some merits if the two words are changed; "must" instead of "may" on line 17 and 50.

There was some discussion on assignments of Governor's appointment investigations.

ADJOURNMENT

Adjournment: 11:30 a.m.



SENATOR ELEANOR VAUGHN, Chair



DEBORAH STANTON, Secretary

EV/ds

ROLL CALL

SENATE COMMITTEE STATE ADMINISTRATION DATE 1-13-93

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	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 14, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration House Bill No. 60 (first reading copy -- blue), respectfully report that House Bill No. 60 be concurred in.

Signed: *Eleanor Vaughn*
Eleanor Vaughn, Chair

TESTIMONY
GENERAL SERVICES DIVISION
HB 60

TITLE: "An act clarifying the requirement that the department of administration must approve the purchase of mail equipment in the capitol area; amending section 2-17-302, MCA; and providing an immediate effective date."

The department has requested this legislation to ensure that the state's mail is processed in the most effective manner possible. Current practice is to "market" the benefits of the mail program by performing cost analysis and comparison for agencies. When cost savings are demonstrated, agencies generally agree to process their mail through Central Mail. We also review and approve the purchase of new mail equipment, but our authority to do so is not clearly stated in statute.

A typical cost analysis might include the following information:

	Agency Processes	Central Mail Processes
Total Postage	\$8,785.02	\$7,672.922
Total Wages	\$ 523.16	\$ 0.00
Equipment Maintenance	<u>\$ 4.82</u>	<u>\$ 0.00</u>
Mail Costs	\$9,313.00	\$7,672.922
6% Overhead	<u>\$ 0.00</u>	<u>\$ 460.375</u>
Total Costs	\$9,313.00	\$ 8,133.297
Savings for 10 day Period		\$ 1,179.703
X 26 Periods		\$ 30,672.27

These types of savings are realized by those agencies which do not have sufficient volumes of mail to qualify for the presort discounts offered by the USPS. When these agencies centralize their mail services, they receive app. a net 10% discount on their outgoing mail, and no longer need to purchase equipment and maintenance contracts.

Agencies which can presort their mail, may not currently benefit from centralizing this function. They do still benefit from the equipment approval review. When these agencies request new equipment, a cost/benefit analysis is performed. The particular equipment requested is reviewed for appropriateness, and either approval is granted, or an alternate piece of equipment is suggested.

For example, one agency requested approval for the purchase of an electronic scale. The scale the salesperson had specified was priced at around \$3,200. This particular scale had a number of

features which the agency did not need, and we were able to specify a different model for bidding which saved the agency \$1,200.

Recent United States Postal Service automation requirements have changed the nature of the efficiencies which can be obtained by centralizing mail processing. The high cost of the new technology requires large volumes of mail to achieve cost efficiency. It is more essential than ever that each purchase be analyzed for the good of the whole, rather than just in the context of the benefit to one agency.

It is possible that a large agency could purchase their own mail processing equipment and save slightly more money in the short term than they could by using the equipment at Central Mail. The net result might be, however, that the overall cost to the state would be increased if central mail's existing equipment has the capacity to process the extra volume at no extra cost, and the new equipment the agency purchased results in the state having excess mail processing capacity. This would increase the overall cost of processing the state's mail.

This legislation will not force agencies to utilize central mail, but it will result in the state receiving the greatest economies possible in the processing of outgoing mail.

TESTIMONY
GENERAL SERVICES DIVISION
SB 100

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 1-13-93

BILL NO. SB100

TITLE: "An act defining the term "designated smoking area"; restricting all smoking areas to designated smoking areas; changing from mandatory to discretionary the establishment of designated smoking areas; revising the responsibility for designated smoking areas and placing signs; and amending sections 50-40-203, 50-40-204, and 50-40-205, MCA."

The Department of Administration has requested this bill to ensure compliance with the public policy act adopted by the 1991 legislature regarding non-smokers' exposure to passive smoke inhalation. The existing statute has caused some confusion, and we believe that these amendments will clarify the direction of the statute, and ensure consistent application of the policy.

Section 1 of the bill defines "designated smoking area" as:

"... an enclosed area that maintains negative pressure in relation to surrounding areas and that exhausts all return air to the outside of the building."

When asked, this has been the department's response to agencies. Coincidentally, it is also the definition used in the 1992 publication from the RJ Reynolds Tobacco Company, DEVELOPING A SMOKING LOUNGE, Practical, Cost-Effective Ways to Accommodate Smokers. All this really means is that no smoke contaminated air should be able to filter back into the building from the designated smoking area, and that none of the air in the room should be recirculated by a central ventilating system.

Frequently, agency heads designate smoking areas without consulting the department. These designated areas seldom meet the technical requirements of the act. They result in segregating smokers, but not in protecting non-smokers. We believe this definition will give agency heads clear direction even in the absence of consultation with the department.

Section 2 of the act adds the phrase "or occupied" to the statute to clarify that all state offices are subject to the act. State employees in leased facilities are entitled to protection under the act as surly as those in state owned offices. It also changes the mandate to designate a smoking area to a discretionary action, and removes areas that do not meet the technical definition of a "designated smoking area" from the list of those available to be designated.

Additionally, this section allows the legislature to designate its own smoking areas, irrespective of the public policy for state offices.

Exhibit # ~
1-13-93
SB-100

Section 3 of the bill merely places responsibility for signage with the agency head responsible for the facility. The Department of Administration only has offices in Helena, and it is nearly impossible from a logistic and budgetary standpoint that us to be responsible for signage in all state offices.

The Department of Administration believes that these changes to statute will make the implementation of the act more compliant with the public policy statement, and more consistent in application in state facilities.

Part 2

EXHIBIT NO. 3DATE 1-13-93

Government Offices and Work Areas

BILL NO. SB 100

50-40-201. Reservation of smoking and nonsmoking areas in work areas in local government buildings. In offices and work areas in buildings maintained by a political subdivision, except a school or community college facility designated as tobacco-free by the board of trustees of the school district or community college district, in which seven or more employees of the political subdivision are employed, the manager or person in charge of the work area shall arrange nonsmoking and smoking areas in a convenient area.

History: En. Sec. 1, Ch. 505, L. 1985; amd. Sec. 1, Ch. 466, L. 1989; amd. Sec. 6, Ch. 539, L. 1991.

Compiler's Comments

1991 Amendment: In two places, before reference to political subdivision, deleted ref-

erence to state; and made minor changes in style. Amendment effective May 1, 1991.

50-40-202. Public policy. In recognition of the increased health hazards of passive smoke on the nonsmoker, it is the declared public policy of the state of Montana that all buildings maintained by the state are to be smoke-free.

History: En. Sec. 1, Ch. 539, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 539, L. 1991.
provided: "[This act] is effective May 1, 1991."

50-40-203. Definitions. As used in 50-40-202 through 50-40-205, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or of an agency of the Montana university system.

(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(3) "Smoking" means any lighted cigar, cigarette, or pipe or any other lighted tobacco product.

History: En. Sec. 2, Ch. 539, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 539, L. 1991.
provided: "[This act] is effective May 1, 1991."

50-40-204. Smoke-free buildings — designated smoking areas. (1) Buildings maintained by the state, smoking is prohibited in the following areas:

- (a) general office space;
- (b) auditoriums, classrooms, and conference rooms;
- (c) elevators;
- (d) corridors, lobbies, restrooms, and stairways, except as provided in sections (2)(b) and (4);
- (e) medical care facilities;
- (f) libraries; and

SENATE STATE ADMIN.

EXHIBIT NO. 4

DATE 1-13-93

BILL NO. SB100

NETWORK

BOUNDLESS FOE

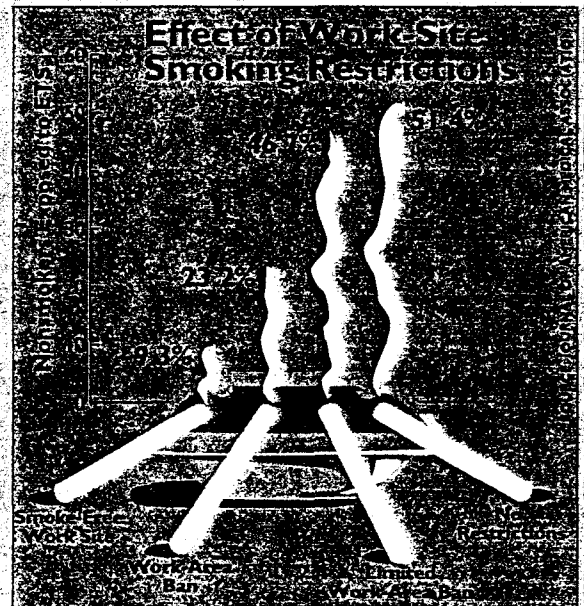
LIMITED SMOKING RESTRICTIONS FAIL AS PROTECTIVE MEASURES

Smoking should not only be restricted in the workplace, it should be eliminated, according to a recent study.

A team of researchers reported in an issue of JAMA, the Journal of the American Medical Association, that a significant number of workers are subjected to environmental tobacco smoke (ETS) despite attempts to restrict smoking to specific areas.

In a survey commissioned by the State of California, 23.2 percent of nonsmokers who worked indoors reported ETS exposure where there was a complete work-area ban. Only 9.3 percent of nonsmokers were exposed to ETS where the entire work site was smoke-free. Almost half of the nonsmokers, however, were exposed to ETS where there was only a limited ban for the work area.

Research has shown that ETS increases the nonsmoker's risk of getting both lung cancer and heart disease. An Environmental Protection Agency draft report in 1990 identified ETS as a Class-A known human carcinogen, the authors of the study report, placing it with the likes of asbestos.



53rd LEGISLATIVE SESSION
STATE ADMINISTRATION COMMITTEE

I, Senator Hobbs do hereby submit my
vote to Chairman Vaughn as follows:

BILL NUMBER SB 95

MOTION

Do Pass	Yes _____	No <u>X</u> _____
Do Not Pass	Yes <u>✓</u> _____	No _____
Indefinitely Postponed	Yes <u>✓</u> _____	No _____
Tabled	Yes <u>✓</u> _____	No _____

1-13-93
DATE

R. L. Hobbs
SIGNATURE

Tabled

DATE 1-13-93

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: HB 60, SB 100

Name	Representing	Bill No.	Check One	
			Support	Oppose
<i>Shirley Anderson</i>	<i>The Tobacco Dist.</i>	<i>SB 100</i>		<input checked="" type="checkbox"/>
<i>Debra Fulton</i>	<i>Dept of Adm</i>	<i>SB 100 HB 60</i>	<input checked="" type="checkbox"/>	
<i>Marta Chapman</i>	<i>Lincoln County Libraries</i>			
<i>Carrie Huntington</i>	<i>MT University System</i>	<i>SB 100</i>	<input checked="" type="checkbox"/>	
<i>Tom McNabb</i>	<i>MT. Technical Council</i>	<i>SB 100</i>		
<i>Mary Madsen</i>	<i>Lincoln Co Supt of Schools</i>	<i>SB 100</i>		
<i>John Romano</i>	<i>Phil Morris</i>	<i>SB 100</i>		<input checked="" type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY