

MINUTES

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

Call to Order: By CHAIRMAN ETHEL HARDING, on February 14, 1995,
at 10:00 A.M.

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: SB 324, SB 343, SB 337, SR 2
Executive Action: SR 2

{Tape: 1; Side: A; Approx. Counter: 56.8}

HEARING ON SB 324

Opening Statement by Sponsor:

SENATOR SUE BARTLETT, Senate District 27, Helena, opened the hearing on SB 324, which prohibits state departments from shifting costs to counties for services, supplies, and filing services when forced to reduce their budgets.

Proponents' Testimony:

Gordon Morris, Executive Director, Montana Association of Counties, stood in support of the legislation and stated that it

was consistent with the overall sentiment of the legislators and the Governor's office on the issue of mandates.

Alec Hanson, League of Cities and Counties, stated this was another side of the mandates issue, adding it is not only the actions of the legislators, but the requirements imposed and required by the state agencies that impact local budgets and services.

Don Waldron, Montana Rural Education Association, stated his membership has the same type of problems as cities and counties: Rules and requirements handed down by state agencies (i.e., the Health Department) onto local entities with no regard for costs. He stated costs should be worked out before implementation.

Blake Wordal, Lewis and Clark County Commissioner, stated the Lewis and Clark County Commissioners are in support of SB 324. He commented on constituent complaints on landfill costs in the county and that those costs are incurred due to state regulations and rules.

Gloria Paladichik, Richland Development, noted that invariably when costs are passed down to the local government it is in the middle of the budget year. The only option available to local governments is to cut other city or county services.

Chris Imhoff, Montana League of Women Voters, stated her organization believes the state should be responsible for costs passed on to local governments and agencies.

Jim Kembel, City of Billings, noted he would like to go on record in support of SB 324.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SENATOR DON HARGROVE asked Senator Bartlett if SB 324 had been reviewed in light of other legislation on unfunded state mandates. **SENATOR BARTLETT** stated it had been, but she believes SB 324 does not address unfunded mandates as much as it addresses state functions whose costs are shifted to local entities.

SENATOR JEFF WELDON questioned the enforcement mechanism in the legislation. **SENATOR BARTLETT** stated she believed local governments had the authority to initiate a court action, and she was looking for a mechanism that would be quicker and less costly.

SENATOR VIVIAN BROOKE questioned Blake Wordal how the bill would affect the landfill issue in Lewis and Clark County. **Mr. Wordal** responded that the Department of Health required an Environmental

Impact Statement at a cost of \$150,000. Ultimately, an agreement was reached between the two entities.

SENATOR MIKE FOSTER asked Blake Wordal if language on page 2, lines 10-11 dealing with written or oral contracts would give local governments an unfair advantage. **Mr. Wordal** replied that in his opinion, it would not.

(EXHIBIT 1), from Gallatin County, supports SB 324.

Closing by Sponsor:

SENATOR BARTLETT closed the hearing on SB 324.

HEARING ON SB 343

Opening Statement by Sponsor:

SENATOR SUE BARTLETT, Senate District 27, Helena, introduced SB 343, which authorizes officeholders to establish Constituent Service Accounts (CSA) with leftover campaign funds (EXHIBIT 2).

Proponents' Testimony:

Chris Imhoff, Montana League of Women Voters, urged support for SB 343 and felt it would help provide a positive view of officeholders in Montana.

Brad Martin, Director, Montana Democratic Party, expressed support for SB 343 and asked for bi-partisan support for the legislation.

J.V. Bennett, MontPIRG, stated his organization supports SB 343.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SENATOR MACK COLE asked Senator Bartlett about the timeline in the legislation. **SENATOR BARTLETT** stated those individuals who have funds in banking accounts would be required to report according to the timeline at the time of passage.

SENATOR COLE asked if a provision could be added that a report not be due if there was no account activity during a period. **SENATOR BARTLETT** said she would be willing to consider that type of approach.

SENATOR HARGROVE asked Senator Bartlett if funds could be expended for a staffed office in a legislator's home town under this legislation. **SENATOR BARTLETT** replied this type of activity would be viable under SB 343.

SENATOR WELDON asked for clarification on the types of money involved in this legislation. **SENATOR BARTLETT** said that money raised for a campaign that is, after the election, surplus would be covered under this legislation, not personal monies.

SENATOR WELDON asked Senator Bartlett if she knew what type of expenditures have been made from Governor Racicot's Leadership 1000 account (unsure as to the name of the account). **SENATOR BARTLETT** responded that she did not know. She added that that information would be available through the office of the Commissioner of Political Practices.

SENATOR FOSTER commented that there is a potential for mischief in handling this type of an account as there is no limit on the amount in the account -- even though it cannot be used for campaign purposes, exactly. **SENATOR BARTLETT** agreed that the bill needs to be scrutinized from those perspectives as well. She said there is no cap on the total amount that could be collected for this type of an account, but there are limits on what individual contributors could give. **SENATOR BARTLETT** stated that many activities carried out to serve constituents can easily bleed over into potential campaign activity. Because of this, SB 343 prohibits any expenditures from these accounts from the filing deadline until the day after the general election in a year in which the person who has the account is on the ballot for any office.

SENATOR BROOKE asked for clarification on what direction the legislation gives to losers in an election cycle. **Brad Martin** replied that individuals losing an election would have no reason to set up a Constituent Service Account and currently have limited options for those funds.

SENATOR KEN MESAROS questioned Brad Martin on the ability of a loser to transfer his funds to another individual's account. **Mr. Martin** stated he does not believe that would not be an allowable disposal of funds under I118, but he added this may be a gray area.

CHAIRMAN HARDING noted there were several pieces of legislation dealing with legislators' expenses and questioned if SB 343 addressed that subject. **SENATOR BARTLETT** stated this legislation does give an office holder the option of using the account for long distance charges, travel charges, and postage.

Closing by Sponsor:

SENATOR BARTLETT said that amendments for SB 343 are being prepared for clarification purposes in the ways monies can be used. She closed the hearing on SB 343 urging the Committee's support of the bill.

{Tape: 1; Side: B; Approx. Counter: 40.}

HEARING ON SB 337Opening Statement by Sponsor:

SENATOR MIKE SPRAGUE, Senate District 6, Billings, stated he was presenting SB 337 on behalf of the Department of Administration.

Proponents' Testimony:

Debra Fulton, Administrator, Department of Administration, stated the only substantive change in the bill was a new section dealing with a building owner's alteration, repair, maintenance, or remodelling of a building to be purchased by the state. Ms. Fulton also presented amendments to the bill which addressed the issue of the state circumventing the Davis-Bacon Act. (EXHIBITS 3, 4, 5, and 6).

Opponents' Testimony:

Jerry Driscoll, Montana State Building and Construction Trades Council, disputed the architectural requirements in SB 337 and available lease/purchase arrangements. He did urge support of the amendment offered by Debra Fulton.

Questions From Committee Members and Responses:

SENATOR FOSTER asked Debra Fulton to respond to Mr. Driscoll's concerns. Ms. Fulton replied that the building in question, Billings Rivendell, was purchased by the state, not leased, and that lease arrangements are reviewed by the legislature.

SENATOR MESAROS asked Jerry Driscoll if there was a parallel between federal buildings constructed and leased in Billings and state buildings. Mr. Driscoll noted there was none at this time.

SENATOR HARGROVE asked Debra Fulton about the competitive bidding process. Ms. Fulton stated contractual agreements and architectural requirements are covered by legislation.

SENATOR HARGROVE asked Jerry Driscoll to respond to the same question. **Mr. Driscoll** noted the current codes define building and compliance requirements.

SENATOR BOB PIPINICH questioned Jerry Driscoll on the legality of the state having a building constructed and then leasing the property back. **Mr. Driscoll** noted under this legislation that scenario could take place.

CHAIRMAN HARDING questioned Debra Fulton regarding the applicability of current codes in light of this legislation. **Ms. Fulton** reiterated the legislature would control the building and/or leasing arrangements for the state departments.

Closing by Sponsor:

SENATOR MIKE SPRAGUE closed the hearing, noting he was responding to complaints from constituents to "Send some common sense to Helena -- Why do they do... what they do... the way they do it?" He stated SB 337 was his response to those frustrations.

SENATOR JEFF WELDON took the chair for **CHAIRMAN HARDING**.

HEARING ON SR 2

Opening Statement by Sponsor:

SENATOR ETHEL HARDING, Senate District 37, Polson, introduced SR 2, which concurs appointments made by the Governor.

Proponents' Testimony:

Betti Hill, Governor's Office, commented on page 3, section 18, which she would like amended out of the bill.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SENATOR COLE questioned Betti Hill on the additional nominations that would be added to the current listing. **Ms. Hill** responded they were nominations made since the initial list was presented.

Closing by Sponsor:

SENATOR HARDING closed the hearing on SR 2.

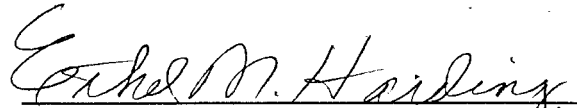
EXECUTIVE ACTION ON SR 2

Motion/Vote: SENATOR WELDON moved TO STRIKE PAGE 3, LINES 10-12.
The MOTION CARRIED UNANIMOUSLY on oral vote.

Motion/Vote: SENATOR FOSTER moved that SB 2 DO PASS AS AMENDED.
The MOTION CARRIED UNANIMOUSLY on oral vote.

ADJOURNMENT

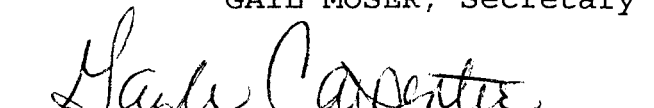
Adjournment: The meeting was adjourned at 11:35 A.M.



ETHEL M. HARDING, Chairman



GAIL MOSER, Secretary



Gayle Carpenter, Transcriber

EMH/gem/gc

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE _____

WBS 02-14-95

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PRELIMINARY

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 3, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration SR 2 (first reading copy -- white), respectfully report that SR 2 be amended as follows and as so amended do pass.


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

That such amendments read:

1. Page 3, lines 10 through 12.
Strike: subsection (18) in its entirety

Renumber: subsequent subsections

-END-


Amd. Coord.
Sec. of Senate

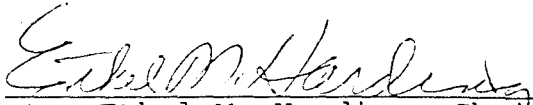
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration SR 2 (first reading copy -- white), respectfully report that SR 2 be amended as follows and as so amended do pass.

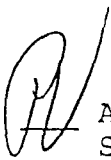
Signed: 
Senator Ethel M. Harding, Chair

That such amendments read:

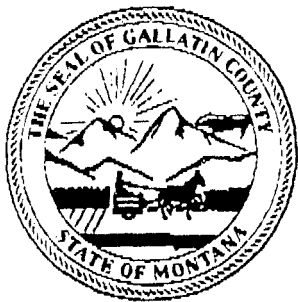
1. Page 3, lines 10 through 12.
Strike: subsection (18) in its entirety

Renumber: subsequent subsections

-END-


Amd. Coord.
Sec. of Senate

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County Commission

GALLATIN COUNTY

331 West Main, Rm. 301 • Bozeman, MT 59715

Kris Dunn
Jane Jelinski
Phil Olson

February 13, 1995

Phone (406) 582-3000
FAX (406) 582-3003**BY FAX (444-4057)**Senator Sue Bartlett
416 North Beattie
Helena, MT

SENATE STATE ADMIN.

EXHIBIT NO. 1DATE 02-14-95BILL NO. SB324RE: SENATE BILL 324

Dear Senator Bartlett:

This is a letter of support for Senate Bill 324. County governments in the State of Montana have experienced a series of administrative actions which have resulted in the passing down of state costs to counties. After the legislature makes cuts in state budgets, they adjourn. Then the departments have, in many cases, "reduced" their budgets by charging counties for their services. One example is the TEAMS computer system for welfare programs. SRS assured counties that the state would bear all costs except wiring to install the TEAMS system in county welfare departments. These assurances were made in writing.

After the last legislature adjourned, SRS billed counties for the TEAMS computer system. This cost Gallatin County \$10,000. The charge was billed after county budgets were adopted, so counties had to make cuts in other areas to absorb the unanticipated cost. In subsequent years, SRS has continued to bill counties for the TEAMS computer system, and the increases have not been explained nor budgeted for in advance. SRS has also recently begun to charge county welfare departments for the forms they are required to use. Again, these charges were made after county budgets were adopted, so cuts had to be made elsewhere.

There are numerous other cases where many state administrative budget cuts have been absorbed by counties. The problems this causes counties are obvious. County mill levies continue to be frozen at 1986 levels, and 42 percent of the counties in the state have experienced lower property values.

Please support SB 324 so that counties will no longer be required to reduce their budgets so that state agencies can maintain their current spending levels.

Sincerely,

A handwritten signature in cursive script that reads "Jane Jelinski".

Jane Jelinski
Gallatin County Commissioner and
President of MACo

SB 343 BY SENATOR BARTLETT

- Authorizes officeholders to establish Constituent Service Accounts (CSA).
- "Officeholder" includes anyone who holds a state, county, municipal, school, or other district office that is filled by the people at an election (from 13-1-101).
- Funds from a CSA could be used to enable the officeholder to better service her/his constituents (identified as those people who vote for the office held) and to assist the officeholder in carrying out the duties of the office.

Examples: Postage for mailings to constituents.
Salary for an aide during a legislative session.
Travel reimbursement to attend constituent meetings.

- CSA funds may not be used:
 - . To directly benefit any candidate or political campaign, including campaigns for or against a ballot issue.
 - . Between the filing deadline and the day after the general election in a year when the officeholder files for election to any office. Campaign funds would have to be used during this period. If this prohibition is violated, the person's name cannot be printed on the ballot or the certificate of nomination or election could be withheld.
- Contributions to a CSA may come from:
 - . The officeholder's campaign account.
 - . Individuals.
 - . Political committees.
 - . Political parties.

Corporate contributions are prohibited.

In any 2 year period, contributions may not exceed the limits set for campaign contributions under I-118.

- CSA reports to be filed with the Commissioner of Political Practices:
 - . Within 5 days of the effective date of the act, notice of all existing CSAs, their treasurers, and the balance in the account on the effective date of the act.
 - . Within 5 days of establishing a new CSA, notice of the account and the account's treasurer.
 - . Quarterly, within 5 days of the end of each calendar quarter. Reports to include the same information on contributions and expenditures that are required of candidate campaign committees.
- July 1, 1995 effective date.

An amendment to the introduced copy of SB 337 DATE 02-14-95
Proposed by the Department of Administration
February 14, 1995 BILL NO. SB337

(1) Amend title

1. Title, lines 5 through 7.

Following: "AN ACT" on line 5

Strike: "providing" on line 5 through "provisions" on line 7

(2) Amend [section 1]

1. Page 1, lines 12 through 13.

Strike: Lines 12 through 13 in their entirety

Renumber: subsequent sections

(3) Amend [section 4]

1. Page 2, lines 23 through 25.

Strike: Lines 23 through 25 in their entirety

Sb 337 as introduced would have done three things.

1. Allowed the state to purchase buildings already remodelled for its purposes by others without following construction statutes. This would have been a change in practice, and was introduced as a possible solution to avoid delays such as those encountered in the purchase of Rivendell.

2. Clarified that leases can be negotiated with landlords without causing the landlord to comply with state construction statutes for negotiated remodelling. This change codifies current practice.

3. Clarified required legislative approval for building repair and maintenance costs, allowing agencies to perform repair and maintenance projects costing over \$50,000 without further legislative authority if they have the money in their operating budgets. This change codifies current practice.

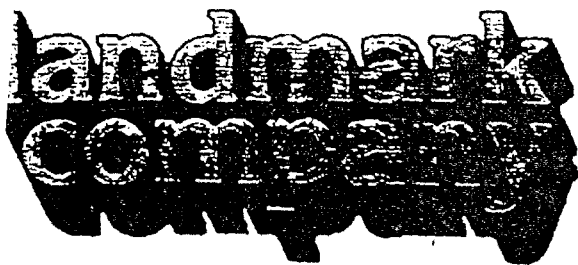
The department solicited comments from concerned groups and legislators, and after those discussions, agreed to remove [section 1] of the bill (#1 above). This change would restore current practice which requires that remodelling or repairs to any building to be purchased by a state agency must be done through using the state construction statutes. (Title 18)

#2 remains and is needed by the department to allow for an efficient leasing program. Without this provision, current statute could be interpreted to say that, in order to remodel a facility for lease to a state agency, a private landlord would have to comply with the requirements of Title 18. These include:

- ▶ Receiving legislative authority for the remodelling if the cost was over \$50,000;
- ▶ allowing the Department of Administration to appoint the architect for the remodelling;
- ▶ bidding the project and awarding it to the low bidder; and
- ▶ requiring bid and performance security in the name of the state, advertising the project for up to 3 weeks, and specifying wages to be paid.

Even if all of these state intrusions into the work being done in a private building were justified, statute is clearly not intended to deal with this situation. The state maintains a centralized lease approval function which ensures that agencies get fair value for their rental dollars, and requires compliance with building codes and other laws and regulations regarding facilities.

#3 remains and, again, reflects current practice. Repairs and maintenance cannot always be anticipated, and even if they exceed \$50,000, should not require legislative approval beyond the approval of an agency's operating budget. A building may need a new air handler which costs \$70,000, and that replacement of like for like should not require a special session for specific legislative approval. Please note, however, that a remodelling project over \$50,000 does require specific legislative authority.



SENATE STATE ADMIN.

EXHIBIT NO. 5DATE 02-14-95BILL NO. SB3337

February 14, 1995

State of Montana Administration Committee
State Senate - State Capital
Helena, MT 59620

RE: Senate Bill 337

Dear Committee Members:

This letter is to express my support for Senate Bill 337. The Landmark Company is a provider of leased office space to the State of Montana.


I can assure you that the Department of Administration does their best to see that agencies get their monies worth in the Helena rental market. The Department's insistence that projects meet the agency's requirements as well as conforming to building codes protects the State of Montana investment. They generally have been able to negotiate rental rates that are at or below the market.

To require the Department to appoint our architect and become involved in our bidding process and negotiations with contractors will more than likely limit the number of providers of space. We, the owners of the leased properties, do not want to turn over to the state the responsibility of awarding bids, etc. The property still belongs to us - our responsibility is to remodel and lease according to negotiated terms. If the number of providers is limited, it follows that the cost of space will increase.

The negotiations for price per square foot and remodeling requirements should be the focus of the Department. Let the owner of the property negotiate with the contractor and architect. If we were to lose control of remodeling and architectural expenses, we would not consider leasing additional space to any state agency unless we were able to obtain a higher rental rate.

Keep the system working along with keeping the cost down and support SB337.

Thank you,



Donald J. Erickson
BROKER/OWNER

DJE/jlv

TESTIMONY ON SB 337
GENERAL SERVICES DIVISION
February 14, 1995
Debra M. Fulton

SENATE STATE ADMIN.

EXHIBIT NO. 6

DATE 02-14-95

BILL NO. SB337

Title: "An act providing that a building owner's alteration, repair, maintenance, or remodelling of a building to be purchased by the state is exempt from public contract provisions; revising the definition of a "building"; clarifying legislative consent to building costs; and amending sections 18-2-101 and 18-2-102, MCA."

The Department of Administration requested the changes to Title 18 proposed in SB 337 to allow public agencies to contract with private building owners for the remodelling of facilities for lease or sale, and to clarify the process for legislative approval of building maintenance in agency operating budgets, and

Section 1 of this bill is a new section, and represents the only substantive change in current practice that is proposed in this bill.

"A building owner's alteration, repair, maintenance, or remodelling of a building to be purchased by the state is exempt from the provisions of this title." (meaning Title 18 - state construction statutes)

As a practical matter, this addition to the statute would allow agencies to purchase an existing facility and have the present owner remodel it to the agency's specifications without following all of the state's construction statutes. This problem arises infrequently, but as in the recent case of the Rivendell purchase, this change would result in a quicker and more cost effective way for agencies to acquire space for program use. This section has, however, been met with some concern and resistance, and so in an effort to compromise, the department is willing to offer an amendment which strikes this section if the rest of the bill remains intact.

Section 2 of the bill amends 18-2-101 MCA, to clarify that the definition of "building" contained in the act does not include structures, "(c) leased or to be leased by a state agency;". Without this clarification, the existing statute might be interpreted to mean that if a state agency needed a landlord to remodel privately owned space so they could lease it, or have remodelling done to meet program needs during the course of the lease, the landlord would have to follow state construction statutes to get the job done.

A strict reading of the statute would require agencies to get legislative approval if they wanted to have existing space for lease remodelled to suit their needs - even though they could lease space that didn't need remodelling without this same approval. In addition, the private building owner would have to go through the state's architectural selection process and couldn't choose their own architect - even though the building owner might be an

architect. The project would require bonding and the payment of prevailing wages, and the building owner would have to put the project out for competitive bid - even though the owner might be a construction company. And then the owner would award the contract for the remodelling to the lowest responsible bidder -even though that bidder might be the landlord's competitor. Then, the Department of Administration would oversee the remodelling project and would extract a fee from the private business owner for that oversight. I think you can agree that this would make it very difficult for the department to lease space in privately owned buildings. It is not the way we do business now, and it doesn't make sense to have us do business this way in the future. I don't know of anyone, including the federal government, who must try to operate under these kinds of constraints.

The only interest the department has in the cost or quality of any remodelling work in leased space is that they get what they ask for, and that the final per square footage costs of the lease fall within acceptable guidelines. These two things are presently accomplished in negotiating the lease document, and any further oversight of the remodelling would not be productive, nor would it be necessary.

I guess the most common sense way to look at this problem is to examine the state's interests in Title 18 and to determine if they apply to leasing. We think they do not. Title 18 exists because the legislature intended to be consulted before the state acquired a long term asset/liability in permanent facilities. In addition, the state has a vested interest in the quality of the facility as we would be maintaining it for its useful life. There is an interest in allowing everyone to have an opportunity to participate in the building of the facility by providing a uniform, competitive bidding process, and leveling the playing field by requiring prevailing wage. These same interests do not apply to the leasing process.

The state has no long term interest in the leased facility, and no requirement to maintain the improvements over time. While there is an interest in allowing all qualified parties to be considered, that process takes place at the negotiating table where space availability and lease terms are determined, not through construction bid documents. Construction and leasing are clearly two separate processes and should not be held to the same rules and regulations.

Section 3 of this bill amends 18-2-102, MCA. It clarifies the statute to align it with current practices regarding building maintenance. As you might imagine, not all maintenance for state buildings can be anticipated during a legislative session. We might not anticipate, for example, that the air handlers on a building were going to fail and have to be replaced a year from now. If they do fail, we need to be able to react quickly and replace the equipment so the building can continue to be used, and so that it is not damaged by any delay in replacement.

EXHIBIT

6

DATE

2-14-95

SB 337

This is the current practice, and the practice which makes sense, but a strict reading of existing statute today would require that a repair such as this, if it cost over \$50,000, receive specific legislative authority. That would require a special session, or abandonment of the facility until the legislature reconvened - neither of which is a very practical solution. I want to clarify, however, that other new construction and remodelling totalling over \$50,000, does now, and would continue to require legislative approval. This bill only addresses those situations that deal with like for like repair or replacement of an existing building feature.

In summary, the changes requested in this bill are not earth shaking, but they do define and streamline good business practices for government space procurement. They keep the government out of the business of private property holders, and they allow agencies to obtain the space they need for their programs. We hope you will agree and support SB 337.

DATE

Feb 02-14-95

SENATE COMMITTEE ON

STATE ADMINISTRATION

BILLS BEING HEARD TODAY:

SB324 / SB343 / SB337 / SR2

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Garia Paluchuk	Richland Develop.	SB324	✓	
W. James Kumbel	City of Billings	SB324	✓	
Gordon Morris	MTA Co	324	✓	
Debra Fulton	Dept of Adm	337	✓	
Blake Wordal	Lewis & Clark Co	324	✓	
Beth Hill	Gov. Off	SR2		
Brad Martin	MT Democratic Party	SB343		
Don Waldrop	WBEA	324	✓	
J.V. Bennett	Mont PIRG	343	✓	
Chris Johnson	League of Women Voters of MT	324 343	✓	
Jerry Driscoll	mt State Building & Construction Trades Council	337		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY