

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON APPROPRIATIONS**

**Call to Order:** By Rep. Tom Zook, on January 14, 1993, at 3:00 P.M.

#### **ROLL CALL**

**Members Present:**

Rep. Tom Zook, Chair (R)  
Rep. Francis Bardanouve (D)  
Rep. Ernest Bergsagel (R)  
Rep. John Cobb (R)  
Rep. Roger DeBruycker (R)  
Rep. Marj Fisher (R)  
Rep. John Johnson (D)  
Rep. Royal Johnson (R)  
Rep. Mike Kadas (D)  
Rep. Betty Lou Kasten (R)  
Rep. Red Menahan (D)  
Rep. Linda Nelson (D)  
Rep. Ray Peck (D)  
Rep. Mary Lou Peterson (R)  
Rep. Joe Quillici (D)  
Rep. Bill Wiseman (R)

**Members Excused:** Rep. Ed Grady  
Rep. Dave Wanzenried

**Staff Present:** Terry Cohea, Legislative Fiscal Analyst  
Mary Lou Schmitz, Committee Secretary

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

**Committee Business Summary:**

Hearing: HB 23 and HB 26  
Executive Action: None

#### **HEARING ON HB 23**

An Act generally revising the law concerning budget amendments; establishing criteria for the acceptance and expenditure by state agencies of certain money from private sources; exempting certain funds from the budget amendment process; eliminating the evaluation criteria requirement for budget amendments.

**Opening Statement by Sponsor:** REP. RAY PECK, HD 15, said the bill assists the legislature with certain fiscal matters that

deal with the acceptance of certain nonstate and nonfederal moneys. Criteria are established in the bill for the acceptance and expenditures of these funds. This is done by filing a report to the Finance Committee in the Legislative Fiscal Analyst's office who does a review. The approving authority may approve or deny the proposed agreement after the committee's review. He said the approving authority for the agency shall submit to the legislative Finance Committee a copy of the agreement and a certification containing: 1) the specific service that will be provided; 2) the proposed duration of the agreement and 3) a statement that the agreement will not result in an ascertainable present or future commitment for general fund support. That is a concern the Finance Committee has had. Agencies now can get involved in activities, come back in the next session saying they have an obligation, and need general fund money.

**REP. PECK** referred to line 5, page 2, "The fiscal analyst shall review the agreement and certification to ensure that: the proposed use of the money has not been specifically disapproved by the legislature".

**REP. PECK** said the next section is current law, Section 2, Page 3 and basically inserts some necessary language that is a result of what would happen with this bill.

**Informational Testimony:** **Jim Haubein, LFA**, said in December, 1989, the Superintendent of Public Instruction received some private funds to conduct public forums throughout the state. She requested an opinion from the Legislative Council; did they need an appropriation to spend these moneys? The Legislative Council opinion stated "private funds, if restricted by a donor, are not subject to legislative appropriation". Private funds have been coming through the budget amendment process. They have also been appropriated in the session. So it is necessary that language be put into the bill that would clarify receipt and spending of these private funds. The first part of this bill refers to the receipt of those funds and the process they go through. This is the second time this bill has been before the legislature. In the 1991 Session, it was tabled because of a mis-understanding that the Finance Committee would review every dollar that came in from private sources. He referred to language on Page 1, Line 20, "and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement or donation".

**Mr. Haubein** discussed the budget amendment requirements starting on Page 9, Line 15 through Page 14.

**Proponents' Testimony:** **Curt Nichols, OBPP**, said his office worked with the Legislative Finance Committee developing this bill. At the time this was discussed in the Finance Committee there was a problem with the way the proprietary funds were treated and he would like to discuss this further with the committee.

Connie Griffith, Administrator, Division of County and Management, Department of Administration offered a proposed amendment to HB 23, EXHIBIT 1. She said the Department of Administration has several internal service funds to provide services to other agencies. These include things like central mailing, publications and drafting and the information services division. Many times the internal agencies look for spending authority to buy additional services from these agencies. The internal services funds are organized to provide specialized service, cost savings and efficiency savings to other agencies. It is better for the agencies to get a budget amendment because they will know at that time they are going to be able to expend those funds rather than wait to request a supplemental after providing the services. By being able to provide the services at the time the agencies request them it will encourage agencies to continue to utilize the centralized services that were set up for that purpose.

Opponents' Testimony: LeRoy Schramm, Legal Counsel, Board of Regents, University System addressed Section 1 only of the bill which deals with the acceptance and review by the board of gifts and donations. He said the committee should not take at face value the statement this does not impose much work either on the University System or on the LFA. There will be a significant amount of work. His agency receives more gifts than any other agency and probably more contracts for research by organizations. Section 1 covers gifts, donations and contracts etc. from very large payments, all non-federal, such as Champion, Arco and IBM and are restricted. Many of the medium-sized gifts, such as a scholarship fund, go to the Foundations but many also go direct to the financial aid offices. If it is from a private source it is restricted. Small gifts are not covered. He used an example of receiving a hand-written letter with a \$200 check to be used for the U of M Music Department. It is from a private source, with a written agreement. By accepting it you are accepting the restricted terms. If they receive the same kind of donation, (a \$200 check) from someone stating the check is simply for the U of M, it is not covered by this bill. If the donation is designated for a certain department, it is restricted and covered by the bill. He does not think either gift should be covered. **Mr. Schramm** said MSU informed him that when you include all these kinds of gifts they are well over a thousand.

**Mr. Schramm** mentioned "procedure" and this is where the work comes in. First of all, you do not just summarize and list gifts. Instead, a copy of the agreement has to be sent over to the Legislative Finance Committee for review. (Line 23, Page 1). After the LFA reviews that certification, it makes a report to the legislature. After the committee's action, a report comes back to the Board of Regents and then they can do what they want. The point is, it does seem like a useless exercise especially the detail demanded from it.

**Mr. Schramm** said if they receive a \$200 gift stating it is for

the U of M Music Department there will not be a request for a matching requirement. The large donors will request some amount of money for matching. If it is a commitment of general fund money, you will never be able to accept this gift because the bill says before an agency may accept these kinds of gift you have to make a certification that the agreement will not result in an ascertainable present or future commitment for general fund support. If there is a matching requirement on it that comes from general fund for the general operating budget it cannot be accepted nor can they send it to the legislature. It makes it illegal for the Regents to accept the donation. That raises some serious constitutional problems.

**Rod Sundsted, Acting Associate Commissioner for Fiscal Affairs,** talked about the Section 3, Budget Amendment. The University System concerns are that this language has some problems which make it impossible for the University System to operate as they have in the past. He referred to **Page 9, line 16** which says "a budget amendment may not be approved except to spend additional grant revenue or a new source of revenue". They generally have three types of budget amendments. The first is similar to the DofA: for instance, they have a proprietary fund for health insurance for the University System. Second, they consistently have federal change requirements. The only way they can react to those is through a budget amendment. The third and most significant type of budget amendment is the tuition. Since 1988, the University System has a budget which uses the last two years' actual enrollment to estimate tuition and appropriate funds. It is a difficult position not knowing if you can get a budget amendment, yet having to expend the money to set up sections and services for new students.

**Bill Lannan, Director, Guaranteed Student Loan Program** said their operating funds are received from a variety of sources. As their volume grows, additional funds come in from guaranteed fees. The Department of Education provides them with an administrative cost allowance that is a function of the dollar volume of loans that are guaranteed. Another source is interest income from their reserves that are in the state treasury. They provide services for students on the edge of potentially defaulting, by working with them to avoid default. This saves the federal government money and the program is then paid a bonus.

Increased volume or changes in the program require some additional services and budget amendments.

**Questions From Committee Members and Responses:** **REP. COBB** referred to **Rod Sundsted's** testimony regarding budget amendments for extra students and asked for a list of sections that were added. He asked if **Mr. Sundsted** could anticipate the number of students who will enroll and then come to the legislature during the session or Special Session to ask for that money instead of doing budget amendments? **Mr. Sundsted** said since 1988 the policy has been through the Education Subcommittee to appropriate

tuition based on the last two years' average enrollment. So if there are additional students, you need extra tuition. If you have less students, you have less tuition. In some cases they may know their actual enrollment, but from one semester to another there are a number of factors which they can't control. **REP. COBB** asked if the Finance Committee denied a budget amendment at one time because of enrollments, but the money was spent anyway. **Mr. Sundsted** said if his memory is correct, the Legislative Finance Committee has never denied a budget amendment.

**REP. COBB** referred to Section 1 and asked **Mr. Schramm** if he is saying the university should be exempt from this as it is not constitutionally allowed against the university anyway? **Mr. Schramm** said the answer to that is two fold. It is probably appropriate for the legislature to put in this cumbersome and time-consuming review process, but it has some very serious legal problems. The answer is yes and no.

**REP. ROYAL JOHNSON** told **REP. PECK** he was concerned about the donations, Line 21, New Section, Page 1. He does not understand why that situation is needed, nor its purpose. **REP. PECK** referred to **Mr. Schramm's** testimony and said if he understood him correctly, an agreement is created if a check comes in the mail with a letter. This is not **REP. PECK's** definition of what this bill is. It says "that is restricted by law or by terms of a written agreement, such as a contract, agreement, or donation". The reason for that is they want to know about any potential obligation they are creating for the legislature when they enter into these agreements. **REP. JOHNSON** asked if that would include a charitable life annuity which could affect the future, particularly, if the annuity kept the income during their lifetime? That would be a contract with the university. Would that go through this program? **Mr. Haubein** said if it went to the current restricted fund it would be part of that. **REP. JOHNSON** asked what would happen if it was in the Foundation? **Mr. Haubein** said if it is not in the current restricted fund, it is not part of this.

**REP. ROYAL JOHNSON** asked **Mr. Schramm** for his analysis of this situation. **Mr. Schramm** said in a specific kind of situation the university holds, it probably would not be covered by this because it might go into the Annuity Fund and not into the restricted fund. He referred to Page 8 of the Bill, Line 2.

**Mr. Schramm** asked to respond to **REP. PECK's** testimony, referred to the bill, Page 1, Line 20, "restricted by law or by the terms of a written agreement". If the university gets a check in the mail with a letter stating a purpose and it is accepted, it is illegal to spend it for something else.

**REP. KADAS** referred **REP. PECK** to Page 1, lines 20 and 21, expressing concern about how it is written. He understands "restricted by law or terms of a written agreement such as a

contract, trust agreement, or donation" but the words "such as" are using written agreement to define those other terms. Essentially, you said that a donation is a written agreement. What you are after is a contract, a trust agreement or a donation that is contained in a written agreement. **REP. PECK** said he has a point in consideration of an amendment. The fact that "such as" broadens it beyond what is intended. **REP. KADAS** also agreed with the issue raised by **REP. JOHNSON** on putting stricter limits on what written agreement is. The other issue **REP. KADAS** wanted to bring up is, **Mr. Schramm** raised the point, line 17, page 1 "before an agency may accept or expend money it has to do (a), (b) and (c)" and (c) is specifically "a statement that the agreement will not result in any future commitment for the general fund." He understands this as saying they cannot accept the money if they acknowledge it increases the future commitment to the general fund. For that reason the legislature can require notification if it affects the general fund, but cannot prohibit them from accepting payment if it has a future effect on the general fund.

**REP. PECK** said he very carefully avoided the idea that any body of the legislature would attempt to tell them no, because he recognizes a court decision.

**REP. KADAS** referred **Mr. Sundsted** to page 9, lines 19 and 20 and asked if his concern is not being able to apply for a budget amendment if it involves an increase in funds from an existing revenue source. **Mr. Sundsted** said that is correct. **REP. KADAS** asked, if they were to strike in that line the word "grant", would that alleviate your concern? **Mr. Sundsted** said that would take care of the federal issue in GSL and take care of the proprietary issues. In answer to a question from **REP. KADAS** concerning the word "grant", **Mr. Haubein** said that was intended to be federal grant. Originally, when it was written, the concern was that there would be no mechanism in place to spend additional grant money over what was appropriated during the session. This was an add-on and intended for additional federal moneys. The word "grant" is probably too restrictive.

**REP. MENAHAN** asked if a bill of this magnitude is needed? Could they not put this in subcommittee wording without ten pages of law? **REP. PECK** said there is not much new law in the bill.

**REP. QUILICI** referred **Mr. Haubein** to the nonstate and nonfederal sources and asked about federal sources. For instance, the Montana Highway Department receives money from the federal government and some of that money is 9 to 1 match. He would hate to see the state lose this money. How does this Act address that? **Mr. Haubein** asked if he was referring to budget amending additional highway funds with the match? **REP. QUILICI** said yes. **Mr. Haubein** referred to the language on Page 9, Line 19, "will allow additional federal funds". Subsection (6) on Page 11 allows additional match and additional federal grants. The Highway Department would not see any difference.

**Closing by Sponsor:** REP. PECK said the sole opponent has been the University System. They have known about this bill for some time and have made no contact with the sponsor. The bill was tabled in the Education Committee last session. He checked with the University System to see what should be put in or taken out but got no response. He said the legislature can't have budget amendments exploding from \$14 to \$21 million and not try to do something about it.

**CHAIRMAN ZOOK CLOSED THE HEARING ON HB 23**

**HEARING ON HB 26**

**An Act prohibiting the use of a Budget Amendment to replace money removed from an Agency Budget by Legislative action.**

**Opening Statement by Sponsor:** REP. PECK, HD 15 said the concern that prompted this bill was the legislature cutting the University System budgets. The Regents turned around and increased the budget, recovering the money by tuition increases, which concerns the students. He did not contact the student groups but is sympathetic to what they are saying and thinks they are correct. They do not feel they are treated with respect in the Regents' meetings and referred specifically to the last meeting in Missoula. The bill simply says money cannot be put back in approving authority for the replacement of money removed from the agency budget by legislative action. If the legislature comes in to Special Session and cuts the budget 10%, agencies cannot come in with a budget amendment and try to reverse what the legislature has set.

**Proponents' Testimony:** None

**Opponents' Testimony:** Rod Sundsted, Acting Associate Commissioner for Fiscal Affairs spoke in opposition to the bill. He pointed out that in 1992 they had a general fund budget reduction imposed in the Special Session. At the same time they ended up with additional students and asked for a budget amendment for them. The pay plan was under-funded. There were issues here that resulted in an increase in tuition which were unrelated to the actual cuts made by the legislature. Concerning the student fee increases, the students' comments were taken into consideration and asked to participate in the hearings for tuition increases this biennium.

**Brian McCullough, Department of Labor,** said it was not clear to him what the language "for the replacement of money", identifies. His department receives federal grants and money. Appropriations sometimes end up with lower or higher levels and through the budget amendment process their budget is always adjusted.

**Ray Hoffman, DHES** said regarding revenue he would like to make an amendment to the bill and referred to Page 2, Line 6, "by legislative action". He suggested to replace that with "unless

specifically addressed to the LFA narratives accompanying the General Appropriation Act". His reason is, over the years they have had appropriation authority program removed but have been told that if they can find other funding sources for this type of service to go get it. This would specifically preclude that from happening.

Jack Lowney, Department of Social and Rehabilitation Services concurred with Mr. Hoffman concerning the language.

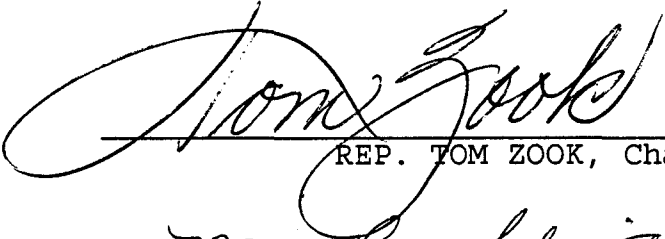
REP. MENAHAN suggested some of the people involved would be here for questions when executive action is taken.


Closing by Sponsor: REP. PECK said the intent of the Bill is very clear.

REP. ZOOK CLOSED THE HEARING ON HB 26.

ADJOURNMENT

Adjournment: 4:30 P.M.

  
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REP. TOM ZOOK, Chair

  
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MARY LOU SCHMITZ, Secretary

TZ/mls



# HOUSE OF REPRESENTATIVES

APPROPRIATIONS

COMMITTEE

ROLL CALL

DATE

1/14/93

NAME	PRESENT	ABSENT	EXCUSED
REP. ED GRADY, V. CHAIR			
REP. FRANCIS BARDANOUVE	✓		
REP. ERNEST BERGSAGEL	✓		
REP. JOHN COBB	✓		
REP. ROGER DEBRUYKER	✓		
REP. MARJ. FISHER	✓		
REP. JOHN JOHNSON	✓		
REP. ROYAL JOHNSON	✓		
REP. MIKE KADAS	✓		
REP. BETTY LOU KASTEN	✓		
REP. WM. "RED" MENEHAN	✓		
REP. LINDA NELSON	✓		
REP. RAY PECK	✓		
REP. MARY LOU PETERSON	✓		
REP. JOE QUILICI	✓		
REP. DAVE WANZENREID			✓
REP. BILL WISEMAN	✓		
REP. TOM ZOOK, CHAIR	✓		

EXHIBIT 1  
DATE 11-14-93  
HB 0023

PROPOSED AMENDMENT TO HB 0023, SECTION 3(1)(a), as follows:

Section 3. Section 17-7-402, MCA, is amended to read:

"17-7-402. Budget amendment requirements. (1) Except as provided in subsection (6), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend additional revenue in the internal service funds within the Department of Administration as a result of increased service demands by state agencies or additional grant revenue or a new source of revenue that was not available for legislative consideration during the most recent legislative session open to that matter;

**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

Appropriation COMMITTEE BILL NO. 23  
DATE 1/14/93 SPONSOR(S) \_\_\_\_\_

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Dawn Allen	Worlt. Linic. Syst.		
Jack Lowmy	SRS		
Dan Short	Montana Karm		
Connie Gruffell	Dept. of Admin.		
Brian McLaugh	Labor		
+ Jerry Matthews	D F S		
Red SWASTED	MUS		✓
Alic Taylor	U of M		

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HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Appropriations COMMITTEE BILL NO. 26  
DATE 1/14/93 SPONSOR(S) \_\_\_\_\_

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Brian McLaughlin	LABOR		—
RAY Hoffman	DHES		✓
ROD SWOOSTED	MUS		✓

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