

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN DON HARGROVE, on January 24, 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: Greg Petesch, 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: SR 4, 1/20/97  
Executive Action: SB 153 DPAA

#### HEARING ON SR 4

Sponsor: CHAIRMAN DON HARGROVE

Proponents: None

Opponents: None

##### Opening Statement by Sponsor:

CHAIRMAN DON HARGROVE welcomed Lois Menzies, Director, Department of Administration, and explained that it is the responsibility of the State Administration Committee to review the Governor's appointments, and make their recommendation to the full Senate. He stated that this is not just a formality, that it is a process required by law and, in his opinion, validates the type of democratic government we have by giving the elected representatives of the people an opportunity to participate in appointing people to offices that affect all of the people. He

indicated that **Ms. Menzies** will be given the opportunity to make a statement, followed by questions from the Committee, and questions or comments from the public.

**Lois Menzies, Director, Department of Administration**, stated that she appreciates the invitation to speak with the Committee. She announced that, later this summer, she will celebrate twenty years as a Montana resident, that the decision to move here was profound and, along with the decision to marry her husband, has made a tremendous impact on her life.

She reported that the Department of Administration comes before this Committee on occasion, that they will hear pension bills, as well as others that deal with state government. She pointed out that every organization needs an infrastructure and, for Montana state government, the Department of Administration provides that infrastructure, noting that she thinks of the Department as sort of an A to Z, soup to nuts agency because of the diversity in the services they provide, that they are a service agency, and other agencies pay them for the variety of things they provide, whether it be services or products such as items they might buy from Central Stores, or computer services. She explained that they set accounting policy for the state, that the State Treasurer unit is part of the Department, that they operate the Long Range Building Program, which is responsible for construction and repair of buildings across the state, the Information Services Division is part of the Department, there is a mail room and an office supply store, they operate nine pension funds, the largest being PERS, as well as the Teachers' Retirement System, that they also defend the state against tort claims. She said that the list goes on with these being the major activities.

She explained that, because of this diversity, she thinks a good person to have in this job is a generalist, and that she has always considered herself to be a generalist, both by education and experience, and by training. She stated that she has both a Master's and a Bachelor's degree in political science, which is very general in nature, and believes that has served her well in the jobs she has held with state government. She related that her very first job was with the legislature and, later, she worked for the Women's Bureau of the Department of Labor and Industry, that she then spent nine years as a Legislative staffer for the House State Administration Committee, and was assigned a number of studies dealing with government in general, pension plans and personnel. She added that she also did work in the area of judicial reorganization, noting that judiciary was her other area of expertise. She stated that this was the kind of job that required shifting gears often, that she had to know a little bit about a lot of things, but could not really go too deep into any of them before it was time to go to the next project. She indicated that is what she does now, with the Department of Administration, that she likes that diversity, and believes she is good at being able to shift gears, giving the example of talking about with how to get rid of pigeon droppings

on the Capitol building in the morning, and dealing with prison riots in the afternoon. She stated that it has been fun, that she has enjoyed it, and thinks it is due to her generalist background that she is able to make those transitions rapidly.

**Ms. Menzies** related a few accomplishments of the Department, reporting that the 1995 Legislature approved the largest building program in state history, at \$181 million, and a few buildings, the Business Administration Building in Missoula and the Eastern Montana Veterans' Home in Glendive, have been completed. She reported that the Information Services Division (ISD) is their largest division, with over 120 employees, and they are deploying a high-speed multi-protocol data network which spans the state. She explained that their goal is a single data network to handle the traffic for the University System, as well as state and local government, and community and tribal colleges, and that they are inviting K-12 to join, as well as libraries and entities like that. She noted that it is an extremely complicated endeavor, but they are off the ground, and it looks like they're going to make it, adding that a request for continuing expansion will be presented to the Appropriations Committee this session.

**Ms. Menzies** pointed out that the Capitol is under renovation, and that their goal is to get it into good shape for its 100th birthday in 2002. She reported that the Department is also developing a competency-based pay plan, which is fairly new in the public sector. She explained that, currently, they evaluate positions and quantify the skills necessary, and compensate the employee for their longevity. She indicated that they do not really look at the person, which has been a handicap because they have not been able to compensate people for the skills, the particular combination of competencies they bring to a job, and have not been able to retain people who are key employees. She continued that the current system is no longer meeting the needs of state managers, and they are looking at doing it differently, which is a big step for state government, adding that they will be asking the legislature to endorse that concept when they review the pay plan bill later this session.

She reported that, in an effort to streamline how state government goes about acquiring or purchasing goods and services, they have implemented a pilot project called the Procurement Card, which will allow state agencies to make small purchases, defined as those under \$5,000. She pointed out that 92% of all purchases in state government are under \$1,000 and that, typically, there is a lot of paperwork involved, and a warrant has to be cut, which is a responsibility of the Department of Administration, plus the vendor has to wait for that payment. She explained that, through the procurement card, called a "Pro Card", agencies can make those purchases, vendors get paid quickly, and they don't have to go through a lot of paperwork, that the accounting will be done through an automated system, but it is much simpler and will save the expense incurred in issuing warrants and handling those transactions.

She concluded by stating that she likes her job, she likes the diversity, and believes she has done an adequate job the last four years. She requested the Committee's favorable consideration of her re-appointment.

Questions From Committee Members and Responses:

**SEN. DELWYN GAGE** pointed out an error in the work history information supplied to the Committee regarding **Ms. Menzies**, that she was not with the Department of Justice from February, 1990 to present. He explained that he has known and worked with her since 1983, noting that she was on staff for Indian Affairs the eight years he was there. He asked **Ms. Menzies** what the status is of the Department's print shop function.

**Ms. Menzies** responded that Publications and Graphics does mainly duplicating, high-speed copying services, that 75% of their business is sent out to the private sector. She added that they operate a printing center in the basement of the Capitol, where the bills are printed, plus there are two quick-copy centers.

**SEN. GAGE** indicated that he has tried to get the legislature to hold a joint hearing regarding the Department of Administration budget with the total Appropriations and Finance and Claims Committees because many parts of the Department's budget affect every budget in the state. He said that he has been unsuccessful, and asked **Ms. Menzies** what her response is.

**Ms. Menzies** stated that she agrees with **SEN. GAGE**, noting that they particularly try to push for that regarding information technology issues because they are so complex, adding that they would certainly support presentations to the combined committees.

**SEN. GAGE** commented that one of the big reasons they make a lot of these changes is, not only to know what the cost of operation of the different department and agencies are, but to justify the ability to get some of the non-general fund revenue, for example, federal funds. He explained that costs have to be identified and the funds applied accordingly and that, if the Department's mainframe costs were funded, for example, but those costs were not apportioned to all of the agencies on the basis of use, they would not be able to justify those costs for those agencies. He stated that he thinks they do a tremendous amount of budgeting which shows up both as revenue and expenditures, that the people of the state are not made aware of what the actual out-of-pocket money is, and it concerns him that the budget looks so high, but there is really a lot of shifting of funds between departments. He asked **Ms. Menzies** to comment about that.

**Ms. Menzies** reported that HB 576, from the last session, provided relief on that issue. She explained that their Legislative subcommittee is taking a look at their budget right now, and the Department is telling them to focus on rates, not what they are going to spend as far as new proposals, that their rates need to

be adjusted because the focus of HB 576 was to eliminate the double appropriations so that they are not taking proprietary funds off the budget, and the direction to the agencies is that they cannot increase their rates, and the legislature has to approve them. She indicated they are working their way through that process right now, that she thinks it was a more accurate way of portraying their finances for state government and, from an agency perspective, it has granted them some flexibility that she has treasured over the interim. She pointed out that, particularly in the area of information technology, they have been able to respond to customer demands that, under the traditional way of budgeting, they would have had to say no. She gave the example of an agency with a small information technology staff of data processing professionals, that they approached the Department to purchase services to operate their data networks more centrally. She pointed out that, without HB 576, they would not have been able to do that however, they were able to add two people to their staff, and collect the revenue from agencies willing to pay for the service, and those agencies did not have to employ the staff in-house. She indicated that, often, it is difficult to employ a data processing professional at a quarter, half, or even three-quarters of an FTE and that supervision would be difficult without knowing what that employee is doing. She added that, if that function is centralized, there is synergy in having two full-time people working together, and that makes good sense, noting that, obviously, agencies believe that, and they were able to provide that service under HB 576.

**SEN. GAGE** reported that he has been told, by people who work in the area of communications, that many large companies have discontinued mainframes because they are too costly. He indicated that, with advancements in technology, they are now able to tie individual work stations together with the same results as a mainframe and asked, although he realizes the state of Montana is looking at long-term cost recovery and it would cost a tremendous amount of money to replace it, would the state be better off without the mainframe system.

**Ms. Menzies** responded that, when she first started this job, she heard that mainframes are dead, that they are dinosaurs and on their way out, but that this has not been the case in state government. She reported that they continue to see growth on the mainframe and were forced to upgrade the system a couple of months ago, that they had not anticipated that need for at least another six months. She indicated that she would project at some time in the future they may no longer have a need for the mainframe, but that will happen gradually, that, over time, they would begin to scale back their staff and storage capacities, and the capacity of the main unit, itself, but that just has not happened. She explained that they run major systems, team searches, that these are welfare software packages that help them track benefits throughout the state, and these systems absorb a tremendous amount of capacity for that computer. She pointed out that, on the other hand, what they are also seeing in information

technology is the client server, which is a mid-tier computer which pulls down information and sends it to the PCs, and is much more functional and flexible for the end-user. She indicated that there are some major applications that are going in that direction, that, for the most part, those are new applications and they have not impacted work on the mainframe. She said that she thinks the mainframe will be in business for quite a while, but noted that they are also developing this mid-tier capacity because they can see what is happening, that agencies have an interest, but they are suggesting doing that centrally. She pointed out that, under HB 576, they purchased a mid-tier computer, which is between the capacity of a PC and a mainframe, they installed it in a secure, air-conditioned area next to their mainframe, with additional power sources in case the power to the Mitchell Building is cut, and they hired a mid-tier expert. She added that the Legislative Fiscal Division and the Budget Office are purchasing services off that to run the budget system, that the Secretary of State has indicated interest in using it, they have an application with the Legislative Audit Division, and the Department of Administration uses it. She noted that it may not make sense to have a mid-tier in their own operation but, if they can centralize it, many agencies can work off of it.

**SEN. GAGE** reported that, prior to her appointment to the Department, an individual contacted him about some difficulties with the ISD, noting that a portion of these problems are addressed in HB 139. He indicated that individual was able to gather eight people involved in the communications area in different agencies of state government, who agreed to meet with him regarding their concerns about the Information Services Division and, at that meeting, he told these employees, if they got any flak over meeting with him, he wanted to know about it.

**SEN. GAGE** stated that he has been told that, since then, two of those individuals have quit state government because their superiors made it so difficult for them for having spoken with him, it was not worth staying. He added that he has been told that six of those people are no longer with state government, and that the reason is related to having talked with him, adding that he does not think any of them were employed by the Department of Administration. He asked **Ms. Menzies** what her policy is with regard to employees talking with Legislators.

**Ms. Menzies** responded that, generally speaking, they ask that questions from Legislators and members of the press, etc., be referred to managers because they believe it is important to have a consistent response. She pointed out that sometimes people at different levels may not be aware of what the policy might be on a department-wide basis, that it is their responsibility to communicate that to everyone, but sometimes it doesn't get done and, generally speaking, it is her policy that the most knowledgeable person to respond to that, in most cases, is the manager. She added that she would never prohibit employees from speaking to anyone, that she does not think that is appropriate but that, most of the time, rank and file members of the

Department would prefer not to speak directly to members of the press or to Legislators, or to members of the public, for that matter, because they are not paid to do that and it is not their role although, if an employee had a need to do that, it would be appropriate, noting that she would ask to be advised, that she likes to know what is happening in the Department. She indicated that turnover in the area of information technology and data processing is a real problem in state government, and she is not surprised to hear that six more have since moved on, stating that it is difficult to retain data processing professionals because they are in high demand, and they are often out bid by the private sector. She remarked that she is not suggesting this is the reason people leave, that people leave because of management positions, as well, but a lot of people do not last very long in this field, in state government, because they are underpaid.

**SEN. VIVIAN BROOKE** indicated that, in her opinion, it appears the state contracts with many outside attorneys, that the amount of money spent on those contracts is considerably more than if attorneys were hired to those positions. She reported that she has talked with attorneys on the other side of some cases, who indicate they can not believe the amount of money spent by the Department on attorney fees.

**Ms. Menzies** admitted that a tremendous amount of money has been spent defending the state, that between 900 and 1,000 claims are filed against the state every year and, although most of those are dismissed, some turn into lawsuits. She indicated that she does not have the statistics to share with the Committee, although she would be happy to provide them at a later date, and explained that it is really a two-part arrangement, that the Department of Administration has four attorneys and one paralegal in their tort defense work unit, and they also contract with Agency Legal Services at the Department of Justice, which is their first recourse in most cases, pointing out that a large portion of their business is retained in-house, so to speak. She indicated that, at times, individual attorneys in the various departments fill that function, but that, often, they defer to those who are most knowledgeable in court defense, and the Department also contracts with the public sector. She then explained that the most important decision in any suit they defend is who they choose to defend the case, that they need to match the expertise, knowledge and experience of those in the private sector with what they have on staff and, if they do not have people who are experienced in tort defense in-house, and it is a major claim that they could end up losing \$1.5 million, they will seek outside expertise. She pointed out that they try to minimize the cost by partnering them with an associate counsel who is also a state attorney, but stated that, frankly, attorneys can make more money on the outside than on the inside and, although some prefer to provide services for state government for a variety of reasons, they have to match guns, otherwise the state stands to lose a tremendous amount of money. She said that they agonize about those decisions and sometimes it makes her

queasy to think what is spent, but they also have to decide whether to spend that money on a state attorney to come up to speed in an area where they have no expertise, or give it to someone who has been trying these cases in the private sector for twenty years. She indicated that they will spend less money, ultimately, because they do not have to train that person, that there have been cases where this has certainly applied, but this is a difficult area and they do struggle with it.

**SEN. BROOKE** referred to the Business Administration Building on the University of Montana campus, indicating that she was disturbed by what happened with the construction flaws that resulted in broken pipes, and the necessity for major repairs, and remarked that she was concerned at the outset when the contract were let, that she discussed this with the Architecture and Engineering Division because it appeared that they did not have to have all the specifications in the contract when it was finally let. She asked if the Department plans to investigate the cause of the damage, how it happened and what kind of flaws in the original construction caused the broken pipes and flood, noting that it was an incredible event and puts the University in a precarious situation because they need to repair that damage, immediately, in order to prevent further damage but, at the same time, they are concerned about the liability, the warranties on materials used and guarantees by the contractor. She indicated that she has been unable to find out what happened, and if the contractor who was awarded the bid was at fault, but pointed out that, if this is the case, something needs to be done about how the Architecture and Engineering Division develops a building plan, adding that she received a lot of information about this contractor, that they had been in trouble in Idaho, and had been fined for other buildings they had not constructed properly. She noted that, by the time she found this out, there was no way to change the course of action in the original bid letting but that, when the damage occurred, it led her to believe it, although she agrees it is a great leap of assumption on her part, but she has not heard what caused the pipes to break. She added that she felt that the Architecture and Engineering Division was not accountable, at the time, that things were moving right along, and these were serious allegations against the contractor.

**Ms. Menzies** noted that, generally speaking, her impression is that it is a beautiful structure, and a source of pride on the campus. She stated that she was aware the tile was coming up, but was not aware of a flood occurring, and would like to gather more information and talk with **SEN. BROOKE** further. She indicated that construction of a building is complicated, and they spend a lot of time working with architects and contractors, adding that they work with the University in trying to meet their needs as well, and that sometimes it is challenging to make sure they are getting the services they want. She reiterated that she does not have the answers, but would like to look into it.



**SEN. BROOKE** referred to **SEN. GAGE's** question about employees talking with Legislators, and indicated that she has a bill draft, which she calls the Governmental Accountability Bill, that she would like for **Ms. Menzies** to look at. She indicated that she will ask other Directors appearing before the Committee to look at this bill draft, also, explaining that it deals with the issue of employees being able to speak freely, without reprisal.

**SEN. KEN MESAROS** asked **Ms. Menzies** to expand on the competency-based pay plan the Department is proposing, how it will be administered and how it relates to employee turnover. He further asked if she would comment on what the turnover rate is in the Department of Administration, compared to other departments, and how that may interact as far as the proposal.

**Ms. Menzies** stated that, within the Department, their turnover rate is fairly average, that she would estimate it to be roughly 5%, except in the area of information technology. She indicated that people move out of that area more rapidly than anyplace else, adding that they have a difficult time recruiting architects, as well; that there are certain professions they have difficulty bringing into state government.

She reported that, currently, they have a very decentralized personnel system, that they do not have a civil service system where applicants have to take a test, and are placed on a list from which the employer selects one out of a list of applicants. She pointed out that they pretty much allow the agencies to make those determinations on their own, as far as recruitment and selection. She indicated they do have a centralized classification bureau and that, until about six months ago, all positions were classified so that, when a new job was created or an existing position reviewed, the pay range was determined based on the grade level assigned to that position. She indicated that was time-consuming, that there were complaints, and they decentralized that bureau, delegating the responsibility to the agency directors. She noted that it has been really well received, and explained that this is part of the competency-based reform movement which is underway. She then indicated that the other part is trying to be more responsive to managers' needs to get key people into jobs, and the ability to compensate them accordingly. She then said that, under current rules, if someone resigns, and it is someone who performs a job that no one else in the Department can perform and there is a need to retain that person, she has the flexibility to offer them a raise, that she can offer a pay increase to six slots in the Department, which is 2% of her FTEs, noting that is some flexibility, although not much. She explained that they need to be able to look at what people bring to the job and decide whether or not they will pay to retain that person because state employees are pretty easy game for the private sector. She said that because of the skills they develop and train people for, they would like to retain them but, under the current structure of looking at the position and not the person in the position, they are hamstrung and can not

really react. She pointed out that she is not suggesting there will be no guidance or structure, that they will define basic competencies and skills, and specialized skills that may apply across agencies, or skills particular to a certain department. She concluded by reporting that not many state governments do this, but they feel if they don't, they will pay the price down the road as far as being able to do more with less.

{Tape: 1; Side: A; Approx. Time: 10:43 a.m.; Comments: End of Tape 1, Side A.}

**SEN. THOMAS** asked if the state's computer system is upgraded into Windows, or still operating on DOS.

**Ms. Menzies** responded that she can not quote the percentage, but that it is definitely the trend, reporting that all computers in the Department of Administration are Windows-based. She asked **Greg Petesch** if they are using Windows.

**Greg Petesch** answered that they are operating both systems right now. **Ms. Menzies** asked if some agencies are in transition. **Mr. Petesch** responded yes, that they could not do their bill drafting functions in the Windows format, but they will next session, so they are operating both right now.

**SEN. THOMAS** asked if the mid-tier system is Windows-based.

**Ms. Menzies** responded that, for the most part, these mid-tier computers function as servers, but that the trend is away from DOS and into Windows, noting that she can not imagine they would purchase old technology on new hardware and, although she is not an expert, she would suggest they are probably in the Windows environment, but that certainly, at the PC level, they are.

**SEN. THOMAS** asked about the e-mail system within state government, if it is being used, or on the drawing board.

**Ms. Menzies** responded that is an integral part of how they do business in state government. She explained that the current system is Zip! Office, which is the state standard, but reported that they are having problems with Zip! Office, that the manufacturer is no longer supporting it, and they are issuing a Request for Proposals (RFP) this month to obtain a new e-mail package. She mentioned that Zip! Office is wonderful, that she could not live without it, but there have been problems with it on a laptop computer, and in remote locations, that they have tried to make it last as long as they could because it was expensive, but they will purchase a central software package with a central license, and distribute that to all the agencies as part of their data network rate.

**SEN. THOMAS** asked if all departments will be able to connect into that system so that they can cross-communicate anywhere, across campus, or off campus.

**Ms. Menzies** responded that, for the most part, that is correct. She explained that, through deployment of SummitNet, the multi-protocol network that currently has about 150 state sites on it, and which the University System has been using for a very long time, they will be able to have one computer talk to another much easier than through the other network, which they are currently phasing out, adding they also have Internet connections, as well.

**SEN. THOMAS** asked if the Internet communications were long distance, not local. **Ms. Menzies** answered that is correct.

**SEN. THOMAS** asked **Ms. Menzies** to walk the Committee through the process and progress on the pay raise.

**Ms. Menzies** responded that, currently, the unions are taking a vote on a proposal, and the results should be available February 1st.

**SEN. THOMAS** asked what seems to be the attitude towards that.

**Ms. Menzies** answered that the attitude is generally favorable, pointing out that there are pockets of employees who are dissatisfied with it, but, generally speaking, the major unions are on track with it.

**SEN. THOMAS** asked what are the top five bills that are most critical to the Department of Administration this session.

**Ms. Menzies** indicated that one is the Procurement Reform bill, HB 139, which is a bold attempt to reform procurement in state government, and that another is the Pay Plan bill, which they believe is critical in order to retain employees, and which also includes the competency-based concept. She added that there is also the Guaranteed Annual Benefit Adjustment (GABA) bill for public retirees, noting that there are actually two GABA bills, one for teachers and the other for all other retirees, and she thinks this is an important policy decision for the legislature to act on. She then reported that a project called "MTPrime" is a portion of the Governor's \$50 million Information Technology bond proposal, and will allow them to swap the current major core information systems, like SBAS, which tracks budgeting and accounting, PAMS, which tracks the property management system, as well as the payroll and personnel systems, and replace those with a software package which will allow them to do their business better, that this is a \$22 million proposal, and a primary concern of the Department. She reported they are also asking the legislature for additional monies for the Capitol restoration, that they have discovered some things that need to be done to the structure which were not apparent earlier.

**SEN. BILL WILSON** asked, in regard to the performance-based compensation plan, who is in charge, and how is it determined that an employee is worthy of more compensation.

**Ms. Menzies** answered that she understands the concerns, that it can be a little bit tricky in this area, and explained that they need to establish the standards for competency. She indicated that this will be done by asking the people who do those jobs what they think is necessary to be a top performer in that particular job, that they would ask the managers the same questions, and then they will compile those standards and measure against those standards, as far as determining compensation. She reported that they have created a design team within the Department of Administration's State Personnel Division, who are working on different areas of this right now. She indicated that she would like an opportunity to put something together in writing to share with the Committee, and stated that they will start with baby steps, that they want to pilot this project. She pointed out that one area she is very interested in trying this out on is in the information technology professionals because of the retention problems, and the fact that these are measurable skills which she believes would be a good testing ground.

**CHAIRMAN HARGROVE** asked **Ms. Menzies** about her philosophy and/or procedure in terms of self-evaluation and budgeting, remarking that incremental budgeting is difficult, but the legislature must rely on the individual department directors for self-inspection, policing, and setting of priorities in their budgets.

**Ms. Menzies** responded that, regarding oversight, their proposed budget is reviewed by the Budget Office and the Legislative Fiscal Division, that they do have experts looking over their shoulders. She commended the legislature for adopting HB 576, explaining that it removed double budgeting, and allows the Department to function as a business in that they have to live within their rates, and can not do certain things unless they have the revenue, and also that the legislature does not provide the minute oversight. She noted that their business can go to the outside, if they are not doing it well. She stated that she takes heart at the changes which have been made, but pointed out that 6% of their budget, approximately \$3 million, is General Fund money, that it has been whittled down and pared away, and is very difficult to manage within the confines given to them.

**CHAIRMAN HARGROVE** responded that they may never get that completely solved, that it is all part of the continuing process. He remarked that he has had occasion to contact the Department with regard to issues raised by constituents, and praised **Ms. Menzies** on her and the Department's responsiveness. He then offered **Ms. Menzies** an opportunity to make a closing statement.

**SEN. GAGE** asked if **Mr. Petesch** would be allowed to testify, in that he has worked with **Ms. Menzies** for some time.

**Mr. Petesch** reported that he has had the opportunity to work with **Ms. Menzies** over a number of years, both as a Legislative staff member and, later, with the Department of Administration, and that she is one of the most intelligent, responsive people he has

ever had the opportunity to work with, adding that it was a tremendous loss to the Legislative branch when she chose to pursue the position she is now filling. He said that **CHAIRMAN HARGROVE's** observation was apt in that **Ms. Menzies** responds immediately to requests, which is a great asset to the State of Montana, and would be to any entity. He concluded by stating that it has been a privilege to work with **Ms. Menzies**.

**Ms. Menzies** said that she appreciates the gentleness in which the hearing was conducted, and asked for the Committee's support of her appointment.

#### EXECUTIVE ACTION ON SB 153

Amendments: SB015301.adn

#### Discussion:

**SEN. THOMAS** indicated, with regard to possible amendments, that the only thing he noted was an immediate effective date upon voter approval, that he does not think that is automatic, and asked **Mr. Petesch** if they need to put that in.

**Mr. Petesch** pointed out that it would be effective the July following, unless they put an effective date on it.

**SEN. THOMAS** stated that the reason they have done this in the past is there was a constitutional amendment approved by the voters, which the Supreme Court eliminated.

**Mr. Petesch** indicated that rejection by the Supreme Court of a ballot measure for technical defects in placing it before the electors has been solved through a constitutional amendment, so that is no longer a concern. He added that, depending on the type of constitutional amendment, if it requires Legislative action, it is very important to have an immediate effective date but, often, it is desirable to leave it, that it depends on the issue.

**CHAIRMAN HARGROVE** pointed out that the sponsor was asked, during the hearing, if it had been reviewed by the Legislative Council for constitutionality, and his response was that it had gone through the process and, therefore, must have been reviewed. He asked **Mr. Petesch** to comment.

**Mr. Petesch** reported that all bills go through the same process, which does not mean they have a stamp of constitutional approval. He pointed out that SB 153 is a constitutional amendment and, therefore, can not violate the state constitution. He explained that SB 153 asserts the state's sovereignty in fairly strong language, with the purpose of notifying the federal government that we reserve the right to reject certain things we do not feel the federal government is properly putting before us.

**CHAIRMAN HARGROVE** asked if this is identical to the bill presented in the last session.

**Mr. Petesch** replied that he is not sure if it is identical, but it is nearly identical, and the concept is the same.

**CHAIRMAN HARGROVE** reported that he has spoken with the sponsor about the proposed amendment, that he is not concerned about it.

Motion:           **SEN. GAGE** moved to ADOPT SB015301.adn (EXHIBIT 1)

Discussion:

**CHAIRMAN HARGROVE** explained that the amendment will replace the language on lines 14 and 15, that it is roughly the same thought in different language.

**SEN. BROOKE** pointed out that **CHAIRMAN HARGROVE** had some questions about the statistical validity of the "Whereas" clauses.

**CHAIRMAN HARGROVE** asked **Mr. Petesch** to clarify the validity of the "Whereas" clauses.

**Mr. Petesch** explained that the "Whereas" clauses are a preamble for a bill, and not part of the body of the measure, itself, as evidenced by their placement after the title, which is a constitutionally required portion of all bills, and before the enacting clause, which is the substance of the law. He added that the preamble is an optional portion, but not part of the substance of the bill, and that courts tend to use preambles as extrinsic aids in construction of the substance of the legislation. He continued that legislative intent, often referred to and reflected in committee minutes, is another example of an extrinsic aid that a court will use to try to find the intent of the measure, that it provides support and a guide for interpretation of the actual text of the measure.

**CHAIRMAN HARGROVE** pointed out that the proposed amendment reads "the 10th amendment reflects that the people created the federal government for limited purposes", which is sort of subjective, that we do not know why the people created the federal government, and asked if everyone in Montana now has to accept that as fact, because it says it is fact here.

**Mr. Petesch** replied that the preamble portion is not submitted to the electorate. He then reported that the preamble to the clean water/mining regulation ballot measure had a preamble which was litigated in District Court. He added that his office is charged, by law, with reviewing the text of all measures prior to being circulated for signatures, and that they decline to review preambles because the law requires them to review the text of the measure. He reported that **Judge Dorothy McCarter** agreed that the preamble is not a part of the text of a measure, that it does not appear on the ballot, and is just an extrinsic aid to

construction in the event the measure is challenged or clarification is sought. He noted that the amendment **CHAIRMAN HARGROVE** referred to is somewhat subjective in nature, but has some basis in reality, and is supported.

**SEN. GAGE** indicated that his position has always been that, on the introduced version of a bill, these clauses are the sponsor's opinion but, once it passes the legislature, then he believes it is the opinion of the majority of the legislature.

**CHAIRMAN HARGROVE** noted that it is largely semantics, that **SEN. BAER** was not terribly concerned one way or another, and it seems like it might not be in the best interests of the bill to have that language in the bill, adding that, on that basis, he will probably not vote for the amendment.

**SEN. BROOKE** asked if the motion was for both of the amendments.

**SEN. GAGE** indicated his motion was for both but that, if the Committee would prefer, he would amend his motion to segregate them.

**CHAIRMAN HARGROVE** stated that he would prefer they be segregated.

Motion/Vote: **SEN. GAGE** amended his original motion, and moved to **ADOPT AMENDMENT NUMBER 1** of **SB015301.adn**. The motion **FAILED** with **SEN. MESAROS**, **SEN. GAGE** and **SEN. WILSON** IN FAVOR, and **CHAIRMAN HARGROVE**, **SEN. BROOKE** and **SEN. THOMAS** OPPOSED.

Motion/Vote: **SEN. GAGE** moved to **ADOPT AMENDMENT NUMBER 1** OF **SB015301.adn**. The motion **PASSED** with **SEN. BROOKE** and **SEN. WILSON** OPPOSED.

Motion: **SEN. THOMAS** moved that **SB 153 DO PASS AS AMENDED**.

Discussion:

**SEN. THOMAS** indicated he would like to readdress amendment number one, that the proposed language is better than the language in the bill. He pointed out that lines 14 and 15 read " . . . the 10th amendment means that the federal government was created by the people specifically to be an agent of the states;", and he does not know if they would concur with that. He noted that it does designate a separation of powers, but that it is not being applied, which is why this bill has been presented. He then indicated that the proposed language in amendment number one reads "created the federal government for strictly limited purposes and the states for general government purposes;".

**CHAIRMAN HARGROVE** asked if **SEN. THOMAS** would agree to reconsidering amendment number one without the words "the fact".

**SEN. THOMAS** replied that he would be amenable to that. He stated that he would move a different amendment, within amendment number one, which would strike the words "the fact".

**SEN. GAGE** stated that he would support **SEN. THOMAS's** proposal, adding that it concerned him, as well, as it gave the impression that the federal government is subordinate to the states, that they are acting at the state's whim and direction.

**SEN. MESAROS** indicated that the word "strictly" in the amendment, on the second line, jumps out at him.

**SEN. THOMAS** pointed out that, if the word "strictly" is deleted, it would read fine, that "strictly" seems to narrow it.

**Motion:** **SEN. THOMAS** moved to **ADOPT A COMMITTEE AMENDMENT TO SB 153. (EXHIBIT 2)**

**SEN. GAGE** indicated that the sponsor would probably not agree with the amendment to strike the word "strictly", adding that, however, it is better construction by striking that word.

**CHAIRMAN HARGROVE** reported that he discussed it with **SEN. BAER**, who indicated he was not concerned one way or the other.

There was discussion regarding what motion is to be voted on.

*{Tape: 1; Side: B; Approx. Time: 11:19 a.m.; Comments: End of Tape 1, Side B.}*

**SEN. BROOKE** asked if the intent is to clean up the language.

**SEN. THOMAS** reiterated that he is not sure why his name is on the amendment, but pointed out that he agrees with the language in the amendment, far better than that in the bill on lines 14 and 15, "was created by the people specifically to be an agent of the state", which he does not find to be the case. He noted that he does not know that it cleans it up, but it does reflect what he believes, more so than what is in the bill.

**SEN. BROOKE** asked **Mr. Petesch** what his opinion is of the "Whereas" clause, and if it has any basis in reality.

**Mr. Petesch** replied that he thinks the proposed amendment legitimately states the 10th Amendment's reservation of power to the states, that anything not specifically delegated to the federal government is reserved to the states. He pointed out that the difficulty in this area of law almost always comes when the commerce clause is coupled with the supremacy clause of the federal constitution, because what was contemplated as commerce when the United States Constitution was written is decidedly different than what constitutes commerce today. He explained that there has been a regrowth and rediscovery of the 10th Amendment in the past five to ten years, that states are



questioning whether the federal government is acting in areas delegated to them, and this is done mostly through the court system. He added that legislatures are joining in, and a great number of state constitutional law decisions are being rendered, even in areas where there is a similar provision in the federal constitution, that are articulating they are decided solely on state constitutional grounds. He reported that, in light of this, the United States Supreme Court is saying they do not have an issue to review, that it is a state decision. He indicated that the response from the federal government are things like the repeal of the 55 mph speed limit, and those types of things. He then indicated that the question will be what is a mandate, pointing out that the federal government often puts a requirement in place, coupled with funding, which makes it optional for the states, that if they do not ratify the requirement, they will not get the money.

**Mr. Petesch** said that he thinks the amendment, as revised, is a legitimate statement of the reservation of the powers to the state, and the constitutional power reservation to the state, as well as the limits on federal authority.

**Vote:** The motion to **ADOPT** the **COMMITTEE AMENDMENT PASSED** with **SEN. BROOKE** and **SEN. WILSON OPPOSED**.

**CHAIRMAN HARGROVE** announced that the hearing on SJR 3 would be postponed at the request of the sponsor. He then reminded the Committee that a motion has been made and seconded that **SB 153 DO PASS AS AMENDED**.

*{Tape: 1; Side: A; Approx. Time: 11:29 a.m.; Comments: None}*

**Discussion:**

**SEN. GAGE** referred to page 2, the sentence beginning on line 2, and asked **Mr. Petesch** if this does not preclude the state, when the federal government sends down mandates, even though we think they are usurping state powers, from accepting that edict as well as the money.

**Mr. Petesch** replied that this is how he interprets it, that it says states have the right, but are not mandated to reject a requirement. He added that this goes to Article 2 of the constitution, referred to as individual rights, and those rights are subject to strict scrutiny by the Supreme Court. He indicated that the amendment sets out how the state's rejection may be, noting that the only portion of the amendment he has had difficulty comprehending is, in the individual rights portion of the constitution, that may give a cause of action to the individual pursuant to this, although he does not know that for certain.

**SEN. BROOKE** stated that she is opposed to this, that she questioned the sponsor during the hearing about the fact that the

states can already do this. She asked why they should present to the public an issue which she thinks is fairly complex, something that will take quite a bit of effort on the part of both the opponents and proponents to educate the public. She added that she thinks they should be concerned that there is a lot of confusion, pointing out that she is not saying the public is ignorant, but that, when an issue is on the ballot, they do work to get out the best information they can, yet, at the same time, the huge majority of the public does not have the time to really delve into an area of constitutional law that this sets out.

She indicated that the courts can step back and look at the relationship between the federal and state governments, that state governments only look at it from the perspective of their interests. She stated that she thinks, if we are going to be a state within the Union, we need to recognize the court's decisions which take a look at how governments work or interrelate. She reminded the Committee of the argument **Rob Natelson** made during the hearing that devolution is one of the best things to happen in our society at this time, and stated that she can not disagree, that she thinks it is very important that states take up a lot more decision making, but indicated that, if devolution goes to its ultimate extreme, it will be every person for his or her self, and she would caution that they are going in that direction with this.

She indicated that another concern she has is the concept on page 2, lines 5-6, which has been amended to include initiatives and referendums. She said that she does not know if they should begin a system for, conceivably, almost every federal program to go under this scrutiny because there are 150 Legislators, each with priorities about a program, whether they are in favor or opposed, and there could be all kinds of bills or resolutions, or initiatives or referendums, or executive orders, to turn back federal money, or accept federal money. She stated that the current process may not be the greatest, but it is certainly more manageable than what this bill would open it up to, indicating that she does not think this is the path they should go down.

**SEN. GAGE** said that, since serving in the legislature, he has realized the difference in strength between statutory law constitutional law. He reported that, last session, he carried a bill urging states to adopt a victims' rights constitutional amendment because of the contention that some cases are decided in favor of criminals on the basis that criminal's rights are constitutional, as opposed to victim's rights being statutory. He indicated that his perspective is that this bill would place a statement in the constitution which he believes will be stronger than what might be in statute regarding the state's rights in this regard, that, in his opinion, it would have more force, he believes, to the courts as a constitutional provision.

**SEN. THOMAS** pointed out that there is no mechanism to react to being trampled on by the federal government, that the Federal

Supreme Court makes decisions, ignoring the defense that it is our 10th Amendment right. He indicated that, unfortunately, the Supreme Court is too political, and the liberal philosophy is to use the court to legislate from, not to just rule on the law as written. He said that he thinks **SEN. BAER** is attempting to create a mechanism for states to react to that, a check and balance, adding that he thinks it is a good thing.

**Vote:** The motion that **SB 153 DO PASS AS AMENDED CARRIED** with **SEN. BROOKE** and **SEN. WILSON OPPOSED**.

**EXECUTIVE ACTION ON SB 170**

**Amendments:** SB017002.adn (**EXHIBIT 3**)  
SB017003.adn (**EXHIBIT 4**)  
SB017005.adn (**EXHIBIT 5**)

**Discussion:**

**Mr. Petesch** indicated that the first amendment will add an immediate effective date so that it would go into effect at the time the voters approve it on the ballot.

**Motion/Vote:** **SEN. THOMAS** moved that **SB017002.adn BE ADOPTED**.  
The motion **CARRIED** with **SEN. BROOKE** and **SEN. WILSON OPPOSED**.

**Mr. Petesch** reported that the second amendment would reduce the signature requirements from 10% to 8% of the qualified electorate.

**Motion:** **SEN. GAGE** moved that **SB017003.adn BE ADOPTED**.

**CHAIRMAN HARGROVE** explained that the reason for this amendment is to maintain a difference in the requirements between a constitutional amendment and an initiative. He indicated that he would ask **Mr. Petesch's** opinion, but he thinks it might run into a problem with constitutional law, adding that he talked with the sponsor, who indicated he was amenable to this amendment.

**Mr. Petesch** explained that this is a proposal to amend the constitution, that the current requirement for qualifying a constitutional amendment is 10% of the total qualified electorate and this amendment would have the effect of leaving a distinction between the number of signatures required to qualify a constitutional measure and a statutory measure for the ballot. He pointed out that, as drafted, the bill establishes the same percentage of signature requirements, that there is nothing to prohibit that and, when he talked with the sponsor in drafting this measure, it was his purpose to set a uniform requirement.

**SEN. BROOKE** asked, if it was his purpose was to set a uniform requirement, where does this come from.

**CHAIRMAN HARGROVE** asked **SEN. GAGE** to respond, noting that he made the motion, but it came from discussions during the hearing. He added that the sponsor has indicated, if it is the desire of the Committee that there be a distinction, he has no objections.

**SEN. GAGE** stated that he would rather see it left the way it is, that he thinks there may be some confusion in peoples' minds as to how many signatures are required to place a constitutional amendment on the ballot and, if the requirements are the same, he does not believe more people would go for a constitutional amendment as opposed to a statutory change. He added that he does not buy that argument, and thinks the people of Montana would be better served if the requirements were the same.

**SEN. THOMAS** stated that he thinks it is direly necessary that it be changed. He explained that, if this bill results in a constitutional amendment, it can not be changed by the legislature however, if this same bill were passed into law, it could be, and that is a dire difference. With regard to the question of confusion, he indicated that there are no confusing factors and that, if someone is confused and obtains signatures from only 8% of the qualified electorate for a constitutional amendment, that is the individual's problem, because they should know what they are doing. He urged the Committee to make sure there is a difference in the requirements for the two measures, that it is easier to amend the law than the constitution, and that should be the case. He pointed out that, in the Legislative process, this bill needs a vote of two-thirds of the legislature to go to the public for a vote, because it is a constitutional measure, that it is harder to amend the constitution than it is, by the legislature, to change a law, and that is how it should be with the public. He added that it is the people's constitution, that they want higher restrictions for changing it than for changing a law, which is why the signature requirements have been different and, therefore, should be different.

**SEN. MESAROS** indicated that, with all due respect, he thinks this bill would create some consistency throughout the process and, although **SEN. THOMAS's** comments are well placed, he thinks that consistency should take precedence in legislation of this nature.

**SEN. THOMAS** asked **Mr. Petesch**, if someone brought in a statutory change, could he fit that in the constitution if they actually wanted it to be a constitutional initiative.

**Mr. Petesch** responded that it depends.

**SEN. THOMAS** then asked, in a general sense, if someone asked him to shorten a statutory measure to make it a constitutional amendment, would they have the ability to say no, that the constitution can not be amended that way.

**Mr. Petesch** responded no.

**SEN. GAGE** stated that one of his concerns about this is that the thoroughness of the legislative process, whereby the public can testify for and against bills, is so much superior to the initiative process, and he thinks the initiative process should be more difficult. He indicated that he does not like the initiative process, that it is not as thorough, and he believes people should try the legislative process, first. He explained that he thinks there is a place for the initiative process when the people do not agree with what the legislature has enacted, but pointed out that issues are not explained during the signature gathering process, and he firmly believes that process leaves a lot to be desired. He reiterated that he would like to see the initiative process made more difficult.

Vote: The motion that SB017003.adn BE ADOPTED CARRIED with **SEN. GAGE** and **SEN. MESAROS** OPPOSED.

**SEN. BROOKE** referred to **SEN. GAGE's** comments about voters being informed on the issues being presented on a ballot measure and explained that she is proposing an amendment to clarify that this measure would increase the requirement from 5% to 10% of the qualified electors, and from one-third to two-fifths of the districts. She stated that, in order to be fair to the voters, she thinks they need to outline the ballot language that way.

**SEN. THOMAS** asked **Mr. Petesch** if this language would be in the content of the ballot measure.

**Mr. Petesch** replied that what appears on the ballot itself is the title and the statements of implication, which are the for and against statements, that the text of the measure itself does not appear on the ballot.

**SEN. THOMAS** asked if the text would only be in the voter information guide.

**Mr. Petesch** apologized for not being prepared, and then stated that these statements of implication are, by law, limited to no more than twenty-five words, and that this exceeds that limit.

**SEN. GAGE** pointed out that this is the reason he did not offer this amendment, that he had suggested it in the hearing but Counsel had indicated it could not be done, perhaps because of the word limitation. He stated that he fully supports **SEN. BROOKE's** idea, that he was concerned that the language in the bill was not fully descriptive, nor was the language proposed by MtPIRG, and he thought that was a compromise to give the people a neutral look at the issue.

**SEN. BROOKE** noted that Counsel indicated there might be a way to put more into the title, that one hundred words are allowed.

**SEN. GAGE** asked if executive action could be postponed.


**CHAIRMAN HARGROVE** asked **SEN. BROOKE** if she would like to try to fit that into 25 words.

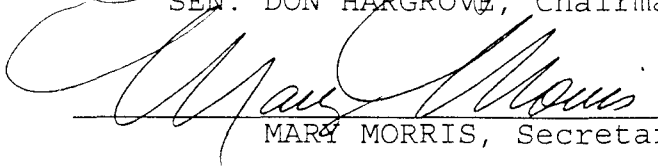
**SEN. BROOKE** responded yes, that is an option.

**CHAIRMAN HARGROVE** announced that executive action on SB 170 would be postponed. He then commended the Committee for its handling of the confirmation hearing on **Ms. Menzies**, and indicated that his intention is to limit these hearings to an hour, which would include fifteen minutes for public comment, that he thinks this is important. He added that he learned a lot in the hearing, and thinks that **Ms. Menzies** felt it was worth her time to appear before the Committee. He indicated that, on Monday, the Northwest Power Planning Council appointees, **Stan Grace** and **John Etchart** will appear before the Committee, as well as **Ralph Peck, Director, Department of Agriculture**. He added that they will wait for instructions from the sponsor regarding SJR 3.

ADJOURNMENT

Adjournment: 11:57 a.m.

  
SEN. DON HARGROVE, Chairman

  
MARY MORRIS, Secretary

DH/MM