

**MINUTES**

**MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By VICE CHAIRMAN KEN MESAROS, on April 11, 1995,  
at 1:10 PM

**ROLL CALL**

**Members Present:**

Sen. Ethel M. Harding, Chairman (R)  
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)  
Sen. Mack Cole (R)  
Sen. Mike Foster (R)  
Sen. Don Hargrove (R)  
Sen. Vivian M. Brooke (D)  
Sen. Jeff Weldon (D)

**Members Excused:** Sen. Bob Pipinich (D)

**Members Absent:** N/A

**Staff Present:** David Niss, Legislative Council  
Gail Moser, Committee Secretary

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

**Committee Business Summary:**

Hearing: HJR 30, HB 607, HB 471  
Executive Action: HJR 30 BE CONCURRED IN  
HB 607 BE CONCURRED IN  
HB 471 BE CONCURRED IN

*{Tape: 1; Side: A; Approx. Counter: 47.3}*

**HEARING ON HJR 30**

**Opening Statement by Sponsor:**

REP. LARRY HAL GRINDE, House District 94, Lewistown, said HJR 30 is a resolution that states Montana is in favor of a balanced budget. The amendment from the House on page 2, line 2, states that if federal funds were not accepted on a per capita basis by state, the federal government would garner \$22 billion if spread across the population.

**Proponents' Testimony:**

REP. DICK SIMPKINS, Great Falls, said he wanted to emphasize the amendment from the House adds a note of encouragement that if states cooperate with the federal government, the federal deficit can be cut down.

**Opponents' Testimony:** None.

**Questions From Committee Members and Responses:**

SEN. JEFF WELDON commented that the deadline for transmittal of amendments to resolutions is the 82nd day. He said today is the 83rd day and there would be a procedural problem if we amended it. SEN. WELDON asked Representative Grinde how is it that the State Administration Committee is even considering HJR 30 as he doesn't recall the Senate suspending its rules to receive the resolution. REP. GRINDE said he received a notice on HJR 30 on April 10 which would have qualified it to be transmitted. SEN. MIKE FOSTER said that is correct, and he believes HJR 30 did make it to the Senate in time. REP. GRINDE said he would be glad to work out any problems involving the appropriate transmittal timeline.

SEN. WELDON said the transmittal should be checked as well as whether or not a suspension of the Senate rules would have been in order to receive it.

VICE CHAIRMAN MESAROS closed the Hearing on HJR 30.

**HEARING ON HB 607****Opening Statement by Sponsor:**

REP. LARRY HAL GRINDE, House District 94, Lewistown, said HB 607 stemmed from the vandalism that took place at the Capitol recently, and HB 607 creates an offense specifically for Capitol desecration. HB 607 was amended in the House to provide that instead of a judge being able to pass a sentence of life in prison, the prison term could not exceed 20 years and \$100,000 fine.

**Proponents' Testimony:**

John Connor, Prosecutor with the Attorney General's Office, said although HB 607 creates a crime unique to a particular building and grounds, they believe it is appropriate because of the unique nature of the building itself. He thinks the House amendments with respect to the penalty make HB 607 more realistic in terms

of trying to get the Lewis & Clark County Attorney to prosecute cases under the bill. **Mr. Connor** said there have been questions as to whether charges of *criminal mischief* would suffice rather than charging under HB 607; but he said HB 607 allows the charging of a felony offense even though the amount of damage may not be over \$500 which is the threshold amount for property crimes in Montana.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

**SEN. FOSTER** said he is concerned that the language on page 1, lines 20 and 21, "places on or attaches to the capitol any mark, design, or material not properly a part of the capitol" will have an impact on displays such banners, posters, etc. from groups like the drug awareness program, etc. **SEN. FOSTER** then read on to page 1, line 25 which states, "This section does not apply to displays or actions authorized by the department of administration" and determined that would address issues he was concerned about.

**SEN. FOSTER** asked Representative Grinde if, during a legislative session, there are instances where groups may hold a rally (and post banners, etc., in the rotunda, for example) and have not gotten authorization from the Department of Administration in advance, would that group be subject to the penalties.

**REP. GRINDE** said such displays would have to be monitored through the Department of Administration. **SEN. FOSTER** said what if the group was not aware of the requirement to get prior authorization from the Department of Administration. **John Connor** responded that when criminal bills are involved, this type of question always arises. Essentially, he said it is a matter of discretion with the prosecutor, and he does not believe any prosecutor would file charges under those kinds of circumstances.

**SEN. MACK COLE** asked John Connor to clarify the difference between the penalties involved if HB 607 *is* in effect and if HB 607 *is not* in effect. **Mr. Connor** said they are currently limited to charging under criminal mischief which is purposely or knowingly injuring, damaging, or destroying public property. He said HB 607 addresses *defacing* and *defiling*, terms which are not defined in the criminal law. Also, under a criminal mischief charge, the damage must be over \$500, otherwise there would only be a misdemeanor charge which is generally punished by a minor fine and no jail time.

**SEN. COLE** asked for clarification that HB 607 only pertains to the State Capitol Building and any monuments on the Capitol grounds and not to other state buildings in the vicinity of the Capitol. **Mr. Connor** said he is not sure exactly what would be considered Capitol "grounds."

SEN. VIVIAN BROOKE said she had concerns along the same line, and she asked John Connor about the trees, landscaping, and lawn and that she would consider desecration to those items as serious an offense as to the building itself. Mr. Connor agreed that HB 607 did not specifically define those items, but he would view those items as permanent "monuments" that are part of the grounds.

SEN. BROOKE referred to the vandalism that took place recently at the Capitol and asked John Connor if that could have been prosecuted not only as vandalism and criminal mischief, but also as a hate crime. Mr. Connor said he is unsure that the vandalism to the Capitol would satisfy all of the issues in the statute that defines a "hate crime."

SEN. BROOKE said she understands that *sexual orientation* is not defined as a hate crime and race, for example, is. She asked if the vandalism had been an indication *against* black people, for example, could it then be prosecuted under the "hate crime legislation." Mr. Connor said he believes that is correct.

SEN. WELDON raised the same procedural question for HB 607 as he had concerning HJR 30 and whether the Senate had properly suspended its rules to accept HB 607.

SEN. WELDON asked John Connor about the applicability of HB 607 and could the person(s) who painted the Capitol be prosecuted under this bill. Mr. Connor said no, they could not be prosecuted under HB 607.

Closing by Sponsor:

REP. GRINDE said he is concerned that the *life in prison* sentence was amended. He believes we need to effectively protect treasures such as the Charlie Russell art.

HEARING ON HB 471

Opening Statement by Sponsor:

REP. DICK SIMPKINS, House District 49, Great Falls, said the rules of the Senate were waived to accept HB 471. He stated HB 471 extends the termination date of the interim committee on public employee retirement systems and also adds an appropriation of \$13,800 to fund the actions of that committee. A provision to accept up to \$10,000 in contributions has also been added to aid that committee in the event involvement in actuarial studies becomes necessary. The \$10,000 in contributions would be provided by the various associations that represent retirees. He said there is no General Fund impact. REP. SIMPKINS said the duties of the committee will continue basically the same in

trying to make the retirement systems uniform throughout. He said in the past, there have been as many as forty bills introduced dealing with retirement issues, and he believes they have been successful in reducing that to about 18 this session. **REP. SIMPKINS** said the committee will also analyze the possibility of a complete revision of the retirement systems and moving from the currently used defined *benefit* plan to a defined *contribution* plan.

**Proponents' Testimony:**

**Tom Schneider, Montana Public Employees Association**, agreed with Representative Simpkins' comments regarding a reduction in the number of bills. **Mr. Schneider** said that two important things happened this session which will make the interim committee work even better in the future. First, organizations found out if they wanted to pass a retirement bill, it should be put before the interim committee. He said this ensures retirement issues are addressed by that committee. Secondly, on the legislative side, the committee will be aware that they have to go much deeper into the bills. As an example, with the GABA bill, the first person stood up and said, "We like the bill, but it's going to raise local property taxes," and that question was never addressed in the committee.

**David Senn, Teacher's Retirement System**, said they found the committee to be very workable during the last interim. He said he wished they could have spent more time on the legislation, but time was spent getting the committee organized and there was also not very much funding (about \$7,500). **Mr. Senn** said Linda King from PERS is not here today, but he said the PERS Board also supports HB 471.

**Tom Bilodeau, Research Director, Montana Education Association**, said they support continued existence of this committee as pension issues are very complicated and not best resolved when bills are introduced at the beginning of the legislative session, hashed over, and then ultimately resolved in some quick committee at the end. He said the groups that worked together over the last four years had clearly identified one bill that was of concern to them that they brought before the interim committee and it was unanimously endorsed by that committee, and that was the GABA bill. They believe GABA is the single most important "fix" the systems needs to attain greater consistency.

**John Malee, Montana Federation of Teachers and Montana State Federation of Employees**, stated agreement with previous proponents' testimony.

**Opponents' Testimony:** None.

Questions From Committee Members and Responses:

**SEN. DON HARGROVE** asked Tom Bilodeau what is his normal relationship with the interim committee throughout the process. **Mr. Bilodeau** clarified that Senator Hargrove was referring to the relationship between the PEPSCO organization and the Governor's office and the Department of Administration. **Mr. Bilodeau** said there have been previous GABA bills introduced which usually only addressed PERS and TRS, and that proved to be a stumbling block. They believe the interim committee's work between 1993 and 1995 helped get over that stumbling block as it provided a vehicle to bring all retirement systems into one discussion and have on-going discussion between members of the legislature, the Governor's office, and their own constituencies -- both active and retiree groups. **Mr. Bilodeau** said that procedurally, it made a big difference, and discussions to address the particular concerns and interests of each of the active and retiree groups ultimately led to the GABA bill. He said that would not have been possible without the existence of the interim committee or the assistance of the TRS and PERS Boards.

**SEN. HARGROVE** asked Tom Bilodeau "who drives the boat." If nobody else has interest, who is the person that makes sure it continues. **Mr. Bilodeau** said historically, each of the retiree groups and each of the active unions of public employees looked out for their own particular interests. He said what has happened in response to pension taxation and the establishment of the interim committee is that these groups have begun working together and relationships have been established with persons appointed to the committee. **Mr. Bilodeau** said it has been a "give and take," and *individuals* have not come to have any deciding role in the process, but rather *groups* are brought into a whole through the PEPSCO organization and have generally met with the Governor's office, TRS, PERS, staff, and members of the committee.

Closing by Sponsor:

**REP. SIMPKINS** said the questions were well put, and added that the interim committee provided the cohesive element that tied it all together rather than each of the groups introducing their own bills. **REP. SIMPKINS** said, as it stands, there is almost an unwritten rule that if a bill does not pass through the interim committee, it's not going to make it through the legislature.

**CHAIRMAN HARDING** closed the Hearing on HB 471.

DISCUSSION ON HJR 30 and HB 607

**SEN. WELDON** stated he was not sure the rules have not been suspended for HJR 30 and HB 607. He said the reason he questioned it was that, specifically on creating a criminal offense, if the bill was not passed by the rules of the legislature, he believes there could be a serious constitutional challenge to the crime. **CHAIRMAN ETHEL HARDING** said if the legislature suspends the rules, that should indicate appropriate support for the law. **David Niss** agreed with Senator Weldon that the issue deserves to be reviewed as it is an issue that could certainly be raised in a defense against the crime.

**SEN. WELDON** asked David Niss if the Committee could take action on the bills with an indication that if the rules have been properly suspended and the bill is properly before the Senate, then the State Administration recommends be concurred in. **Mr. Niss** said the Hearing is not an issue, but the Executive Action is. He asked how difficult would it be to delay action so he could review the journal. **CHAIRMAN HARDING** said this Committee could meet again upon adjournment from the Senate floor.

**SEN. MESAROS** asked for clarification if it would be possible to act on these bills with a contingency regarding whether or not the rules have been suspended. **Mr. Niss** stated he believes it would be possible, but asked the Committee how difficult it would be to meet again.

**SEN. WELDON** said the issue is that if the bill was not properly before the Senate before the rules were suspended and the Committee takes action on it, that would still provide a defense argument that could be made on constitutional grounds. He said in order for this crime to be used as intended, we should ensure it is tight against those types of defenses.

**CHAIRMAN HARDING** said the Committee would meet briefly after adjournment on the Senate floor.

EXECUTIVE ACTION ON HB 471

Motion/Vote: **SEN. MESAROS** moved that **HB 471 BE CONCURRED IN.**  
The **MOTION CARRIED UNANIMOUSLY** on oral vote.

**SEN. BROOKE** said she believed it would be best to get information from Mr. Niss during the floor session so that if a motion needs to be made to suspend the rules, it could be done.

**CHAIRMAN HARDING** said this Committee will recess until adjournment of the floor session.

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The Committee reconvened at 4:05 PM.

EXECUTIVE ACTION ON HB 607

Motion/Vote: SEN. MESAROS moved that HB 607 BE CONCURRED IN.  
The MOTION CARRIED UNANIMOUSLY on oral vote.  
SEN. HARGROVE will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HJR 30

Discussion: CHAIRMAN HARDING stated that Senator Weldon had raised a concern that the Senate had not properly suspended the rules to receive the bill, and she related that President Brown said rules did not have to be suspended for resolutions.

Motion: SEN. COLE moved that HJR 30 DO PASS.

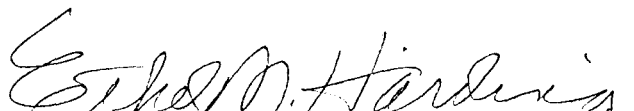
Discussion: SEN. WELDON said he still has concerns, but he will express his concerns when the bill is on the Senate floor.

Vote: The MOTION CARRIED 5-3 on oral vote with SEN. WELDON, SEN. BROOKE, and SEN. PIPINICH voting NO.  
SEN. COLE will carry the bill on the Senate floor.



ADJOURNMENT

Adjournment: FIRST MEETING -- 1:55 PM  
SECOND MEETING -- 4:15 PM

  
ETHEL M. HARDING, Chairman

  
GAIL MOSER, Secretary

EMH/gem

MONTANA SENATE  
1995 LEGISLATURE  
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE \_\_\_\_\_

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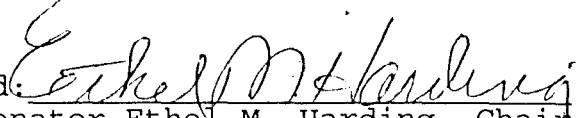
SENATE STANDING COMMITTEE REPORT


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April 11, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB 471 (third reading copy -- blue), respectfully report that HB 471 be concurred in.

Signed:

  
Senator Ethel M. Harding, Chair

 Amd. Coord.

57 Sec. of Senate

BECK  
Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT


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April 11, 1995

MR. PRESIDENT:

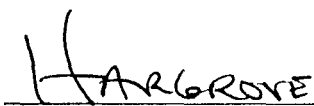
We, your committee on State Administration having had under consideration HB 607 (third reading copy -- blue), respectfully report that HB 607 be concurred in.

Signed:

  
Senator Ethel M. Harding, Chair

 Amd. Coord.

SA Sec. of Senate

  
Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT


Page 1 of 1  
April 11, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HJR 30 (third reading copy -- blue), respectfully report that HJR '30 be concurred in.

Signed: Ethel M. Harding

Senator Ethel M. Harding, Chair

 Amd. Coord.

Sn Sec. of Senate

COLE  
Senator Carrying Bill

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DATE Tuesday 04-11-95  
 SENATE COMMITTEE ON State Administration  
 BILLS BEING HEARD TODAY: HJR30 / HB607 / HB471

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Check One

Name	Representing	Bill No.	Support	Oppose
Tom Schneider	MPRA	HB 471	X	
John MAler	M.F.T.		X	
John Connor	Atty. Gen.	HB607	X	
David Senn	TRS	HB471	X	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY