

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN ETHEL HARDING**, on February 7, 1995,
at 10:00 AM

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. Bob Pipinich (D)
Sen. Jeff Weldon (D)

Members Excused: N/A

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: N/A
Executive Action: SB135 DO PASS AS AMENDED
HJR1 BE CONCURRED IN AS AMENDED
SB154 TABLED

{Tape: 1; Side: A; Approx. Counter: 56.9}

EXECUTIVE ACTION ON SB135

Motion: SEN. MACK COLE moved that SB135 DO PASS.
SEN. MACK COLE moved TO ACCEPT AMENDMENTS TO SB135.

Discussion: SEN. MACK COLE handed out amendments to SB135
(EXHIBIT 1) and asked that David Niss explain the amendments to
the Committee.

David Niss said the bill contains three substantive amendments - new sections 3,4, and 5. **Mr. Niss** described the effects of sections 3 and 4 regarding issues such as delayed effective dates, enforcement mechanisms, the Drake amendment, etc. **Mr. Niss** also explained that section 5 was taken directly from Senator Bartlett's bill, which has not been introduced, that would enforce requirements in administrative rules. He explained that Senator Bartlett may prefer to have her bill address the issues in section 5 and SB 135 address the issues contained in sections 3 and 4.

SEN. FOSTER said he and Alec Hansen discussed questions about determining what is a material effect on local government.

SEN. FOSTER said Mr. Hansen suggested SB135 be amended to use the language, "1/10th of a mill" rather than "an insubstantial amount." Because a mill has different values in different counties, this would provide a more level playing field.

SEN. FOSTER agreed with Mr. Hansen's suggestion and he asked Senator Cole if he objects to attempting to more clearly define what is a material effect on a county by using language such as Mr. Hansen's suggestion.

SEN. COLE said he thought there was another amendment on the original bill to address the language "insubstantial amount."

Mr. Niss said he had no other requests for amendments. **SEN. COLE** said he believes that language could be replaced by something such as Mr. Hansen's suggestion.

CHAIRMAN HARDING said she had received a request to address the language "insubstantial amount" because questions would be raised as to what exactly is an "insubstantial amount."

SEN. JEFF WELDON asked Chairman Harding what 1/10th of a mill is worth in Lake County. **CHAIRMAN HARDING** said approximately \$33,000. **SEN. WELDON** said the language in section 3, "a bill may not be introduced enacting a law" is qualified by the exception that "this section does not apply to an insubstantial amount."

SEN. WELDON said if the amount were set at 1/10th of a mill, and using Senator Swysgood's voter pamphlet bill as an example, it would then become incumbent upon the bill sponsor and the bill drafter to do some initial economic or financial analysis before even introducing a bill. **SEN. WELDON** said this type of analysis could be burdensome. **SEN. WELDON** said he believes this amendment is creating an intra-governmental cause of action where a county, which is a subdivision of the state, would be suing the state. He asked if there other instances where a county sues the state. **Mr. Niss** said that it may happen, but it is probably unusual.

SEN. DON HARGROVE said he thinks Senator Foster's suggestion is appropriate, but feels that most county mandates would fall under 1/10th of a mill.

SEN. WELDON said for Senator Swysgood's voter pamphlet bill, it was calculated that the cost in Gallatin County would be \$3,000.

The 1/10th of a mill calculation would indicate the needed mill value in Gallatin County would have to be \$30,000. That's obviously low, and it was still judged in that case that sending the voter information pamphlets would be too expensive.

SEN. WELDON questions the use of 1/10th of a mill to calculate an amount to be absorbed.

SEN. BROOKE asked, using Senator Swysgood's voter pamphlet bill as an example, if the unfunded mandate was more than a 1/10th of a mill for Missoula county but it was under 1/10th of a mill for other counties, would Missoula County then be exempt from sending out voter information pamphlets. **SEN. BROOKE** said the actual expense of a mandate will be quite variable throughout the state.

SEN. HARGROVE said the value of a mill may vary from one year to another, and the mandate may be an on-going requirement.

SEN. WELDON said this discussion could dramatically change the nature of SB135 by creating a new cause of action, changing the legislative process, and redefining "insubstantial amount."

SEN. WELDON asked if additional feedback could be gained from local governments and others, perhaps through a sub-committee hearing.

SEN. COLE said he's had a lot of conversation on SB135 and he is not sure if "1/10th of a mill" would create problems. He said he believes the other changes would be supported by counties and school districts. **SEN. COLE** added that the language in section 4, "may bring civil action" allows that a county can still opt to provide the service and absorb whatever costs are involved.

SEN. FOSTER said there may be a definition of immaterial in "Generally Accepted Accounting Principles." He added, however, that it may still be somewhat more flexible than a figure such as 1/10th of a mill.

SEN. MESAROS questions whether this Committee could or should determine an actual amount.

SEN. HARGROVE commented that if an amount were set at \$3,000, for example, and a mandate came down for a county that would cost \$4,000, he does not believe the county would bring suit against the state. **SEN. HARGROVE** stated he is not sure if the intent of the bill is being addressed.

SEN. FOSTER said another approach could be to add language such as "insubstantial, immaterial, insignificant amount and, as a suggestion, use 1/10th of a mill as a guideline."

CHAIRMAN HARDING asked Mr. Niss if the language could be adjusted to address using 1/10th of a mill as a guideline rather than a directive. **Mr. Niss** said that could be done by changing the language on line 30 to state that 1/10th of a mill be used as a guideline to determine if the amount would be substantial, or a

statement of intent could be included, or it could be left as reflected in the Committee minutes. **SEN. WELDON** said the Committee minutes would serve as much weight as a statement of intent in this particular situation. **SEN. WELDON** asked Chairman Harding if a sub-committee hearing could be held on a "gray bill" that included the proposed changes to SB135. **CHAIRMAN HARDING** said she would like to get SB135 out of Committee and if the local governments are not happy with it, it can be changed in the House. **CHAIRMAN HARDING** suggested that the Committee consider the language Mr. Niss suggested regarding using 1/10th of a mill as a guideline.

Motion: **SEN. FOSTER** made a **SUBSTITUTE** motion **TO ACCEPT AMENDMENTS TO SB135 AS FOLLOWS:**

- Amendment 1 in its entirety
- Amendment 2 regarding sections 3, 4, and 6
- Amendment 3 in its entirety
- insert language on page 1, line 30 to the effect that 1/10th of a mill be used as a *guideline* to determine amounts that can be absorbed.

Discussion: **SEN. BROOKE** asked Senator Cole about a new criminal law passed last session that encompassed and defined "stalking." She said she is sure that bill added additional expense to the county sheriff and police department for enforcement purposes. **SEN. BROOKE** said she sponsors a bill regarding partner and family assault that strengthens language so that protection orders have to be more strictly enforced by police. She asked Senator Cole if either of those bills would be affected by SB135.

SEN. COLE again referred to section 4 which states "may bring a civil action," and he said in cases of *beneficial* services being added, he doesn't believe there will be problems.

Mr. Niss pointed out that existing section 3 (which would be renumbered) of the bill contains a savings clause and explained that makes legislation operates *prospective* only regardless of the effective date. In this case, beginning October 1, 1995, SB135 would affect only legislation introduced or enacted after the effective date of the statute. **SEN. BROOKE** asked what that clause means for future legislation that would be proposed in the area of criminal law. **Mr. Niss** said he now understands the issue to be whether even the existing language of the existing Drake amendment can be interpreted to apply to the creation of a new offense, and he said the Legislative Council staff has never interpreted the existing language of the Drake amendment to apply to, for example, the creation of a new offense. **SEN. BROOKE** asked Mr. Niss why or why not. **Mr. Niss** said it did not directly fall within the scope of the legislation mandating an action by a local government.

SEN. FOSTER said this again raises the question of whether it is a *material* change, and he doesn't believe a stalking bill is a *material* change to any law enforcement agency in the state.

SEN. FOSTER agrees it would add more responsibility, but he said he does not believe it would cause agencies to hire more people.

Vote: The MOTION TO ACCEPT AMENDMENTS TO SB135 CARRIED 5-3 on roll call vote.

Motion: **SEN. COLE** moved that SB135 DO PASS AS AMENDED.

Discussion: **SEN. WELDON** said he supports the concept in SB135 but said he will vote against the motion because he believes this Committee should do additional work on the bill.

SEN. HARGROVE asked what is being done with section 5 of the amendments. **CHAIRMAN HARDING** said it is being disregarded as those issues will be addressed by Senator Bartlett's bill.

Vote: The MOTION CARRIED 5-3 on roll call vote.

EXECUTIVE ACTION ON HJR1

Motion: **SEN. FOSTER** moved that HJR1 BE CONCURRED IN.
SEN. FOSTER moved TO ACCEPT AMENDMENTS TO HJR1.

Discussion: **SEN. FOSTER** said questions about residency he raised in the Hearing were not criticism of the HJR1. He said he wanted the language to clarify HJR1 refers to veterans who are *residents* in Montana.

SEN. BROOKE, referring to the amendments, said if a veteran came to Montana from another state, they are still a veteran in Montana. **SEN. FOSTER** agreed that the amendments do not necessarily address his intent regarding residency.

SEN. HARGROVE said that HJR1 addresses only the *study* of housing needs of veterans, and therefore, would not create a magnet for veterans seeking housing.

Vote: The MOTION TO ACCEPT AMENDMENTS TO HJR1 CARRIED UNANIMOUSLY on oral vote.

Motion/Vote: SEN. PIPINICH moved that HJRI BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY on oral vote. Senator Pipinich will carry the bill on the Senate floor.

EXECUTIVE ACTION ON SB154

Motion/Vote: SEN. BROOKE moved that SB154 BE TABLED. The MOTION CARRIED 6-2 on roll call vote.

Discussion: CHAIRMAN HARDING said she believes there is a problem with the Federations and Library Commission, but she believes the problems should be handled without this legislation. CHAIRMAN HARDING suggested that a letter be written from the State Administration Committee to Ann Hauptman of the State Library Commission asking them to address the situation.

SEN. FOSTER said he strongly endorses this approach. He believes it would send a clear message to the State Library Commission that problems exist, and the legislature would prefer the problems be fixed internally and as soon as possible.

SEN. FOSTER suggested the letter also state that if the problem is not solved internally the legislature will likely address the issue again in the next session.

Motion: SEN. FOSTER moved that A LETTER BE SENT TO THE STATE LIBRARY COMMISSION ADDRESSING CONCERNS OF THE STATE ADMINISTRATION COMMITTEE REGARDING SB154.

Discussion: SEN. BROOKE said she would resist the recommendation to use any sort of a threatening tone in the letter. SEN. BROOKE also asked if her constituent's concerns regarding the timing of budgeting issues between the Commission and the Federations could be addressed in the letter.

SEN. WELDON asked to have the record show, regarding the discussion of the suggested letter, that there was a concern in the discussion of the bill that the Federation budgets remain controlled at the local level. SEN. WELDON also requested that votes against the motion to write the letter be reflected in the letter as well.

SEN. COLE said he does not agree with complete control at the local level. He is supportive of the Commission being able to work these problems out, and they should have some authority.

SEN. MESAROS said he believes it would be prudent of Committee members to endorse submitting a letter to the Commission

regarding the need for improved communication through the Federations.

SEN. WELDON believes the letter should be copied to the Federation presidents or chief officers.

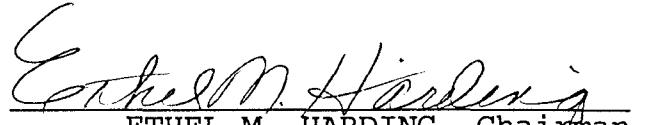
Vote: The **MOTION CARRIED 7-1** on oral vote with **SEN. WELDON** voting no.

DISCUSSION ON SB193

Mr. Niss said he did not believe he had a request from a Committee member to take section 67 through 78 out of the bill. **SEN. WELDON** said he would request that amendment, and added that he intends to talk with Joe Kerwin, the election official at the Secretary of State's office.

ADJOURNMENT

Adjournment: 11:15 AM



ETHEL M. HARDING, Chairman



GAIL MOSER, Secretary

EMH/gem

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE

82-07-95

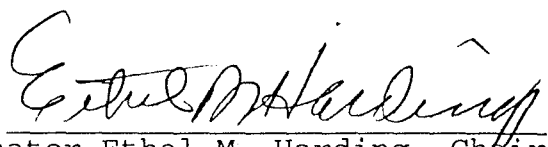
NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
MACK COLE	✓		
MIKE FOSTER	✓		
DON HARGROVE	✓		
BOB PIPINICH	✓		
JEFF WELDON	✓		
KEN MESAROS, VICE CHAIRMAN	✓		
ETHEL HARDING, CHAIRMAN	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 7, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration SB 135 (first reading copy -- white), respectfully report that SB 135 be amended as follows and as so amended do pass.

Signed: 
Senator Ethel M. Harding, Chair

That such amendments read:

1. Title, line 6.

Following: " ; "

Insert: "PROHIBITING THE INTRODUCTION OF A BILL VIOLATING SECTION 1-2-112 OR 1-2-113, MCA; PROVIDING FOR ENFORCEMENT AND PAYMENT OF COSTS AND ATTORNEY FEES;"

2. Page 2, line 1.

Following: " . "

Insert: "A required expenditure of the equivalent of approximately 0.1 mill or less levied on taxable property of the local government unit may be considered an insubstantial amount."


3. Page 2.

Following: line 19

Insert: "NEW SECTION. **Section 3. Bill restriction.** A bill may not be introduced enacting a new law or amending an existing law to require a local government unit to perform an activity or provide a service that requires a direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of 1-2-112 or 1-2-113.

NEW SECTION. **Section 4. Enforcement -- costs and fees.** A local government unit may bring a civil action in the district court of the county in which the local government unit is located to prevent the application of a law enacted in violation of 1-2-112 or 1-2-113. The state of Montana may be named as the respondent or defendant in an action brought pursuant to this section. A local government unit that substantially prevails in an action brought pursuant to this section must be awarded costs, including attorney fees, that must be paid by warrant drawn upon the state general fund.

NEW SECTION. **Section 5. Codification instruction.**
[Sections 3 and 4] are intended to be codified as an integral

 Amd. Coord.
SA Sec. of Senate

321251SC.SPv

part of Title 1, chapter 2, part 1, and the provisions of Title 1, chapter 2, part 1, apply to [sections 3 and 4]."

Renumber: subsequent section

4. Page 2, line 21.

Following: "affect"

Insert: "obligations that were created,"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 7, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HJ 1 (third reading copy -- blue), respectfully report that HJ 1, be amended as follows and as so amended be concurred in.

Signed: Ethel M. Harding
Senator Ethel M. Harding, Chair

That such amendments read:

1. Title, line 9.
Following: "VETERANS"
Insert: "IN MONTANA"
2. Page 1, line 13.
Strike: "Montana veterans' "
Following: "needs"
Insert: "for veterans in Montana"
3. Page 1, line 14.
Strike: "Montana veterans' specific"
Following: "needs"
Insert: "of veterans in Montana"
4. Page 1, line 19.
Strike: "Montana"
Following: "veterans"
Insert: "in Montana"
5. Page 1, line 21.
Strike: "Montana"
Following: "veterans"
Insert: "in Montana"
6. Page 1, line 30.
Following: "veterans"
Insert: "in Montana"
7. Page 2, line 3.
Strike: "Montana"
Following: "veterans"
Insert: "in Montana"

-END-

AV Amd. Coord.
SA Sec. of Senate

Pipinich
Senator Carrying Bill

321259SC.SPV

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE
ROLL CALL VOTE

DATE 02-07-95 BILL NO. SB135 NUMBER _____

MOTION: _____

SEN FOSTER Moved To ACCEPT Amendments SB135
CARRIED 5-3

NAME	AYE	NO
VIVIAN BROOKE		✓
MACK COLE	✓	
MIKE FOSTER	✓	
DON HARGROVE	✓	
BOB PIPINICH		✓
JEFF WELDON		✓
KEN MESAROS, VICE CHAIRMAN	✓	
ETHEL HARDING, CHAIRMAN	✓	

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE
ROLL CALL VOTE

DATE MAR 02-07-95 BILL NO. SB135 NUMBER _____

MOTION: _____
SEN. COLE MOVES SB135 DO PASS AS AMENDED

CARRIED 5-3

NAME	AYE	NO
VIVIAN BROOKE		✓
MACK COLE	✓	
MIKE FOSTER	✓	
DON HARGROVE	✓	
BOB PIPINICH		✓
JEFF WELDON		✓
KEN MESAROS, VICE CHAIRMAN	✓	
ETHEL HARDING, CHAIRMAN	✓	

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE
ROLL CALL VOTE

DATE Tues 12-07-95 BILL NO. SB154 NUMBER _____

MOTION: _____
Sen. Brooke Moves SB154 Be Tabled

NAME	AYE	NO
VIVIAN BROOKE	✓	
MACK COLE	✓	
MIKE FOSTER		✓
DON HARGROVE	✓	
BOB PIPINICH	✓	
JEFF WELDON	✓	
KEN MESAROS, VICE CHAIRMAN		✓
ETHEL HARDING, CHAIRMAN	✓	
<u>THE DO PASS MOTION FAILED 02-06-95</u>		
<u>4-4 (1 MEMBER VOTING LATE & NOT PRESENT AT NOTE)</u>		

Amendments to Senate Bill No. 135
First Reading Copy

DATE 02-07-95
BILL NO. SB135

Requested by Sen. Cole
For the Committee on State Administration

Prepared by David S. Niss
February 6, 1995

1. Title, line 6.

Following: ";"

Insert: "PROHIBITING THE INTRODUCTION OF A BILL VIOLATING SECTION 1-2-112 OR 1-2-113, MCA; PROHIBITING STATE AGENCIES FROM SHIFTING COSTS TO LOCAL GOVERNMENTS; PROVIDING FOR ENFORCEMENT AND PAYMENT OF COSTS AND ATTORNEY FEES;"

2. Page 2.

Following: line 19

Insert: "NEW SECTION. **Section 3. Bill restriction.** A bill may not be introduced enacting a new law or amending an existing law to require a local government unit to perform an activity or provide a service that requires a direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of 1-2-112 or 1-2-113."

NEW SECTION. **Section 4. Enforcement -- costs and fees.** A local government unit may bring a civil action in the district court of the county in which the local government unit is located to prevent the application of a law enacted in violation of 1-2-112 or 1-2-113. The state of Montana may be named as the respondent or defendant in an action brought pursuant to this section. A local government unit that substantially prevails in an action brought pursuant to this section must be awarded costs, including attorney fees, that must be paid by warrant drawn upon the state general fund.

NEW SECTION. **Section 5. Section 1. State agencies not to shift cost to local governments.** (1) A state agency may not take any action prohibited by subsection (2) without authorization in state law.

(2) A state agency may not demand, bill, request, or otherwise require a local government to take any of the following actions or refuse to provide a service to a local government, which is required by state law to be provided to that government, unless the local government takes any of the following actions:

(a) pay for all or part of the administrative costs of a program, activity, or undertaking required by state law to be carried out primarily by a state agency;

(b) pay for costs of computer hardware or software used in

the operation of a state program, activity, or undertaking or pay for the application of either hardware or software in a state program;

(c) pay for forms required to be completed either by a local government or by third persons through a local government office and used by or filed with a state agency; or

(d) pay for the filing in a state office of forms required by state law to be completed by a local government.

(3) (a) A local government may refuse to pay for services billed or charged to it by a state agency in violation of this section. Upon refusal by the local government, the state agency may send to the local government a written notice of the program or activity for which the local government is billed, a detailed statement of the amount of the bill or charge, and a citation to the legal authority requiring the local government to pay the bill or charge.

(b) Within 30 days of receipt of the notice required by this subsection (3), the local government shall pay the bill or charge or request a hearing before the state agency. Upon request, the state agency shall provide a hearing. If a local government fails to pay the bill or charge and fails to request a hearing, the state agency may initiate a contested case proceeding. Proceedings authorized by this subsection must be held in accordance with the provisions of the Montana Administrative Procedure Act governing contested cases. A decision of the state agency following opportunity for a hearing may be appealed to the district court as provided in 2-4-702.

(4) The remedy provided in subsection (3) is exclusive of any other remedy provided in law for a state agency claiming a right to recover an administrative cost from a local government and is exclusive of any other remedy provided in law for a local government refusing to pay a bill or charge of a state agency.

(5) This section does not apply to services provided by a state agency pursuant to a written or oral contract.

(6) The following definitions apply to this section:

(a) "Administrative cost" means the cost of administering a program, activity, or undertaking, including costs for salaries, wages, rent, heat, electricity, computer hardware, computer software, telephone, travel, equipment, supplies, or postage.

(b) "Local government" means a county, city, town, township, school district, or other district or local public entity with the authority to spend or receive public funds.

(c) "State agency" means a department, board, commission, office, bureau, or other public authority of state government."

NEW SECTION. Section 6. {standard} Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 1, chapter 2, part 1, and the provisions of Title 1, chapter 2, part 1, apply to [sections 3 through 5].

Renumber: subsequent section

EXHIBIT 1
DATE 2-7-95
SB 135

3. Page 2, line 21.
Following: "affect"
Insert: "obligations that were created,"

Amendments to House Joint Resolution No. 1
Third Reading Copy

Requested by Sen. Foster
For the Committee on State Administration

Prepared by David S. Niss
February 6, 1995

1. Title, line 9.
Following: "VETERANS"
Insert: "IN MONTANA"

2. Page 1, line 13.
Strike: "Montana veterans'"
Following: "needs"
Insert: "for veterans in Montana"

3. Page 1, line 14.
Strike: "Montana veterans' specific"
Following: "needs"
Insert: "of veterans in Montana"

4. Page 1, line 19.
Strike: "Montana"
Following: "veterans"
Insert: "in Montana"

5. Page 1, line ²¹~~19~~.
Strike: "Montana"
Following: "veterans"
Insert: "in Montana"

6. Page 1, line 30.
Following: "veterans"
Insert: "in Montana"

7. Page 2, line 3.
Strike: "Montana"
Following: "veterans"
Insert: "in Montana"