MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on January 7, 1997, at 10:00 a.m., in Room 331.

ROLL CALL

Members Present:
Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

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

Committee Business Summary:
HEARING(S) & DATE(S) POSTED: SB 18 12/30/96; SB 19 12/30/96
Executive Action: SB 18

Introductory Meeting and Discussion

CHAIRMAN DON HARGROVE called the meeting to order at 10:00 a.m. He gave a brief overview of the types of bills the Committee would be hearing, including the Governor's interim appointments, and then asked that each of the Committee Members introduce themselves, beginning with **VICE CHAIRMAN KEN MESAROS**.

VICE CHAIRMAN KEN MESAROS introduced himself, indicating that he served on this Committee last Session and is familiar with the functions of the Committee.

SEN. BILL WILSON introduced himself, stating that he is in his second term in the Senate, but his first term on this Committee.

SEN. FRED THOMAS stated that he is new to both this Committee and the Senate, and is looking forward to it.

SEN. DELWYN GAGE indicated this is his first time on this Committee, but has had good and bad experiences in the Senate and hopes to lend something to what happens in this Committee.

SEN. VIVIAN BROOKE stated this is her second session on State Administration, but her first term as a Senator, adding there were some real interesting things the Committee listened to and debated, and she is looking forward to hearing more of the same.

{Tape: 1; Side: A; Approx. Time: 10:04 a.m.; Comments: None.}

CHAIRMAN HARGROVE opened the hearing on SB18.

HEARING ON SB 18

SPONSOR: **SEN. MIKE HALLIGAN, SD 34, MISSOULA**

PROPONENTS: **None**

OPPONENTS: **None**

INFORMATIONAL TESTIMONY: **Greg Petesch, Legal Director Legislative Services Division**

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, Missoula, reported that the Federal Fair Labor Standards Act excludes the Legislative branch from its coverage therefore Legislative employees are covered by the Montana Wage and Overtime Compensation Act. He noted that there are exemptions in that Act for bonafide executive, administrative and professional employees. He indicated there is also coverage under that act by rule, noting that those rules were last changed in 1975, but it is no longer necessary for the Department of Labor to adopt rules to cover the Legislative branch since they are covered by the Montana Wage and Overtime Compensation Act. He stated that the Federal Family Medical Leave Act references the Federal Labor Standards Act, which excludes Legislative employees, and SB 18 would allow the Legislative Council to adopt a provision which would be consistent with the rest of State Government in those areas.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:

Greg Petesch, Legal Director, Legislative Services Division stated that he thought **SEN. HALLIGAN** did an adequate job of explaining the bill and that he would be happy to answer any questions the Committee Members may have.

Questions From Committee Members and Responses:

SEN. DELWYN GAGE pointed out, on page 5 of the bill, that employees of the Legislative Branch are also exempted from that section of the Code dealing with overtime. He stated that Legislative employees have been treated as second class citizens and complimented **SEN. HALLIGAN** for bringing this bill, then indicated that if this bill is adopted, it is incumbent on all of us to try get the funding necessary to implement this for the Legislative employees of the State of Montana.

VICE CHAIRMAN MESAROS asked what the funding would amount to, or if there were any projections as to what that may be.

SEN. GAGE indicated that he did not know, adding that he doubted there was anything in the current budget to address this. He noted that it would depend on what the committees in charge of Legislative Finance and Revenue Oversight as well as the Legislative Council and Legislative Auditor decide regarding policy in these areas.

CHAIRMAN HARGROVE asked **SEN. HALLIGAN** if there will be a fiscal note.

SEN. HALLIGAN replied that this bill would create no fiscal impact, that as the Council addresses issues of overtime or leave, it would then be addressed along with the entire Legislative Branch budget. He added that this bill would simply address the Legislative Council's authority to adopt a provision to address this issue.

Closing by Sponsor:

The hearing on SB 18 was closed.

{Tape: 1; Side: A; Approx. Time: 10:12 a.m.; Comments: None.}

HEARING ON SB 19

SPONSOR: SEN. DELWYN GAGE, SD 43, CUT BANK

PROPONENTS: Mr. Dave Lewis
Office of Budget and Program Planning

OPPONENTS: None

INFORMATIONAL TESTIMONY: Ms. Taryn Purdy, Principal Fiscal Analyst
Legislative Fiscal Division

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, Cut Bank, indicated this bill is a result of a resolution he introduced last session which set up an interim committee to look at state management systems and was originally intended to address the budgeting process, which this bill deals with to some extent. He indicated that the budgeting process has become a horrendous task, noting that there is no coordination in current statute with regard to state budgeting laws, and this bill is an attempt to clarify some sections of the budgeting law, as well as allow more time for the Fiscal Analyst Division to review and analyze budgets. He pointed out that some of the language which has been stricken has been moved to other sections where it will fit better in the code.

SEN. GAGE indicated that, in discussions with **Taryn Purdy, Legislative Fiscal Division**, and **Dave Lewis, Director, Office of Budget and Program Planning**, it was decided that it would be advisable to put a July 1st effective date on the bill to correspond with the beginning of the new biennium.

Informational Testimony:

Ms. Taryn Purdy, Principal Fiscal Analyst, Legislative Fiscal Division reported that SB 19 requires in statute that the Legislative Finance Committee provide some guidance and suggestions to the Legislature before it meets regarding certain global budgeting issues, and it also consolidates all budget submission and other date requirements into one section. She noted that, in the bill, a lot of the language being stricken is actually being moved to another section, and that certain budget definitions were slightly adjusted, such as the definition of agency and program, or eliminated if they were not being used.

Ms. Purdy pointed out that the bill will coordinate the funds which have to be included in all budget requests and a change in the Governor's budget submission is being recommended so that all of the funds that need to be included in the Executive Budget will be coordinated with the rest of statute. She added that, in the past, statute had one definition of funds and the submission requirements of the Executive had another definition.

She then indicated Section 6 of the bill deals with the provision of minimum requirements for submission of budget data by the agencies to the Executive, and will clarify what the information must be and the form in which it must be submitted. She stated that Section 8 does the same thing for budget submissions of the Executive to the Legislature, and that these sections are fairly specific so that the Legislature can conduct their business in a reasonable and timely manner. She added that it clarifies what the Executive needs to have in the budget, including policy proposals, so that these can be analyzed by the Legislative staff immediately. She then noted Section 11 eliminates certain redundant language with regard to items such as personnel grade change report.

With regard to Section 13, she explained that when an appropriation is established for an agency, the agency then establishes an Operational Plan for their expenditures throughout the biennium. She indicated that current statute requires agencies to expend their funds in significant compliance with that Operational Plan, but allows a change of 5% from the Plan. She then pointed out that once the Operational Plan is changed by 5%, that then becomes the new Operational Plan and is again changeable by 5%, and that the impact of current statute is simply to create additional paperwork, without constraining agencies from spending funds any way they choose regardless of the appropriation passed by the Legislature.

She stated that this bill appears less stringent by eliminating the 5% limitation, but it requires agencies to spend in compliance with the Operational Plan as it was originally established according to the appropriation set by the Legislature. She added that the SJR 23 Committee, upon recommendation by the Finance Committee, requested that agencies report changes in policy, exhibited by major changes in the way they are expending funds, before the funds are expended, and that a trigger was put in the bill to let the agencies know when to report expenditures significantly different from the appropriation set by the Legislature.

Ms. Purdy further indicated that appropriations are established by the Legislature on a yearly basis for two years, and current statute requires that if an agency wishes to spend a portion of their second year appropriation in the first year, they have to go through a very stringent process. She noted that the Legislature currently cannot, in the General Appropriations Act, allow agencies to do this. She stated that this bill would allow the Legislature to specify in the General Appropriations Act that agencies may spend their appropriated funds in either year.

{Tape: 1; Side: A; Approx. Time: 10:26 a.m.; Comments: None.}

<u>**Proponents**</u>:

Mr. Dave Lewis, Office of Budget and Program Planning reported that his staff worked with the SJR 23 Committee on making the changes in the language that **SEN. GAGE** and **Ms. Purdy** recommended, and that they support those changes.

He then indicated that, after discussion with the sponsor of the bill and the Fiscal Analyst, they would like to prepare some amendments regarding the issue of changes in operating budgets. He explained that they are currently preparing a budget to present to the Legislature this January which goes through June 30, 1999 and pointed out that there are always adjustments required as they move along in administering a $4 billion budget.

He indicated that, when looking at a budget for 30 months, they are not able to determine, to the last decimal point, where every dollar should go, and that there are usually justified reasons for this, noting that construction projects are an example of areas where changes are usually made, and that in Public Health and Human Services, in the past, there has been flexibility in moving funds around between programs so they end the year even.

Mr. Lewis stated that they are always willing to appear before the Finance Committee to discuss any changes during the interim, but their only concern is the language which says changes can not be made until the Finance Committee has a chance to review and comment on proposed changes. He indicated that if the Finance Committee met every two weeks, particularly towards the end of the fiscal year, that would not be a problem however that is not the case, adding that, particularly in the summer, there are two month gaps in their meetings. He further indicated that 90% of the changes being made could certainly wait for Finance Committee review, but that there would be times when they would need the ability to make changes that can not wait for the Finance Committee to meet, particularly at the end of the fiscal year.

{Tape: 1; Side: A; Approx. Time: 10:29 a.m.; Comments: End of Tape 1, Side A

He indicated that although this would create a lot of paperwork for the Committee to look at, he felt sure the agencies would be more than willing to go to this level regarding interim changes and documentation, and that his office would be willing to also, but reiterated that they would not want to be held up on changes waiting for the Finance Committee to review and comment. He noted that the Finance Committee can not veto changes, only make comment, but that it is the timeliness of that comment they are concerned about.

Mr. Lewis went on to point out that, in Section 17 of the bill, there is a requirement that the Governor approve all changes in spending between the second year and the first year. He indicated that he felt the Judiciary and the Legislative branches would have some concern about the Governor being the approving authority on all of those changes, and recommended to the Committee that the language be changed to read "the approving authority", rather than "the Governor". He further pointed out that the Board of Regents, the Chief Justice of the Supreme Court, and various chairmen of Legislative Interim Committees have the authority to act as approving authority, and he would suspect some of the other branches may have some concern about the Governor having veto authority over their fiscal changes.

He closed by indicating that, other than the changes he previously outlined, the bulk of the bill are the kinds of things their staff have agreed to work with, especially the changes in dates.

<u>**Opponents**</u>: None

<u>**Questions From Committee Members and Responses**</u>:

SEN. THOMAS asked Ms. Purdy to cite an example of the compounding effect of the 5% changes. **Ms. Purdy** responded that, as a hypothetical example, the Department of Health and Human Services is appropriated a certain amount for Medicaid, as well as a certain amount for each of the other programs. That agency can, by 5% increments, continually move money from one section to another. She suggested that the Legislature may have required excess funds from the Medicaid program be spent on a specific program but, with the 5% changes, cumulative over a period of time, there may not be excess Medicaid money to spend as the Legislature directed. She added this is more of an issue of the law not having an impact on how the money is actually spent. **SEN. GAGE** added that they were interested in giving more flexibility to agencies to move money, but also to put a cap on it and do away with as much paperwork as possible. He gave the example of a small agency which needed to move 25% of their budget. Instead of having to go through the charade of doing it 5% at a time, they could request 25% at one time.

SEN. BROOKE asked for the names of the members of the Joint Interim Subcommittee on State Management Systems. **SEN. GAGE** responded that he was not sure, but that **SEN. MACK COLE** chaired the committee, and that they split into subcommittees. **Ms. Purdy** responded that the subcommittee was comprised of **SEN. DOROTHY ECK, REP. BEVERLY BARNHART, REP. DEB KOTTEL, SEN. GREG JERGESON, and REP. KARL OHS.**

SEN. THOMAS asked if the problem with the 5% increments was a reality or theoretical. **SEN. GAGE** responded that he thought it was both, indicating that **Steve Bender, Assistant Director, Office of Budget and Program Planning** said to look at the potential of this thing and he did not think they wanted it to be left open-ended, that it does not make a lot of sense. He pointed out that **Ms. Purdy** has indicated there were instances of there being more than 5%, and stated that he believes the Legislative intent was to limit that 5%, although it did not say it, and that they should be definite in what they mean.

He then pointed out that the section dealing with the Governor as approving authority is current law and needs to be changed, but that it is not changed in this bill.

SEN. WILSON asked **Mr. Lewis** to define "significant" as it relates to "significant change" referred to in Section 13 of the bill, and further asked if the word "significant" could be stricken so that it would read "any change". **Mr. Lewis** responded that Section 17 outlines the definition of what is considered a significant change, noting that the intention was to broaden it, but that it might have, in some cases, actually narrowed that definition.

SEN. WILSON indicated that **Mr. Lewis** had stated there were two-month gaps in when the Finance Committee met and mentioned a safety valve to remedy that. He asked if **Mr. Lewis** had any specific ideas. **Mr. Lewis** responded that their major concerns were with letting highway contracts, and the fiscal year-end issues with Health and Human Services. He pointed out that they are under a real time crunch in that the Department of Administration Accounting Division closes their books at a particular point, and these agencies need to make sure they have not over-expended their appropriations at that point.

SEN. GAGE added that he feels it is the nature of Legislators to want to know what is going to happen ahead of time, even if they can not prevent it from happening, and indicated that he would not have a problem with looking at this area of the bill again.

VICE CHAIRMAN MESAROS asked if the Finance Committee has any authorization other than merely reporting. **SEN. GAGE** responded they do not.

VICE CHAIRMAN MESAROS asked, referring to page 16, Section 17, what are the limits on second-year appropriations that can be spent in the first year that are not covered in the General Appropriations Act. **SEN. GAGE** responded that he did not think there are any limits in this bill, and he did not know that there is in statute. **Ms. Purdy** stated that if an agency wants to spend money in the first year beyond their appropriation for that year, they can request to have the appropriation authority moved from the second year into the first year, as long as they stay within their plan. Because they will then have more money in the first year than in the second year, current statute requires them to come up with a plan as to how they will stay within that reduced second-year appropriation. This section is referring to that appropriation transfer mechanism.

SEN. GAGE indicated that his understanding of the question was is there a dollar limitation, and that to his knowledge there is not. **Ms. Purdy** stated that the limitation is essentially the plan. **VICE CHAIRMAN MESAROS** stated his understanding to be that agencies may transfer any amount from second-year appropriations to the first year, as long as they adhere to the original two-year Operational Plan. **Ms. Purdy** pointed out that a good example of this is the Corrections Department. They moved a lot of money out of the second year, and came up with a plan to stay within the second-year appropriation, but now they have a very hard supplemental to try to restore that authority for the second year.

{Tape: 1; Side: B; Approx. Time: 10:45 a.m.; Comments: None.}

CHAIRMAN HARGROVE asked what would be the control, under this bill, for significant compliance. **Ms. Purdy** responded that if an agency wished to spend more than 25%, or $1 million, whichever is greater, they would be required to come to the Finance Committee.

CHAIRMAN HARGROVE then asked if there is any control over reporting changes in policy to the Finance Committee. **Ms. Purdy** stated that any changes of 25% would be construed as a change in policy.

CHAIRMAN HARGROVE asked **Mr. Lewis** if he is comfortable with the timelines set out in the bill and, further, if those timelines are not met what would be the consequences. **Mr. Lewis** responded that they are comfortable, with the new systems they have in place, that they have a reasonable ability to meet those timelines but indicated that there is no particular penalty at this point for failure to do so.

CHAIRMAN HARGROVE asked, regarding adjustments made during the interim, if **Mr. Lewis** was referring to adjustments between programs or from one department to another. **Mr. Lewis** responded that he was referring to adjustments within departments and cited examples within the Department of Health and Human Services, the Department of Natural Resources, and the Department of Corrections. He noted that if an agency, as an administrative matter, transferred funds from the second year to cover something in the first year, and effectively could cut back enough in the second year to cover the shortfall, they would be required to comply with that plan, but they recognize there are instances when that would not be practical and that these are the issues which come forth in the supplemental bill.

CHAIRMAN HARGROVE asked what is the mechanism for moving money from one department to another. **Mr. Lewis** responded that there is no such mechanism in place. He indicated that funds can be moved between departments if a function is transferred from one department to another, or if there is an interagency agreement to purchase services, but that they have no authority to simply transfer funds between departments.

CHAIRMAN HARGROVE asked **Mr. Lewis** if he is going to provide a proposed amendment to the language addressing the "safety valve" regarding the Finance Committee review. **Mr. Lewis** stated that they would work with the Fiscal Analyst on the proposed amendment. He added that he believes there is some opinion that the entire review process is overdone, but reiterated that they are willing to live with it as long as they have the ability to deal with critical issues without having to wait for Finance Committee review.

{Tape: 1; Side: B; Approx. Time: 10:54 a.m.; Comments: End of Tape 1, Side B

CHAIRMAN HARGROVE asked if the bill requires the Finance Committee to review and comment in a timely manner. **SEN. GAGE** responded that he did not believe the bill addressed a timely manner of any kind. He added that one solution would be to have the Finance Committee meet more often and another solution, in the case of critical issues, might be for the Finance Committee to meet in conference call.

CHAIRMAN HARGROVE then asked who would propose the amendment concerning the Governor's authority. **SEN. GAGE** responded that **Mr. Lewis** and **Ms. Purdy** can propose that amendment. **CHAIRMAN HARGROVE** further asked if consideration had been given to simply limiting the number of 5% transfers to make it more specific, and if that would be a good idea. **SEN. GAGE** responded that he did not think it would be a good idea, adding that he believed the intent was to allow more flexibility, since the Legislature only meets every two years for 90 days.

VICE CHAIRMAN MESAROS asked **SEN. GAGE** to clarify the role of the Revenue Oversight Committee, noting that he realized they are two different entities, and asked if they are headed towards a common denominator with these two committees. **SEN. GAGE** responded that he did not think this would affect the Revenue Oversight Committee in as much as their function is to look at revenue as opposed to the budget and he did not feel they would be involved.

SEN. THOMAS asked **Mr. Lewis** if he could think of a significant situation of the 5% change being compounded. **Mr. Lewis** responded that he could not. He indicated that the major area where this has been used is in Health and Human Services, noting that they have a $400 million budget and a 5% change would be significant enough to do what was needed. He added, however, that it is a possibility and could happen. **SEN. THOMAS** further asked if, without this change, there might be any situation which could not be addressed within current law. **Mr. Lewis** responded that it could happen although he did not know precisely what the circumstances might be. He added that it could be a concern that it will be used to circumvent the law, but the Finance Committee would be able to address that situation, noting that it was unlikely that would happen. He added there have been some instances of concern and disputes with some of the departments in the past, but they still have the ability to say no and, in most instances, that has been the case. **Mr. Lewis** stated that he felt it would be a good move to loosen it up and they are agreeable to prior Finance Committee review as long as they have the safety valve in critical situations.

<u>Closing by Sponsor</u>:

SEN. GAGE explained that the 25% and $1 million figures are merely guidelines as to what constitutes significant change, which then triggers a review by the Finance Committee, noting that it would be difficult to set a dollar figure limitation due to the differences in the size of the agencies and their budgets. **SEN. GAGE** talked at length about Montana State Government's technology being out of date and, with regard to meeting timeliness, indicated that could depend on the whole technology system in the State of Montana. He indicated that the Governor has a proposal for bonding to upgrade current State Government technology but that, without technology upgrades, some agencies may not be able to put their budgets together in a timely fashion in order to submit them to the Budget Office. He then stated that they did not necessarily feel there had been abuses of the 5%, that their intent in increasing it to 25% was to save a lot of paperwork, to close a loophole they felt the Legislature did not intend, as well as to allow more flexibility. He added that they would prepare the amendments as quickly as possible for consideration by the committee.

CHAIRMAN HARGROVE announced that Executive Action on SB19 would be delayed until the Committee had a chance to review those amendments. He then opened Executive Action on SB 18.

{Tape: 2; Side: A; Approx. Time: 11:04 a.m.; Comments: None.}

EXECUTIVE ACTION ON SB 18

Amendments: None

Motion **VICE CHAIRMAN MESAROS** moved to adopt SB 18, seconded by **SEN. GAGE**.

Discussion:

SEN. THOMAS asked **Mr. Niss** to explain the exclusion outlined in 5-2-503. **Mr. Niss** indicated the reference to 5-2-503 on line 9, page 5 is referencing the law regarding the consolidated branch of government. He indicated that line 26, page 2 of the bill outlines those to whom the provisions of 39-3-405 do not apply, adding that Title 39 contains the time and a half wage requirements which would apply to all employees of the Legislative Council. He noted that this is the law that we are concerned with. **SEN. THOMAS** asked if **Mr. Niss** was saying that is the primary exclusion already existing in law exempting Legislative Council staff. **Mr. Niss** responded that's the primary exclusion, pointing out those listed on page 5 A-X are all exclusions from the current time and a half overtime requirements of state law, adding that line 9 on page 5 simply adds the consolidated legislative agencies as another recipient of that exclusion.

SEN. GAGE indicated that the Committee should realize this does not necessarily mean those people can not be paid time and a half for overtime, only that they are not required to be, that it is left to the discretion of the committees overseeing those particular areas of the Legislative Branch. This would also apply to parental leave.

Vote: The **DO PASS** motion for SB 18 **CARRIED UNANIMOUSLY.**

SEN. GAGE indicated he was not sure what the effect would be of the act being effective upon passage and approval, and asked **Mr. Niss** to comment if it would make more sense to have it become effective July 1st. **Mr. Niss** responded that the bill has already been passed by the Committee without amendment, therefore the Committee would have to reconsider its action to change the effective date. He went on the explain that the exclusions in the bill would become effective on the day the Governor signs it if the bill is passed with Section 3 intact. He added that it would depend on the plans of the Legislative Council or the committees they are required to consult with as to whether or not a July 1st or October 1st effective date would impede their plans with regard to this legislation. **SEN. GAGE** noted that his question was predicated on whether or not this would affect an appropriation for the coming biennium.

{Tape: 2; Side: A; Approx. Time: 11:10 a.m.; Comments: Adjournment

ADJOURNMENT

Adjournment: 11:10 a.m.

Don Hargrove

SEN. DON HARGROVE, Chairman

Mary Morris

MARY MORRIS, Secretary

DH/MM