

MINUTES

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

Call to Order: By CHAIRMAN ETHEL HARDING, on January 19, 1995,
at 10:05 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: SB120 HB24
Executive Action: SB37 DO PASS AS AMENDED
SB24 DO PASS

{Tape: 1; Side: A; Approx. Counter: 51.5}

HEARING ON SB120

Opening Statement by Sponsor:

SEN. JOHN HERTEL, Senate District 47, Moore, stated that SB120 is a central Montana bill to a certain degree. SB120 will revise the name and function of the Montana Center for the Aged which is a state institution located in Lewistown. Currently, patients are not considered for admission to the Center unless they are at least 55 years old but occasionally, there are younger patients appropriate for placement at the Center. SEN. HERTEL stated the function of the Center will change only slightly. The Center

provides a nursing home environment with special services for the needs of its mentally ill patients. The mental health services at the Center are not considered *active and intensive* treatment, but rather *supportive* care. Treatment professionals including psychiatrists are available, but Center patients need less frequent and intensive treatment from these professionals.

SEN. HERTEL said there are three categories of admission criteria for the Center. First, they must require nursing home care, second, they must have a mental illness which makes it impossible to serve the patient in a private nursing facility, and third, they must not require active in-patient psychiatric care for their mental illness. Presently, patients are admitted to the Center only on a voluntary basis. SB120 would allow an involuntary admission but only after a direct examination from the Montana State Hospital in Warm Springs has taken place. SB120 would allow a transfer of involuntary patients from the Montana State Hospital. If, after receiving active treatment at the State Hospital, and it is determined that the nursing care is required, and if symptoms of mental illness make placement in a private nursing home impossible, then the patient would be considered for the Center. The Center is a 190 bed facility. Over the last few years only about 130 of those beds have been utilized. SB120 would enable the Center to utilize the facility more fully.

Proponents' Testimony:

Dan Anderson, Administrator of the Mental Health Division and the Department of Corrections and Community Services, stated that the Center for the Aged and the Montana State Hospital are administered by the Mental Health Division. **Mr. Anderson** stated the Division's intent is to continue and to further emphasize the purpose of the Center for the Aged which is to serve people with mental illness who require nursing home care but do not require active, intensive in-patient treatment. The purpose of SB120 is to recognize that some of the people who meet that criteria are under age 55 and some are in the mental health system involuntarily. **Mr. Anderson** referred to page 1, line 27, and the name change from Montana Center for the Aged to Montana Mental Health Nursing Care Center. **Mr. Anderson** said the key characteristic of the Center is that it is a licensed and certified nursing home. Page 3, line 6, contains a major key to SB120, which is to allow the *transfer* of appropriate involuntary patients from the State Hospital. Page 3, section 4, lines 13, 14, and 15, essentially state that there would be clinical criteria for the transfer from the State Hospital to the Center. Section 4 also provides that a patient could be transferred *back* to the State Hospital if more intense treatment becomes necessary. **Mr. Anderson** said that transfers already take place between the State Hospital and the Center, but SB120 would provide the ability to transfer patients under age 55 and/or patients under an involuntary commitment at the Hospital. As part of a Hospital Redesign Project, the State Hospital hired a

private consultant who determined that about 25 patients (mostly geriatric) at the State Hospital could be appropriately served at the Center. **Mr. Anderson** handed out a letter from Ron Balas, Superintendent of the Montana Center for the Aged (**EXHIBIT 1**), and read some portions of that letter to the Committee.

Mr. Anderson stated that his Department would not allow or advocate direct, involuntary commitments to the Center.

Carl Keener, Medical Director, Montana State Hospital, said that SB120 would fit the goal of the State Hospital to continue to receive and treat people who need active treatment and would allow for a transfer at the end of the active treatment.

Opponents' Testimony:

Andree Larose, staff attorney with Montana Advocacy Program, handed out written testimony (**EXHIBIT 2**). **Ms. Larose** said her organization is concerned regarding the constitutionality of SB120 and that constitutional due process is not adhered to. **Ms. Larose** did not read her testimony verbatim, but paraphrased the items covered in that testimony. **Ms. Larose** urged the Committee to oppose SB120 as it is currently drafted and offered amendments to specific sections of SB120 as stated in her written testimony.

Questions From Committee Members and Responses:

SEN. VIVIAN BROOKE commented that SB120 is beyond the scope of the State Administration Committee. **SEN. BROOKE** stated her objection to SB120's assignment to this Committee.

SEN. MIKE FOSTER asked **Mr. Anderson** to respond to the concerns raised by **Ms. Larose** as well as the amendments proposed by **Ms. Larose**. **Mr. Anderson** said some of **Ms. Larose's** comments were due to a difference in interpretation; for example, the Department would certainly continue to review (at least annually) those patients involuntarily committed under section 53-21.

Mr. Anderson said he did not believe an amendment was necessary to clarify this point. **Mr. Anderson** said it would be difficult for the Department to agree to a judicial review for a transfer from the State Hospital to the Center for the Aged as they believe that is a clinical decision. **Mr. Anderson** commented that regarding the voluntary patients, he would be happy to work with Montana Advocacy Program to determine what amendments may be needed. The Department's assumption would be that a voluntary patient at the Center is also entitled to give five-day notice of discharge, just as the patients at the State Hospital are entitled.

SEN. DON HARGROVE asked **Mr. Anderson** to clarify that "private" referred to county nursing homes from which you could not be transferred directly to the Mental Health facility. **Mr. Anderson**

stated that is correct. **SEN. HARGROVE** asked what is the board or commission that provides guidance to the Mental Health Division. **Mr. Anderson** said they have a Mental Health Planning and Advisory Council which is strictly advisory. Other than that Advisory Council, his organization is governed under the Department of Corrections and Human Services.

SEN. KEN MESAROS asked Mr. Anderson to go over the population figures for the State Hospital and the Center to clarify whether there is crowding at the State Hospital or an increased need to expand services in outlying regional facilities. **Mr. Anderson** responded that the Center is licensed for 190 beds, and there has consistently been about 140 patients at the Center. The State Hospital consistently serves about 200 patients and that does not create a crowding condition. **Mr. Anderson** stated, however, the population numbers are not the issue; the required level of care is the main issue. **SEN. MESAROS** asked Mr. Anderson if the Center would need to change their staffing and criteria considerably to serve a different clientele. **Mr. Anderson** stated that at some point, there may need to be a locked area in the Center. **Mr. Anderson** said there will not likely be more patients in the overall system, but if the number of patients increased at the Center and decreased at the State Hospital, the staffing resources could be transferred from the State Hospital to the Center. SB120 would simply provide for more appropriate placements for the same number of patients in the system now.

SEN. BOB PIPINICH, asked Mr. Anderson if SB120 is an attempt to down-size the State Hospital at Warm Springs and fill the beds at the Center. **Mr. Anderson** responded that he would not characterize SB120 as such an attempt. He would characterize it as an attempt to distinguish between those mentally ill patients requiring active and intensive treatments and those requiring a lower level more supported-nursing type level of treatment. **SEN. PIPINICH** said he agrees with Senator Brooke that aside from the name change, SB120 is beyond the scope of this Committee and it should be referred to Public Health.

SEN. MACK COLE asked Mr. Anderson to clarify what the patient load at the State Hospital will be. **Mr. Anderson** said they are proposing that the State Hospital be a 166-bed facility. It is anticipated that in about 4-5 years the average population at the State Hospital will be about 135 patients.

SEN. COLE asked Mr. Anderson if the Department has calculated what the savings would be to transfer the patients requiring less-intensive care from the State Hospital to the Center. **Mr. Anderson** said no, but stated that the Center is a less expensive facility.

SEN. JEFF WELDON asked Mr. Anderson to clarify the existence of admission criteria as referred to on page 3, section 4, line 14 specifically related to transferring patients from the State Hospital to the Center. **Mr. Anderson** stated that they have in

administrative rule, the admission criteria for the Center, and it would be the same criteria used for transfers. **SEN. WELDON** asked Mr. Anderson if "active" treatment of mental disorders is statutorily defined or defined through administrative rule or is it a "term of art." **Mr. Anderson** said he would call it a "term of art."

SEN. WELDON asked Ms. Larose to clarify that her constitutional argument was concern for the due process protection of the patients. **Ms. Larose** stated that is correct. **SEN. WELDON** said that Mr. Anderson suggested other parts of Title 23, chapter 21 do prescribe due process protection for the patients and asked Ms. Larose if that was accurate. **Ms. Larose** stated that is true and many problems could likely be solved if there was a reference to the procedures in statute. **SEN. WELDON** suggested reference to appropriate statutes be included where due process considerations exist regarding transfers to the Center.

SEN. WELDON then asked Ms. Larose if she believed the due process protections contained elsewhere in Chapter 21 are sufficient. **Ms. Larose** answered yes since topics of concern such as a discharge, admission, and transfer to other facilities are covered.

SEN. BROOKE asked Mr. Anderson if the patients currently at the Center are mental health patients. **Mr. Anderson** stated that all patients at the Center are mental health patients.

Closing by Sponsor:

SEN. HERTEL stated he did not realize the number of problems that existed with SB120. **SEN. HERTEL** specifically requested it be noted that VOLUNTARY admissions to the Center will continue. **SEN. HERTEL** said he believes patients transferred from the State Hospital to the Center would be in an environment better suited to their needs. **SEN. HERTEL** stated he would be willing to work on amendments to SB120.

CHAIRMAN HARDING closed the Hearing on SB120.

HEARING ON HB24

Opening Statement by Sponsor:

REP. WILLIAM "RED" MENAHAN, House District 57, Deer Lodge, stated that HB24 was requested by the Legislative Council to allow the Council flexibility to adjust the size of interim joint subcommittees. **REP. MENAHAN** stated HB24 is a non-partisan issue, as the committees would remain politically equal, but the size may vary. **REP. MENAHAN** said that Senator Gage, Representative Hanson, and Senator Lynch all support HB24.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. VIVIAN BROOKE asked Rep. Menahan to clarify that HB24 would provide the flexibility to have a committee composed of three members of the House that were all Republican and three members of the Senate that were all Democrats. REP. MENAHAN stated he didn't believe it would work that way, it would be an equal number from each party but also from the House and Senate.

REP. MENAHAN stated the goal would be to reduce the size of the committee overall. SEN. BROOKE asked Dave Boyher to clarify the amendment that addresses the equal number of members.

Dave Boyher of the Legislative Council stated there is a possibility that the situation Senator Brooke described could occur. Traditionally, it has been balanced by party within each house. Mr. Boyher said if that is a concern, an amendment could be drafted to be included. SEN. BROOKE said she wasn't really concerned about it, but the current language gives the Council the flexibility to do that. Mr. Boyher then stated that actually it *isn't* possible because the Committee on Committees in the Senate and the Speaker of the House make the appointments to the interim committees. What HB24 would do is to allow the Legislative Council to set the size of the committee, not the composition or the actual appointments.

REP. MENAHAN commented that because the amount of money allotted for interim study committees is a fixed amount, perhaps more studies could be done if fewer people served on each committee.

CHAIRMAN HARDING closed the Hearing on HB24.

{Tape: 1; Side: B; Approx. Counter: 42.6}

RECONVENE HEARING ON SB89 (from Wednesday 01/18/95)

Questions From Committee Members and Responses:

SEN. MESAROS asked Mr. Argenbright about the cost to the Office of Commissioner of Political Practices to implement SB89 due to the expansion of their responsibilities. Mr. Argenbright said he did complete some information for a fiscal note. Certainly the registration of paid signature gatherers in each county will result in increased clerical work and coordination activities with the local election administrators. Another impact would be the handling and processing of claims regarding the behavior of

signature gatherers. **SEN. DOHERTY** said the fiscal note projection was for 1.5 additional FTE's at the Commissioner's office. **SEN. DOHERTY** said he did not agree with that projection and did not sign the fiscal note. **SEN. DOHERTY** stated the fees charged for registration by the signature gatherers should cover the costs involved.

SEN. DON HARGROVE asked Senator Doherty if there were demonstrated problems from the last election to indicate SB89 is necessary. **SEN. DOHERTY** said he had personal experience and some of his constituents also complained about incorrect information being given out regarding the effects of various petitions.

SEN. JEFF WELDON asked Mr. Argenbright how the passage of CI118 would change the structure of the Commissioner's office.

Mr. Argenbright said it would be difficult to forecast the necessary changes. **Mr. Argenbright** stated there are currently two FTE's and himself that handle all activities associated with campaign finance disclosure, complaint resolution, lobbyist registration, etc. **Mr. Argenbright** said he went before the Appropriations Subcommittee seeking an additional four FTE because of the increase in the workload that he perceives is going to result from having to deal with the aspects of two election cycles and other additional responsibilities. In the Subcommittee vote, there are two FTE's requested for the implementation of CI118. **SEN. WELDON** explained the reason he asked this question is that he believes the Commissioner's office is under-funded and under-staffed. **SEN. WELDON** believes the state should recognize and support the expanded responsibilities being placed with the Office of the Commissioner of Political Practices. **SEN. WELDON** questioned whether the request for 1.5 FTE's associated with SB89 may be considered inflated because the additional work produced by SB89 could be carried out by the additional staff anticipated anyway to implement CI118. **Mr. Argenbright** stated the history of his office has been consistently under-funded, and he believes an additional FTE is needed to take on the enforcement issues regarding the behavior of signature gatherers.

SEN. WELDON asked Laurie Koutnik, if the two principles being considered are that there are tools of direct democracy and if there are checks against political power, what she sees as appropriate checks to the political power of the tools of direct democracy. **Ms. Koutnik** said she believes the checks in the whole initiative process lie with the people themselves in that they have the right to either sign or reject to sign a petition or they also have the right to vote to support or to reject a proposal. **Ms. Koutnik** said that regardless of how the signatures were gathered, what happens in the end lies in the voting power of the people. She believes that SB89 is the beginning of regulating grassroots people's right to redress government.

SEN. WELDON stated his concern was to get at the appropriate amount of check of this particular power. **SEN. WELDON**

addressed the issue of what is actually occurring during the signature gathering process, and that in his bill, SB5, he argued that in the polling place, it's actually electioneering. At that stage of the petition process, there is a person advocating a particular opinion, and advocating a particular political opinion is commonly called lobbying. At the Capitol, there are checks against lobbying that say paid lobbyists must register with the Commissioner and pay a fee. Logically, if that rule is followed at the Capitol, why wouldn't it be followed in other tools of direct democracy. **Ms. Koutnik** responded that she believes the system currently in place guarantees a fairness in reporting and believes the people who are approached to sign have the choice to sign, sometimes not because they agree with the issue, but just to have the issue placed on the ballot.

Ms. Koutnik said people are not being paid by signature, they generally work through a temporary agency and are paid an hourly wage. These workers have been trained beforehand regarding the arguments for the issue. **Ms. Koutnik** also stated she believes it is somewhat vindictive to require a fee in every county to exercise the right to redress government.

SEN. WELDON said **Ms. Koutnik's** accusation of vindictiveness degrades this discussion of how these issues play in our society because he's sure Senator Doherty has had as many calls from groups that he supports as groups he does not support.

SEN. WELDON asked Senator Doherty about the aspect of paid signature gatherers.

SEN. DOHERTY stated he had been lobbied by supporters of CI66 and CI67 and asked them why they were gathering signatures, and they told him they were being paid to gather signatures. **SEN. DOHERTY** stated that even though it was his signature they wanted, they were advocating a political position, and he believes they were lobbying for his vote. **SEN. DOHERTY** said he started carrying petitions for referendums and initiatives in the early 1970's, and he has no quarrel with that effort. **SEN. DOHERTY** said he does have a problem with people not being told these signature gatherers are paid to advocate a particular purpose.

Closing by Sponsor:

SEN. DOHERTY said he is not vindictive, but he is scared about the power of money in the initiative process. When money is involved, if you agree with the premise that it can affect legislators, you should believe it can affect citizens as well. SB89 is not an attempt to diminish the rights of people to redress government, it is an attempt to stop the influence of big money in the initiative process.

CHAIRMAN HARDING closed the Hearing on SB89.

EXECUTIVE ACTION ON SB37

Motion: SEN. MESAROS moved to ACCEPT AMENDMENTS TO SB37.

Discussion: SEN. WELDON asked if someone would explain why Senator Bishop would rather retain the position of Lt. Governor and have the tasks of the Secretary of State associated with that position. SEN. BROOKE answered that it had been explained as a familiarity issue and that the Montana public thinks of Lt. Governor as the person who would succeed the Governor and the Secretary of State as more of an administrative role.

SEN. MESAROS said he understood that the main issue was that of succession and ease of transition. SEN. WELDON said he was concerned for the segment of society that is accustomed to dealing with state Secretaries of State and the level of confusion it may cause them. SEN. FOSTER said he believes the confusion which may exist for that segment of society would be temporary. SEN. BROOKE referred back to the booklet on the Governor's renewal of government. She expressed concern that the rationale for this combination was taken from the study "Preparing for a New Century" to reduce the number of elected officials in order to give the Executive more authority. She believes the Executive's authority is not at issue due to the fact that the legislature only meets every other year. She also stated that the composition of the Land Board should be carefully considered as it is affected by amendments to SB37.

Vote: The MOTION CARRIED UNANIMOUSLY on oral vote.

Motion: SEN. MESAROS moved that SB37 DO PASS AS AMENDED.

Discussion: SEN. WELDON suggested an amendment that would state if there are other areas where functions of the Secretary of State are referred to, they be included in the position of the Lt. Governor.

Motion: SEN. WELDON moved to AMEND SB37 AS DESCRIBED.

(CHAIRMAN HARDING clarified the amendment that any other responsibility the MCA shows for the Secretary of State would be incorporated with the office of the Lt. Governor.)

Vote: The MOTION CARRIED UNANIMOUSLY on oral vote.

Motion: SEN. MESAROS moved that SB37 DO PASS AS AMENDED.

Discussion: SEN. BROOKE asked Mr. Niss about page 7 of the "gray bill" subsection 2 which contains gender-specific language.

Mr. Niss stated he could make the change to gender-neutral language notwithstanding the motions and votes now in process.

Vote: The MOTION CARRIED UNANIMOUSLY on oral vote.

EXECUTIVE ACTION ON SB24

Discussion: David Niss handed out information regarding SB24 (EXHIBIT 3).

{Tape: 2; Side: A; Approx. Counter: 26.2}

CHAIRMAN HARDING read a fax she received from the Lake County Election Administrator (EXHIBIT 4) regarding the financial impact SB24 would have in Lake County.

SEN. HARGROVE said the Clerk in Gallatin County told him about 2,500 absentee ballots are actually mailed out, and SB24 would cause a significant expense to the County. There would also be a timing problem of about six days in terms of having the voter information pamphlet ready and the time they could be mailed out.

SEN. BROOKE asked if the date change on page 2, line 18 would ease the difficulty Senator Hargrove talked about. SEN. HARGROVE stated it appeared as though it would.

SEN. WELDON said that as the Committee considers whether the counties should bear the costs of SB24, it is difficult to resolve the question of whether the value of including the voter information pamphlets with the ballots outweighs the notion that the Committee has the authority to pass down not only a good idea, but the costs associated with it.

Motion: SEN. MESAROS moved that SB24 DO PASS.

Discussion: SEN. MESAROS agreed with Senator Weldon's concerns regarding passing down unfunded mandates to the local level.

SEN. MESAROS said he thinks having Montana's absentee voters be an informed group outweighs the costs involved.

SEN. FOSTER said the material impact to a county's budget should be considered, and he said in most cases, he thinks it is immaterial and believes SB24 is a good idea.

SEN. PIPINICH said he received calls from three counties in his district who stated they cannot absorb any further costs.

SEN. MESAROS asked how those counties determine they cannot absorb any costs unless they know what the costs will be.

SEN. PIPINICH said those counties are broke, and cannot absorb any costs.

SEN. HARGROVE stated that while he had initially supported SB24, he has received strong opposition from his county because of the costs involved. SEN. HARGROVE added that as an absentee voter, it's good to have the information, but people who vote absentee are not generally uninformed people since they are concerned enough to take the initiative to ensure they receive their absentee ballot.

SEN. COLE stated he sponsored SB135 regarding unfunded mandates. A statement in SB135 says "unless it's an insignificant amount". **SEN. COLE** said he believes, in the six counties he represents, the costs involved with SB24 may end up to be more than a minor administrative cost, and passing SB135 and SB24 could be perceived as a conflict.

SEN. BROOKE said the costs for Missoula County would not be immaterial, but supports SB24. In response to Senator Hargrove's comments that absentee voters are informed people in general, **SEN. BROOKE** said when she speaks with college students who are just beginning to vote, when they request an absentee ballot, they are thinking only of the *candidates*, not *initiatives* or other proposals that may be on the ballot.

CHAIRMAN HARDING said, as a former clerk & recorder and election administrator, she believes people want and need the information.

SEN. WELDON suggested an amendment to page 2, line 4 that would add "*if requested by the voter.*"

CHAIRMAN HARDING stated if the Voter Information Pamphlet was sent to some people and not others without their saying either don't or do, it opens the possibility for a lawsuit.

SEN. HARGROVE asked if you could include with Senator Weldon's suggestion that a check for \$2.00 be included to cover the costs of mailing. **SEN. MESAROS** said that would be an administrative nightmare.

SEN. HARGROVE said he had a list of unfunded mandates that have been passed to his county and they are all small, and SB24 will add one more.

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

ADJOURNMENT

Adjournment: 11:30 AM


ETHEL M. HARDING, Chairman


GAIL MOSER, Secretary

EMH/gem

Thurs

DATE 02-19-95

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 19, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration SB 24 (first reading copy -- white), respectfully report that SB 24 do pass.

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

AS
Amd. Coord.
Sec. of Senate

161340SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 7
January 19, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration SB 37 (first reading copy -- white), respectfully report that SB 37 be amended as follows and as so amended do pass.

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

That such amendments read:

1. Title, line 6.

Following: "TO"

Strike: remainder of line 6 in its entirety

Insert: "ELIMINATE THE OFFICE OF"

2. Title, lines 7 and 8.

Following: the first "STATE" on line 7

Insert: "AND ASSIGNING THE DUTIES OF THAT OFFICE TO THE
LIEUTENANT GOVERNOR"

Following: ";" on line 7

Strike: remainder of line 7 through ";" on line 8

Following: "AMENDING"

Insert: "ARTICLE III, SECTIONS 4 AND 5,"

Following: "8,"

Strike: "AND"

Insert: "ARTICLE V, SECTION 14,"

3. Title, lines 9 and 10.

Following: "AND" on line 9

Strike: "14"

Insert: "10, ARTICLE X, SECTION 4, AND ARTICLE XIV, SECTIONS 2
AND 9"

Following: ";" on line 9

Strike: remainder of line 9 through ";" on line 10

4. Page 1, line 13.

Insert: "**Section 1.** Article III, section 4, of The Constitution
of the State of Montana is amended to read:

"**Section 4. Initiative.** (1) The people may enact laws by
initiative on all matters except appropriations of money and
local or special laws.

(2) Initiative petitions must contain the full text of the
proposed measure, shall be signed by at least five percent of the
qualified electors in each of at least one-third of the
legislative representative districts and the total number of
signers must be at least five percent of the total qualified

PV Amd. Coord.
SA Sec. of Senate

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electors of the state. Petitions shall be filed with the ~~secretary of state~~ lieutenant governor at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held."

Section 2. Article III, section 5, of The Constitution of the State of Montana is amended to read:

"Section 5. Referendum. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the ~~secretary of state~~ lieutenant governor no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.""

Renumber: subsequent sections

5. Page 1, line 15.

Strike: "secretary of state"

Insert: "lieutenant governor"

6. Page 1, line 20.

Strike: "secretary of state"

Insert: "lieutenant governor"

7. Page 1.

Following: line 29

Insert: "**Section 4.** Article V, section 14, of The Constitution of the State of Montana is amended to read:

"Section 14. Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of

whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative districts and a plan for redistricting the state into congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as ~~chairman~~ presiding officer of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select ~~him~~ the presiding officer.

(3) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the ~~secretary of state~~ lieutenant governor and it shall become law.

(4) The commission shall submit its plan for legislative districts to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan for legislative districts with the ~~secretary of state~~ lieutenant governor and it shall become law.

(5) Upon filing both plans, the commission is then dissolved."

Renumber: subsequent sections

8. Page 2, lines 2 and 3.

Following: "7" on line 2

Strike: remainder of line 2 through "state" on line 3

Insert: "lieutenant governor"

9. Page 2, line 10.

Strike: "secretary of state"

Insert: "lieutenant governor"

10. Page 2, lines 13 and 14.

Following: "~~governor~~" on line 13

Strike: remainder of line 13 through "state" on line 14

Insert: "lieutenant governor"

11. Page 2, line 15.

Strike: "secretary of state"

Insert: "lieutenant governor"

12. Page 2, line 20.

Strike: "secretary of state"

Insert: "lieutenant governor"

13. Page 3, line 4.

Following: "~~governor~~."

Insert: "The lieutenant governor shall perform the duties provided by law and those delegated by the governor."

14. Page 3, line 5.

Strike: "secretary of state"

Insert: "lieutenant governor"

15. Page 3, line 6.

Strike: "secretary of state"

Insert: "lieutenant governor"

16. Page 3, line 7.

Strike: "secretary of state"

Insert: "lieutenant governor"

17. Page 3, line 15.

Strike: "secretary of state"

Insert: "lieutenant governor"

18. Page 3, line 16.

Strike: "secretary's"

Insert: "lieutenant governor's"

19. Page 3, line 18.

Strike: "secretary of state"

Insert: "lieutenant governor"

20. Page 3, line 20.

Strike: "secretary of state"

Insert: "lieutenant governor"

21. Page 4, line 1.

Strike: "secretary of state"

Insert: "lieutenant governor"

22. Page 4, line 7 through page 5, line 10.

Strike: sections 8 and 9 in their entirety

Insert: "**Section 11.** Article VI, section 10, of The Constitution of the State of Montana is amended to read:

"**Section 10. Veto power.** (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for ~~his~~ signature. If ~~he~~ the governor does not sign or veto the bill within five days after its delivery to ~~him~~ the governor if the legislature is

in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of ~~his~~ the reasons therefor.

(2) The governor may return any bill to the legislature with ~~his~~ a recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for ~~his~~ reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.

(4) (a) If the legislature is not in session when the governor vetoes a bill approved by two-thirds of the members present, ~~he~~ the governor shall return the bill with ~~his~~ the reasons therefor to the ~~secretary of state~~ lieutenant governor. The ~~secretary of state~~ lieutenant governor shall poll the members of the legislature by mail and shall send each member a copy of the governor's veto message. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(b) The legislature may reconvene as provided by law to reconsider any bill vetoed by the governor when the legislature is not in session.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill."

Section 12. Article X, section 4, of The Constitution of the State of Montana is amended to read:

"Section 4. Board of land commissioners. (1) The governor, superintendent of public instruction, auditor, ~~secretary of state~~, and attorney general, and a member chosen by the other members constitute the board of land commissioners. If the four members are unable to agree on the fifth member, the chief justice shall appoint the member.

(2) It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law."

Section 13. Article XIV, section 2, of The Constitution of the State of Montana is amended to read:

"Section 2. Initiative for constitutional convention.

(1) The people may by initiative petition direct the ~~secretary of state~~ lieutenant governor to submit to the qualified electors the question of whether there shall be an unlimited convention to

revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The ~~secretary of state~~ lieutenant governor shall certify the filing of the petition in ~~his~~ the lieutenant governor's office and cause the question to be submitted at the next general election."

Section 14. Article XIV, section 9, of The Constitution of the State of Montana is amended to read:

"Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the ~~secretary of state~~ lieutenant governor. If the petitions are found to have been signed by the required number of electors, the ~~secretary of state~~ lieutenant governor shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise."

Renumber: subsequent sections

23. Page 5, lines 18 and 19.

Following: "FOR" on line 18

Strike: "combining the offices of lieutenant governor and"

Insert: "eliminating the office of the"

Following: "and" on line 18

Strike: remainder of line 18 through "jointly" on line 19

Insert: "transferring the functions of that office to the lieutenant governor"

24. Page 5, lines 20 and 21.

Following: "AGAINST" on line 20

Strike: "combining the offices of lieutenant governor and"

Insert: "eliminating the office of the"

Following: "and" on line 20

Strike: remainder of line 20 through "jointly" on line 21

Insert: "transferring the functions of that office to the

lieutenant governor"

-END-

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE
ROLL CALL VOTE

DATE 01-19-95 BILL NO. SB24 NUMBER _____

MOTION: DO PASS

[illegible]

SEN:1995
wp:rlclvote.man
CS-11

DEPARTMENT OF CORRECTIONS
AND HUMAN SERVICES
MONTANA CENTER FOR THE AGED



MARC RACICOT, GOVERNOR

800 CASINO CREEK DRIVE

STATE OF MONTANA

(406) 538-7451

January 19, 1995

LEWISTOWN, MONTANA 59407-9734
SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 01-19-95

BILL NO. SB120

An open letter to the Senate State Administration Committee
from Ron Balas, Superintendent, Montana Center for the Aged.

Greetings Chairwoman Harding and Committee Members:

I have been asked to submit a brief letter concerning amending the Center for the Aged's admission criteria since I am unable to be present at today's hearing.

There are three major changes that would effect the Center: 1) remove the age 55 requirement from the admission criteria; 2) allow involuntary committed patients to be transferred to the Center for the Aged from Montana State Hospital; and 3) change the name of the facility to the Montana Mental Health Nursing Care Center.

Removing the age 55 criteria would allow the Center to take younger clientele but, because we would still require a referral to have a mental disorder and be in need of nursing care, it would not change the type of resident we are currently serving. If a referral requires nursing care, (i.e., assistance with toileting, grooming, feeding, ambulating, taking medications) it really is unimportant what age they are because the referrals physical limitations categorize them - not their age. It seems totally irrelevant whether a resident at the Center for the Aged is 55 or 35 if they both require the same level of care.

Over the last two years we have had several appropriate referrals, except for age, from Montana communities but were unable to take them because of the admission age requirement. We believe many of the referrals were then involuntarily committed to Montana State Hospital since no other facility in Montana would accept them. Ironically, if an admission of this type remains at the state hospital, as an involuntary commitment, they can not be referred to the Center for the Aged at a future date even if they do reach the 55 age requirement because the Center can only accept voluntary admissions.

After discussions with treatment staff at Montana State Hospital I believe there are several appropriate referrals at the state hospital that could be transferred to the Center for the Aged, but again, they do not meet the age requirement, or the patients have an involuntary commitment status.

For many years, the intended mission of the Center for the Aged has been to accept aging patients from Montana State Hospital who

require nursing care. The inability of the Center to accept involuntary patients from the state hospital has been a barrier to that end. The proposed legislation would eliminate this obstacle.

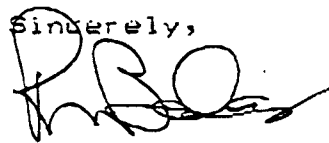
The suggested legislation is very specific regarding the Center's ability to accept involuntary committed patients. It will not broaden the scope of the Center's mission because the Center could not accept involuntary committed persons from the community. Montana State Hospital would remain the only option for community ordered involuntary commitments.

The last of the changes effecting the Center is the new name. If the Center could begin accepting younger clientele it seems inappropriate to refer to the facility as the Center for the Aged. Another point raised earlier this year by the Medicaid Division of the Department of Social & Rehabilitative Services is that the age requirement and the name in itself may be discriminatory. With new federal ADA legislation it appears we could be discriminating against a younger physically impaired group that would otherwise be considered appropriate for the Center's services by refusing to admit them based on age.

In summary, I believe the proposed legislation would benefit Montana State Hospital, the Montana Center for the Aged and the patients and residents they serve. It would not broaden the scope of the Center's mission but would instead assist the Center in achieving its primary objective of serving the mentally ill of Montana who require nursing care.

Thank you for the opportunity to comment on this proposal. If you have questions, I would be happy to answer them by telephone or letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ron Balas', written over the word 'Sincerely,'.

Ron Balas, Superintendent

MONTANA ADVOCACY PROGRAM, Inc.

316 North Park, Room 211
P.O. Box 1680
Helena, Montana 59624

(406)444-3889
1-800-245-4743
(VOICE - TDD)
Fax #: (406)444-0261

January 18, 1995

Senator Ethel Harding, Chairperson
Senate State Administration Committee
State Capitol
Helena, Montana 59620

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 01-19-95

BILL NO. SB 120

Re: SB 120

Madame Chairwoman and Members of the Committee:

For the record, my name is Andree Larose and I am a staff attorney for the Montana Advocacy Program. Montana Advocacy Program is a non-profit organization which advocates the rights of individuals with disabilities. We are here to testify in opposition to SB 120, as it is currently worded. With some changes, which I will describe, we might be able to support this bill.

Concerns

1. Our over-arching concern is that substantial constitutional rights are being infringed as the bill is currently written. There are no statutory definitions for admission criteria, treatment or discharge procedures. When the constitutional right to liberty is at stake, we believe the legislature should give some guidance and set some limits for the Department regarding admission criteria, treatment and discharge procedures.

2. The requirement that persons be placed at the Center for the Aged voluntarily has been eliminated. As currently drafted, persons at Montana State Hospital can be transferred to the Center for the Aged (renamed the Montana Mental Health Nursing Care Center) without their consent. Even persons at Montana State Hospital (MSH) voluntarily can be transferred to the Mental Health Nursing Care Center without their consent, thus becoming "involuntary" patients in fact.

3. Although the statute states that persons are admitted to the center voluntarily, except those transferred from MSH, there is no mechanism in the statute by which these voluntary patients can ever leave without Department approval. (See p.3, lines 22-25). Once admitted, then, all persons at the Mental Health Nursing Care Center seem to become involuntary patients.

4. Whether placed at Mental Health Nursing Care Center voluntarily or involuntarily, there is a very fundamental constitutional problem with placing the decision for discharge with the superintendent. At a minimum, constitutional rights of liberty and due process require some judicial review of an ongoing involuntary commitment, which is what this becomes as soon as someone is admitted. As currently drafted, patients could be held in this facility indefinitely without a court order. There is no provision for extension of the placement at the nursing care center beyond the

original period of involuntary transfer or even voluntary placement, as currently exists in the involuntary civil commitment of persons with serious mental illnesses or developmental disabilities.

By comparison, under the civil commitment statutes for a person with a serious mental illness, a patient's custody cannot be affected for a period greater than one year without filing a new petition for involuntary commitment and adhering to all the commitment procedures. Section 53-21-127, MCA. Yet, under this proposal, a person could be committed to MSH for 90 days, involuntarily transferred to the nursing care center, and then be held there involuntarily and indefinitely.

5. SB 120 is inconsistent with current civil commitment laws. Persons are involuntarily committed to a facility, not to the custody of the Department. Provisions already exist for transferring a person who is under an order of commitment, Section 53-21-182, MCA. [For your background information, a person leaves MSH by discharge, Section 53-21-181, MCA; conditional release to outpatient care, Section 53-21-183, MCA; court ordered transfer to non-state or out of state facilities, Section 53-21-133, MCA; or court ordered release, Section 53-21-182, MCA. There is no provision for transfer without judicial review and approval.]

6. Compounding the problem of the superintendent having discretion to authorize discharge is the fact that the superintendent is the legal guardian of many of these patients. Such a situation gives the superintendent inordinate social control over these people's lives.

Suggestions

1. Amend Section 53-21-411 (page 3, lines 7-8) to say that the Department shall adopt rules and set the criteria for admission, treatment and discharge in statute so there is some guidance and limits as to the scope and effect of the rules.

2. Amend Section 53-21-412 (page 3, lines 11-19) to require judicial review and approval for transfers to the Mental Health Nursing Care Center through Sections 53-21-127, 128 or 182, MCA.

3. Provide for at least an annual review of voluntary and involuntary placements, the involuntary placements through Section 53-21-128, MCA.

4. Provide a mechanism for persons to challenge placement at the Mental Health Nursing Care Center. Require consent or judicial review for an initial placement at or transfer to the facility. Once placed, if a person or their legal guardian requests discharge, require the facility to release the patient or file for involuntary civil commitment. See Section 53-21-111, MCA, for a procedure for holding a "voluntary" patient who requests discharge.

We urge you to vote against this bill as currently drafted. We urge you to amend this bill as suggested. Thank you for your time.

Sincerely,


Andree Larose

SENATE BILL 24

TO: Senator Harding and David Niss

FROM: Robert R. Throssell on behalf of the Montana Association
of Clerks and Recorders RRT

At your request the Montana Association of Clerks and Recorders is submitting the following information concerning the additional costs of mailing voter information pamphlets along with absentee ballots as is provided in Senator Gage's Senate Bill 24.

As background, the law currently requires that the county official responsible for voter registration (the clerk and recorder or election administrator) mail a voter information pamphlet to each registered voter in the county. This requirement currently is being met by sending the pamphlets at bulk mail rates. This lowers the postage costs. The postage costs ultimately are determined by the weight of the mailing. Bulk mail allows the counties to use the lowest rate possible and still assure delivery.

Requiring the pamphlet to be send first class would drastically increase the cost to the counties. In the smaller population counties where the number of absentee ballot requests is not large, the additional postage increase is not significant to an individual county. In the large population counties where there are numerous requests for absentee ballots, the costs are significant.

For example, Flathead County send out in the last election approximately 32,000 pamphlets by bulk mail at 14.5 cents for a total of \$4,640.00. It sent out approximately 2000 absentee ballots first class at 98 cents (new rate \$1.01) for a total of \$1960.00. Flathead County estimates it would have cost \$1.75 in postage to include the pamphlet. The same mailing under SB 24 would total \$3500.00. This is over a \$1500.00 increase. Flathead County's mailing weights more because its sends punch card ballots with a foam board.

Yellowstone County mailed over 3000 absentee ballots last election. The postage was 52 cents for a total of \$1,600.00. It estimates the same mailing, including the pamphlet and postage of 78 cents, would cost \$2,400.00. This is an \$800.00 increase.

Gallatin County and Ravalli County are representative of counties with a larger absentee vote than you would expect for their total population. Both counties were able to send absentee ballots out a 58 cents last fall. Including the pamphlet and the postage increase, the postage now will be at least 78 cents, a 20 cent increase. Both counties mail approximately 1500 ballots. A 20 cent increase would mean an additional \$300.00 expense for each county.

It is true that under SB 24 the pamphlet would not have to send bulk mail to the absentee voter. But the bulk mail process relies on volume to save costs. A computer generated mailing label is made for all registered voters. The labels are printed by zip code so the mailing is pre-sorted to save money. To go through the labels and pull all the names of absentee voters defeats the cost savings of a bulk mailing.

There is a financial impact on the counties associated with Senate Bill 24. The Montana Association of Clerks and Recorders appreciates the need for voters to have the voter information pamphlet before they vote. Without the pamphlet, an absentee voter may not have the information necessary to make an informed choice. There is a cost, and when totaled for all the counties, a substantial cost of providing this information to absentee voters. This is a cost that will fall on the counties if Senate Bill 24 is passed as currently proposed. It is a policy decision to be made by the Senate State Administration Committee and the Legislature of whether this cost should be borne by the counties or if the person requesting the absentee ballot should share in the cost.



106 Fourth Avenue East
Polson, Montana 59860-2174

LAKE COUNTY ELECTION ADMINISTRATOR

(406) 883-7268
FAX (406) 883-7283

JANUARY 18, 1995

SENATE STATE ADMIN.

EXHIBIT NO. 4

DATE 01-19-95

BILL NO. SB24

TO: SENATOR ETHEL HARDING

Office # 319

FROM: KATHIE NEUGARD *KN*

RE: SENATE BILL 24

ACCORDING TO OUR RECORDS, 1150 PEOPLE VOTED ABSENTEE IN THE NOVEMBER 1994 GENERAL ELECTION, OF THOSE 566 WERE MAILED.

THE FOLLOWING ARE MAILED: 1 BALLOT
1 LETTER OF INSTRUCTION
1 PENCIL
1 RETURN ENVELOPE

THE COST FOR MAILING THE PACKET WAS \$0.52 AT THE OLD RATE OR A TOTAL OF 294.32 FOR THE 566 MAILED.

WHEN A VOTER INFORMATION PHAMPLET IS INCLUDED IN THE PACKET IT INCREASES THE WEIGHT AND POSTAGE TO \$0.75 (OLD POSTAGE RATE). THE TOTAL COST FOR MAILING THE 566 WOULD HAVE BEEN \$424.50. THAT IS AN INCREASE OF \$130.18.

THESE FIGURES ARE BASED UPON THE WEIGHT OF THE 1994 VOTER INFORMATION PHAMPLET. IF IT WEIGHED MORE, OF COURSE THE POSTAGE COST WOULD INCREASE.

WITH TODAYS POSTAGE RATES, IT WOULD COST \$0.78 PER PACKET IF A VOTER INFORMATION PHAMPLET WERE INCLUDED FOR A TOTAL OF \$441.48.

NOT INCLUDED IN THE NUMBER OF ABSENTEE BALLOTS MAILED WERE THE ONES MAILED TO MILITARY APO AND FPO ADDRESSES AS WE (THE COUNTY) DON'T PAY THE POSTAGE.

COSTS COULD BE CUT BY MAILING ONLY 1 PENCIL, 1 LETTER OF INSTRUCTION AND 1 VOTER INFORMATION PHAMPLET WHEN MAILING ABSENTEE BALLOTS TO HUSBAND, WIFE AND/OR CHILDREN AT THE SAME ADDRESS RATHER THAN A COMPLETE PACKET TO EACH INDIVIDUAL.

WE HAVE IN THE PAST AFTER THEY WERE AVAILABLE MAILED VOTER INFORMATION PHAMPLETS AS WE FEEL IT IS IMPORTANT INFORMATION FOR THE VOTER.

DATE 1-19-95

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: SB120 and HB24

SB37, SB89, SB24

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PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Dave Bohyer	Legislative Council	HB 24		
Carl L. Reemer MD	Montana St Hosp	SB 120	✓	
Christie Hume	Montana Adm Serv Prog.	SB 120		✓
J.H. Bennett	Mont PIRC	SB 89		
Don [Signature]	MH D	SB 120	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY