

MINUTES

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

Call to Order: By **CHAIRMAN ETHEL HARDING**, on March 13, 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. Jeff Weldon (D)

Members Excused: Sen. Bob Pipinich (D)

Members Absent: N/A

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

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

Committee Business Summary:

Hearing: N/A
Executive Action: HB 89 BE CONCURRED IN AS AMENDED
HB 273 BE CONCURRED IN
HB 376 BE CONCURRED IN
HB 467 BE CONCURRED IN

{Tape: 1; Side: A; Approx. Counter: 56.}

EXECUTIVE ACTION ON HB 89

Discussion: David Niss explained to the Committee that a computer-generated conflict notice had been received which pointed out the section dealing with the availability of vital statistics on adoptions. Mr. Niss gave the secretary a new copy of the amendments as reference (EXHIBIT 1). He stated the only change is in the coordination instruction in the amendment for 40-8-126 which is also the section amended in SB 150. Mr. Niss briefly explained the coordination instruction as related to 40-8-126 and SB 150.

SEN. VIVIAN BROOKE asked if the confidentiality laws in section 2 are kept in tact. **Mr. Niss** said that is the section amended by the coordination instruction. **SEN. BROOKE** asked, without the amendment, the confidentiality in section 2 is not changed. **Mr. Niss** asked Senator Brooke for clarification that she meant if we don't include the coordination instruction. **SEN. BROOKE** responded that is correct. **Mr. Niss** said that with the exceptions of new sections 7 and 8, that is correct. Page 3, lines 1 and 5 are the new exceptions.

Mr. Niss said if Committee members have questions on the operation of section 7 and 8, the Bureau Chief, Sam Sperry is present and could address questions about how the exceptions operate.

Sam Sperry said that when SB 150 was first introduced, his Department worked closely with DFS and with Senator Waterman. He said the only reason his Department had amended 40-8-126 in HB 89 was because it repeals 50-15-206 and reference was made in 40-8-126 to 50-15-206, so their amendments in section 2 simply deleted that reference. **Mr. Sperry** said it was understood that the content of SB 150 and the concept of the confidential intermediary as interpreted in SB 150 was that the confidentiality aspects of vital records on file with the Department of Health were not affected, it dealt primarily with access to records in the possession of District Court.

SEN. BROOKE asked Sam Sperry if the section being amended by this amendment from SB 150 relates specifically to the confidential intermediary and its appointment. **Mr. Sperry** said that is his understanding.

CHAIRMAN HARDING asked David Niss to clarify that the Committee must adopt the amendments in order to coordinate with SB 150. **Mr. Niss** said that is correct.

Motion/Vote: **SEN. JEFF WELDON** moved TO ACCEPT AMENDMENTS TO HB 89. The MOTION CARRIED UNANIMOUSLY on oral vote.

Motion/Vote: **SEN. BROOKE** moved that HB 89 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY on oral vote. **SEN. WATERMAN** will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 273

Motion: **SEN. MIKE FOSTER** moved that HB 273 BE CONCURRED IN.

Discussion: **SEN. DON HARGROVE** said he has several concerns regarding HB 273. He believes that many bills should be better prepared prior to the legislature going into session, but added that there may be a down side to that as well regarding freshmen being targeted by special interest groups. **SEN. HARGROVE** also

stated his concern that because Montana has a citizen legislature, HB 273 could cause it to become more of a full-time job. He believes it would cause some people to not run again because of the time devotion and they could not continue to earn a living. **SEN. HARGROVE** also believes HB 273 contains a strong element of anti-incumbency. He said if contentious bills are dealt with during the session and during an election year, those issues are used against the incumbent legislators. **SEN. HARGROVE** added another concern that, while the decision would be left to the people, this legislation would not pass anyway, and it may be viewed as a step towards yearly legislative sessions. **SEN. HARGROVE** asked for input from Committee members on these issues.

SEN. WELDON said his primary reason for opposing HB 273 is because of the interplay with the legislative session and the election year and that it would change the nature of the legislative session.

SEN. KEN MESAROS said he shares many of the same concerns and has weighed the issues, but he believes the efficiencies that could be created through pre-planning, organizational type work, bill structure, and scheduling, etc., outweigh the negative issues.

SEN. BROOKE said HB 273 presents a difficult choice as it contains many good parts, but she is concerned about legislators and candidates keeping their roles separate. **SEN. BROOKE** said she believes it would also provide elected officials with more contacts with other legitimately elected officials as well as involved advocates.

CHAIRMAN HARDING said she has also considered the same issues being discussed. She said doesn't like the bill because it would turn the job of being a legislator into a full time job. **CHAIRMAN HARDING** said she would like to see more study commissions that involve pros and cons come up with compromise measures to bring to the legislature. She stated she will vote for HB 273 in order for it to be debated on the Senate floor.

SEN. FOSTER believes Senators Mesaros and Brooke addressed an important idea that would involve opposing sides of issues doing more work prior to legislation being introduced. **SEN. FOSTER** said he believes there is also merit to having a short session each year because of the impact the current four-month session can have on your life. As an example, one session could be devoted to non-budget issues, and the next year devoted entirely to budget issues. **SEN. FOSTER** said the concerns regarding candidate/legislator are very legitimate, but it may point to the need to move the primary date. **SEN. FOSTER** also addressed the impact the current system has on a newly elected Governor to organize their cabinet and plan for a legislative session. HB 273 will provide a much easier transition.

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

EXECUTIVE ACTION ON HB 376

Motion: SEN. MESAROS moved that HB 376 BE CONCURRED IN.

Discussion: SEN. HARGROVE said his motives are from experience where Spanish or other indigenous languages are the primary language. He believes that is a way of suppressing people. He said he agrees with most people that Montana doesn't necessarily have a problem, but he added that impacts on our social services make HB 376 worthwhile.

SEN. BROOKE asked Senator Mesaros to clarify that there is a reason for HB 376. SEN. MESAROS said he believes problems exist more on the federal level than state level, but he thinks there is a clear indication that, state by state, we do need to send a message that this is the United States and English is the accepted language. SEN. MESAROS said he believes there are provisions in the bill that are not limiting in certain circumstances, and HB 376 is a standardization measure that is warranted in every state.

SEN. BROOKE commented that it is important to have English in all documents and believes that is usually the case. She said her concern with HB 376 is that it does not address a *specific* problem. She asked Senator Mesaros if he believes there is a specific problem that SB 376 will solve. SEN. MESAROS said he believes the problem today is small, but it is poised to grow because of the various elements of society moving to Montana. This is the first step of standardization throughout the United States.

SEN. BROOKE commented that she understands the language on page 1, lines 19-21, would allow that local school boards cannot ask that a French teacher, for example, be required to speak a foreign language (or have a command of French) in order to be employed as that cannot be a requirement of that particular teacher's employment. She believes that language poses significant problems with accreditation requirements, graduation requirements, etc.

CHAIRMAN HARDING asked David Niss to comment on the issue Senator Brooke raised. Mr. Niss stated Senator Brooke raised a good point, but he believes it would depend in part upon whether *local government policy* as referred to on line 19 is the kind of employment condition being addressed. Mr. Niss added that he is unsure whether a school board is a "local government" for the purpose of this bill.

SEN. MESAROS asked if "may" at the end of line 19 would make that statement discretionary. Mr. Niss said it does not.

SEN. BROOKE said, to clarify her point, she doesn't speak French, but if she had a teaching certificate and applied for that job and was denied because she didn't speak French, she believes she would have a legal case according to HB 376.

SEN. MACK COLE asked if this issue could be handled in the qualifications and job application process in stating requirements to be eligible for such a position. **SEN. BROOKE** said she didn't think that local school board policy would supersede state law.

CHAIRMAN HARDING asked David Niss to clarify his previous response to Senator Brooke. **Mr. Niss** said he was only saying he was unsure that, as used in this bill, a local government is a school district and also unsure that a local government policy speaks to a condition in an employment contract. **Mr. Niss** added there are no definitions in the bill or any indication of where it is to be codified that it would fit within existing definitions. **Mr. Niss** stated that a court interpreting this language would look to other indicators for the legislative intent.

SEN. HARGROVE commented that the language on page 1, lines 19-20, states "may not require specific foreign language to be used", not necessarily that someone is qualified in the language or can speak it or write it or read it. He would submit that 50% of foreign language teachers do not really speak the language, they teach it from a book and background and education. **SEN. BROOKE** said she thinks *being used* is more than just *speaking* the language.

SEN. COLE said he does not believe HB 376 is needed at this point. He believes it sends a message to minority people in Montana that we're down-grading or looking at their culture in a different way.

SEN. WELDON does not support HB 376. He stated he is troubled that it goes contrary to many of the principles and customs on which this country is actually founded. **SEN. WELDON** said he is saddened by the strong message HB 376 would send out, and he doesn't see a particular reason for this legislation in Montana. **SEN. WELDON** also said he believes HB 376 may create more problems given the ruling from the 9th Circuit on the Arizona Constitutional Amendment. He expects this legislation to be litigated, and the state will have to defend it.

SEN. HARGROVE asked if any Committee members know of government documents currently written in Native American languages. There was not really a response to Senator Hargrove's question.

SEN. BROOKE said there have been printed arguments against this type of ruling and commented on one which states that historians believe that an official language was not adopted by the founding fathers because many of the founding fathers were concerned with the potential impact on religious freedom.

SEN. HARGROVE said the item the bill addresses is small, but the implications are broad. He feels strongly that we hurt people by promoting another language. To speak another language at home, or learn it, etc., is good, but he said there are very large groups of people in the world that are kept in poverty and sickness because of that.

CHAIRMAN HARDING commented that she has visited friends in Brazil, and she learned that people in that country believe it is a "step up" to speak English for many reasons. She believes HB 376 should be passed to help people.

SEN. MESAROS commented on a survey that had been distributed, and he believes that the citizens of Montana overwhelmingly are in favor of this move. He said the survey appeared to have included a good cross-section of the people of the state.

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

SEN. GROSFIELD will carry the bill on the Senate floor.

{Tape: 1; Side: B; Approx. Counter: 10.}

EXECUTIVE ACTION ON HB 467

Motion: **SEN. FOSTER** moved that HB 467 BE CONCURRED IN.

Discussion: **SEN. FOSTER** said he favors HB 467 because it provides consistency for the public service commission to be the same as other major elected officials in the state. He said there is a very difficult learning curve if an elected public service commissioner is going to take the time to learn the issues they will be involved with.

SEN. BROOKE said she the two reasons she has heard for HB 467 is that "it makes it consistent" and the "House majority requested the bill." She said she does not believe those two reasons outweigh the invaluable resource of the availability of historical perspective from people who have been here longer.

SEN. WELDON said the reason of "consistency" does necessarily hold true because there are not term limits on all elected officials (judiciary, for example). He believes the inherent flaw in term limits is that voters put term limits on legislators and the Executive out of frustration with government operation

and they believe government will improve by having people serve a shorter period of time. One of the consequences of term limits is that it will ultimately produce a stronger Executive, because the legislature will not have the institutional memory to check the Executive. **SEN. WELDON** added that, within the Executive Branch, the un-elected, hired, employees or bureaucrats will ultimately have the most authority. The same inherent flaw will exist with the public service commission -- without the experience and institutional memory of elected officials, *staff* will be more powerful in the scheme, and more importantly, the industry is regulated by the public service commission because they won't be under the same limitations the public service commission would be under. **SEN. WELDON** said consistency will not be accomplished, and he does not see any other reason to pass HB 467.

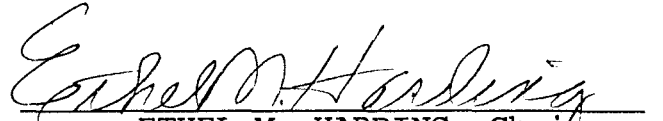
SEN. HARGROVE said term limits are very normal in the military and it's not always roses because there are the permanent bureaucrats that stay and have more importance than they should. He added that in the case of legislators, nobody is an expert in legislation because of the gamut that is run from taxes to the oil industry, to county roads, etc., so you need talented hard-working generalists to do it, and you get the institutional memory from Legislative Council; so the elements are still there.

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

SEN. FOSTER will carry the bill on the Senate floor.

ADJOURNMENT

Adjournment: 11:10 AM


ETHEL M. HARDING, Chairman


GAIL MOSER, Secretary

EMH/gem

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE _____

Nov 13 95

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SEN:1995

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SENATE STANDING COMMITTEE REPORT

Page 1 of 3
March 13, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB 89 (third reading copy -- blue), respectfully report that HB 89 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. Page 20.

Following: line 16

Insert: "NEW SECTION. Section 22. Coordination instruction. If Senate Bill No. 150 is passed and approved and if it contains a section that amends 40-8-126, then [section 2 of this act] reads as follows:

"40-8-126. Confidentiality and disclosure of record and proceedings -- appointment and duties of confidential intermediary. (1) Unless the court shall orders otherwise order, all hearings held in proceedings under this part shall ~~be~~ are confidential and shall must be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall must be kept as a permanent record of the court and withheld from inspection. ~~No~~ A person shall may not have access to ~~such~~ the records, except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered;

(b) as provided in subsection (7); or

~~(b)(c)~~ as provided in 50-15-206 [sections 7 and 8].

(3) All files and records pertaining to ~~said~~ adoption proceedings ~~in the county departments of public welfare, the department of social and rehabilitation services, retained by the department of family services, or any authorized agencies shall be~~ agency are confidential and must be withheld from inspection, ~~except upon order of court for good cause shown or as provided in 50-15-206 as provided in [sections 7 and 8] and except that the department or authorized agency may disclose:~~

(a) nonidentifying information to an adoptee, an adoptive or biological parent, or an extended family member of an adoptee or biological parent; and

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in [sections 7 and 8].

(4) When an adoptee reaches 18 years of age, the adoptee,

SA Amd. Coord.
Sec. of Senate

WATKINSON
Senator Carrying Bill

581256SC.SPV

an adoptive or biological parent, or an extended family member of the adoptee or biological parent may petition the court for disclosure of the identity of the adoptee, biological son, biological daughter, or biological parent. A petition for disclosure must contain the following information:

(a) the name, address, and identification of the petitioner;
(b) the date of the adoptee's birth;
(c) the county and state where the adoption occurred;
(d) the date of the adoption; and
(e) any information known to the petitioner concerning the biological parents, the adoptive parents, and the adoptee that could assist in locating the person being sought.

(5) After a petition for disclosure has been filed under subsection (4), the court shall appoint a confidential intermediary who shall:

(a) conduct a confidential search for the person sought, as requested in the petition for disclosure;

(b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless ordered to do so by the court; and

(c) make a written report of the results of the search to the court not later than 6 months after appointment.

(6) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

(7) A confidential intermediary may inspect otherwise confidential records of the court, the department, or an authorized agency for use in the search. The confidential intermediary may not disclose the contents of the records or any results of a search unless authorized by the court.

(8) If a confidential intermediary is unable to locate the person being sought within 6 months of appointment, the confidential intermediary shall recommend to the court whether a further search is warranted and state the reasons for the recommendation. If the court finds that a further search is warranted, the court may order that the search be continued for a specified time.

(9) If a confidential intermediary locates the person being sought, a confidential inquiry must be made as to whether the located person consents to having that person's present identity disclosed to the petitioner. The court may request that the confidential intermediary assist in arranging contact between the petitioner and the located person.

(10) If a confidential intermediary locates the person being sought and the located person does not consent to having that person's identify disclosed, identifying information regarding that person may be disclosed only upon order of the

court for good cause shown.

(11) If the person being sought is found to be deceased, the court may order disclosure of the identity of the deceased to the petitioner."

Renumber: subsequent sections

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 13, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB 273 (third reading copy -- blue), respectfully report that HB 273 be concurred in.

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

FW
Sec. of Senate

Amd. Coord.
Sec. of Senate

Foster
Senator Carrying Bill

581302SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 13, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB 376 (third reading copy -- blue), respectfully report that HB 376 be concurred in.

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

EA Amd. Coord.
Sec. of Senate

GROSFIELD
Senator Carrying Bill

581304SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 13, 1995

MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB 467 (third reading copy -- blue), respectfully report that HB' 467 be concurred in.

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

SP

Amd. Coord.
Sec. of Senate

Foster

Senator Carrying Bill

581306SC.SPV

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE
ROLL CALL VOTE

DATE 03-13-95 BILL NO. HB273 NUMBER

MOTION: SEN FOSTER Moved HB273 Be Concurred In

Carried 57

NAME	AYE	NO
VIVIAN BROOKE	✓	
MACK COLE	* —	
MIKE FOSTER	✓	
DON HARGROVE		✓
BOB PIPINICH (Left Written Vote)		✓
JEFF WELDON		✓
KEN MESAROS, VICE CHAIRMAN	✓	
ETHEL HARDING, CHAIRMAN	✓	
* Cole	✓	

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE
ROLL CALL VOTE

DATE 05-13-95 BILL NO. H3376 NUMBER

MOTION: Don Magnus March HB376 Be Concurred In

Carried 53

[illegible]

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE
ROLL CALL VOTE

DATE 03-13-95 BILL NO. HB467 NUMBER

MOTION: Foster Motion HB467 Be Concurred In

Carried

NAME	AYE	NO
VIVIAN BROOKE		✓
MACK COLE	✗	
MIKE FOSTER	✓	
DON HARGROVE	✓	
BOB PIPINICH (<u>at written vote</u>)	✓	
JEFF WELDON		✓
KEN MESAROS, VICE CHAIRMAN	✓	
ETHEL HARDING, CHAIRMAN	✓	
✗ <u>Cole</u>		✓

Amendments to House Bill No. 89
Third Reading Copy

For the Committee on State Administration

Prepared by David S. Niss
March 7, 1995

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 03-13-95 2

BILL NO. HB889

1. Page 20.

Following: line 16

Insert: "NEW SECTION. Section 22. Coordination instruction. If Senate Bill No. 150 is passed and approved and if it contains a section that amends 40-8-126, then [section 2 of this act] reads as follows:

"40-8-126. Confidentiality and disclosure of record and proceedings -- appointment and duties of confidential intermediary. (1) Unless the court shall orders otherwise order, all hearings held in proceedings under this part shall be are confidential and shall must be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall must be kept as a permanent record of the court and withheld from inspection. ~~No~~ A person shall may not have access to such the records, except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered;

(b) as provided in subsection (7); or

~~(b)~~(c) as provided in 50-15-206 [sections 7 and 8].

(3) All files and records pertaining to ~~said~~ adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, retained by the department of family services, or any authorized agencies shall be agency are confidential and must be withheld from inspection, except upon order of court for good cause shown or as provided in 50-15-206 as provided in [sections 7 and 8] and except that the department or authorized agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or biological parent, or an extended family member of an adoptee or biological parent; and

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in [sections 7 and 8].

(4) When an adoptee reaches 18 years of age, the adoptee, an adoptive or biological parent, or an extended family member of the adoptee or biological parent may petition the court for disclosure of the identity of the adoptee, biological son, biological daughter, or biological parent. A petition for disclosure must contain the following information:

(a) the name, address, and identification of the petitioner;

(b) the date of the adoptee's birth;

(c) the county and state where the adoption occurred;

(d) the date of the adoption; and

(e) any information known to the petitioner concerning the

biological parents, the adoptive parents, and the adoptee that could assist in locating the person being sought.

(5) After a petition for disclosure has been filed under subsection (4), the court shall appoint a confidential intermediary who shall:

(a) conduct a confidential search for the person sought, as requested in the petition for disclosure;

(b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless ordered to do so by the court; and

(c) make a written report of the results of the search to the court not later than 6 months after appointment.

(6) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

(7) A confidential intermediary may inspect otherwise confidential records of the court, the department, or an authorized agency for use in the search. The confidential intermediary may not disclose the contents of the records or any results of a search unless authorized by the court.

(8) If a confidential intermediary is unable to locate the person being sought within 6 months of appointment, the confidential intermediary shall recommend to the court whether a further search is warranted and state the reasons for the recommendation. If the court finds that a further search is warranted, the court may order that the search be continued for a specified time.

(9) If a confidential intermediary locates the person being sought, a confidential inquiry must be made as to whether the located person consents to having that person's present identity disclosed to the petitioner. The court may request that the confidential intermediary assist in arranging contact between the petitioner and the located person.

(10) If a confidential intermediary locates the person being sought and the located person does not consent to having that person's identify disclosed, identifying information regarding that person may be disclosed only upon order of the court for good cause shown.

(11) If the person being sought is found to be deceased, the court may order disclosure of the identity of the deceased to the petitioner."

Renumber: subsequent sections

DATE Mon March 13, 1995

SENATE COMMITTEE ON STATE ADMINISTRATION

~~BILLS BEING HEARD TODAY:~~ Executive Action:

HB 273 / HB 389 / HB 376 / HB ~~467~~ 467

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Marlene Hines	Mt. Human Rts Network	376		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY