

MINUTES

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

Call to Order: By VICE CHAIRMAN KEN MESAROS in the absence of  
CHAIRMAN DON HARGROVE, on January 28, 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 197, HB 75; SB 123; Posted  
1/23/97

Executive Action: SB 197 DP; HB 75 BCI; SB 123  
TABLE; SB 170 DPAA; SR 4 DP;  
SR 5 DP; SR 6 DP

HEARING ON SB 197

Sponsor: SEN. LORENTS GROSFIELD, SD 13, Big Timber

Proponents: John Shontz, Montana Association of Realtors  
Joan Mandeville, Montana Telephone Association  
Angela Janacaro, Montana Mining Association

Opponents: None

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, Big Timber, said SB 197 tightened  
agency rulemaking. He referred to (EXHIBITS 1 & 2) and said they  
were examples of when an agency wanted to make a rule, it had to

provide public notice of what the rules were and the justification for them. (EXHIBIT 1, Page 1948, #3). SEN. GROSFIELD said he was involved with the bill from the 1995 session which this rulemaking process was responding to and decided the justification was woefully inadequate. i.e. some rules went beyond the adoption of the bill while others had nothing to do with the bill. He referred to (EXHIBIT 1), Page 1948, #4, and said "current interpretations of the law" didn't specify whose interpretations, nor did it say where it was in conflict. He reiterated how one of the purposes of SB 197 was to tighten the rationale the agencies gave for rulemaking, i.e. have them explain in more detail why they were adopting rules, etc.

SEN. GROSFIELD again referred to (EXHIBIT 1), Page 1948, #5, and said proposed new rules followed in the text; justification for the new rules was on Page 1951, #6. He said "minimum standards and guidelines" had nothing to do with 1995 legislation, but were passed in 1976 as a result of what the Board of Natural Resources put together. He said he went to John McMaster of the Code Committee who agreed with the points SEN. GROSFIELD was making, and said it was typical of rulemaking. He said Mr. McMaster referred to the Supreme Court decision (as illustrated by (EXHIBIT 2), Page 22, "administrative agencies have only those powers specifically conferred upon them by the legislature", explaining the Board of Barbers adopted a rule which went beyond that. SEN. GROSFIELD quoted from the underlined sections on Pages 22-23 of (EXHIBIT 2), explaining it said even though an Agency may be consistent with the statute, it could not adopt rules which were not envisioned by the legislature. He said he used some of the concepts of the Supreme Court decision in the bill, especially on Page 3, Lines 6-10; 21-27.

{Tape: 1; Side: A; Approx. Time Count: 10:12 a.m.}

#### Proponents' Testimony:

John Shontz, Montana Association of Realtors, said he was of the opinion the expansion of power in the administration of law was stretching itself in both state and local government; in fact, the tragedy of SB 197 was it didn't include local governments. He gave examples of the stretching of powers, one of which was the Board of Realty Regulation was asked by a licensee to interpret a section of the statute which governed the license. He said the Board did two things: (1) Proposed a rule which was contradictive to the legislative intent which was clearly established in both the bill and legislative record; (2) Issued a declaratory ruling, something it did not have the power to do -- District Courts have the power to issue declaratory judgments. Mr. Shontz said it was important the segregation of powers, those who administered the law clearly understood that, not writing the law, was their role. He said SB 197 got to the heart of the issue; for that reason, he urged its support.

**Joan Mandeville, Montana Telephone Association,** urged the Committee's support of SB 197, explaining they had ongoing concerns with the Public Service Commission (PSC) and some its rulemaking. She said it was the typical argument they took the broad statutory authority to supervise the activities of the utilities; one of the most recent examples was the effort they did with affiliated interest reporting. They put out about 100 pages of proposed rules for affiliated interest which went into a large ongoing process for rulemaking. She said their associations spent thousands of dollars in legal fees and there was not a single proponent for those rules; however, in the end the PSC did not adopt them. **Ms. Mandeville** said the problem with her example was not if they had authority to look at affiliated interest, but if they had authority to do a very broad rulemaking which required a huge annual reporting. She said SB 197 would help bring a more narrow focus to when they could do rules and which topics they could address; therefore, she urged the Committee's support.

**Angela Janacaro, Montana Mining Association,** said SB 197 was an excellent vehicle in keeping the administrative side to administrative issues only; legislators were here because their constituents felt they were the most capable of making the laws. She said many times the mining industry saw the regulators bringing in their own personal objectives on mining and using them to regulate the mines. She said they supported SB 197.

Opponents' Testimony: None

{Tape: 1; Side: A; Approx. Time Count: 10:19 a.m.}

Questions From Committee Members and Responses:

**SEN. DELWYN GAGE** said he felt blame should also be placed on the legislature who wasn't paying enough attention to the Statement of Intent (which often said the Statement was required because it granted rulemaking authority) and on the Committees who were not reviewing them more thoroughly. **SEN. LORENTS GROSFIELD** said he agreed, explaining what happened was the Statement of Intent didn't get the focus the body of the bill got. He said a bill was passed which got rid of the Statement of Intent; however, the bill required more statutory language which would guide agencies in their rulemaking.

**SEN. GAGE** asked what an agency or department would do if something was mandated but not carried out, or if someone said they were mandated but wouldn't do it because they didn't think it was necessary, no matter what the legislature said. **SEN. GROSFIELD** said "a statute mandating the agency adopt rules establishes the necessity for the rules, but does not standing alone, constitute the reasonable necessity for a rule; therefore, he thought it was taken care of.

**SEN. GAGE** said he understood the Code Committee reviewed the rules; it was part of their responsibility to determine if they were out of line and to look at the Statement of Intent. **SEN. GROSFIELD** agreed, explaining a booklet of published rules came out every two weeks, and were the official publication of the Secretary of State's office. He said some of the rules were fairly lengthy and it was very hard for anyone to go through them with a fine-toothed comb; in fact, sometimes things to be changed would be brought to their attention by persons or agencies.

**SEN. FRED THOMAS** referred to Page 3, Lines 21-26, and asked for clarification. **SEN. LORENTS GROSFIELD** said it talked about necessity for a rule; however, just because an agency was required to make rules didn't mean they all were justified.

**SEN. THOMAS** commented the necessity did not justify the rule. **SEN. GROSFIELD** corrected the comment, saying the necessity of rulemaking did not give discretion to adopt any rule they wanted.

**SEN. THOMAS** asked about the bill addressing the repeal of a rule. **SEN. GROSFIELD** said it was addressed briefly at the top of Page 2. He said the agency published this publication which said there was a deadline date by which a person could request a hearing. That process would include proponents, opponents, suggested rule changes; at some point the agency would look at the testimony and possibly make changes. If the rule changes would be significant, it could be a question of whether the process would have to be started all over. He said it already was a six-month process and if it was constantly extended, nothing would be accomplished; therefore, compromise had to be reached. As to appeal, there was a process by which a person(s) could approach the Code Committee to let them know they were out of line, but he wasn't sure how it worked.

**SEN. KEN MESAROS** referred to Page 3, Line 6, and asked if "substantive" was defined. **John McMaster** said "substantive rules" under the main definition of Section 2-4-102 of MAPA was defined as those rules which had an enforcing effect of law, as opposed to those which were adjective or interpretive.

**SEN. GAGE** referred to Page 3, Lines 19 & 27, and asked if it answered the question of repeal. **SEN. GROSFIELD** said it might; however, the question was who was going to raise the question and with whom would it be raised. **John Shontz** said the Code Committee met on call; generally what happened was when affected parties requested the Code Committee to examine a particular rule, the chairman would call the meeting. **Mr. Shontz** said the Code Committee had several options: (1) Not stopping the implementation of a rule; (2) Put into the rules a statement it did not believe the rule the agency was promulgating was statutorily correct. He said in one instance the Code Committee looked at the statute, but not the Statement of Intent, and allowed the Board to adopt rules which were contrary to the statute. He said the solution could come through one of the

following options: (1) Request for the Attorney General's opinion to overturn the rule; (2) Come to the legislature for a new rule; (3) Go to District Court to ask for a declaratory judgment. He said the Code Committee had no power other than putting a notice in the rules it was illegal to do anything.

**SEN. MESAROS** asked **David Niss** the same question and was told this issue had been a struggle for years in other states as well as here in Montana. He said the basic issue was the separation of powers in the Constitution between the legislature and the executive branch, i.e. how far can the legislative branch go without executive concurrence in reversing an act of an agency which was part of the executive branch. He said in Montana that issue was impacted by the case of Legislative Finance Committee vs. Judge which said an action the legislature had to make could not be taken alone by a committee of the legislature; in other words, a legislative resolution could not do what only a bill signed by the executive could do. He commented the effect (under 2-4-406) of the statement published by the Administrative Code Committee in response to a rule which the Committee believed to be illegal, was to reverse the burden of proof to the agency rather than the challenger. He said the Administrative Code Committee had to rely mostly on the political clout of its members as opposed to the legal authority of the Committee itself.

*{Tape: 1; Side: B; Approx. Time Count: 10:42 a.m.}*

**SEN. DELWYN GAGE** said both he and **SEN. GROSFIELD** had been successful in challenging rulemaking authority and asked for other people's experiences regarding the agencies responding to their concerns. **John Shontz** said his experience had been when dealing with a rule which was promulgated by an agency which was the executive branch, the hearing was usually fair; however, there were other agencies and boards where the experience was less successful. He said he thought SB 197 would bring some of that to a halt.

**Bill Squires, General Counsel for Montana Telephone Association,** said his experience had been exclusively with the Public Service Commission (PSC). He said their success had been fairly good in getting the Commission to change or modify the proposed rules, or drop it altogether; however, it usually was a process which took about a year and was extremely expensive.

**Closing by Sponsor:**

**SEN. LORENTS GROSFIELD** said there were issues of practicality and of separation of powers. The Montana Administrative Procedures Act (MAPA) was passed because the legislature sensed it could not effectively deal with all the needed detail regarding administrative law; it was probably still the case. He said the question was how much guidance did they want to give -- he said he sensed from talking to people, they felt the more guidance the

better; therefore, SB 197. SEN. GROSFIELD said it would be fine with him if the Committee would want to tighten the bill further, but he hoped for a DO PASS.

{Tape: 1; Side: B; Approx. Time Count: 10:48 a.m.}

VICE CHAIRMAN KEN MESAROS relinquished the chair to SEN. DON HARGROVE, who had returned.

#### HEARING ON HB 75

Sponsor: REP. ANTOINETTE HAGENER, HD 90, Havre

Proponents: Tony Herbert, Department on Administration  
John Shontz, Montana Association of Realtors

Opponents: None

#### Opening Statement by Sponsor:

REP. ANTOINETTE HAGENER, HD 90, Havre, said HB 75 was a result of a legislative audit of the bulletin board system of the Department of Administration; it only proposed to change the outdated language of "bulletin board" to updated "electronic access system." She referred to Page 1, Lines 16-18, and said the new definition would include that language. She said the language change would allow greater flexibility and efficiency in providing public access to information on state government, legislation and other activities. She said much information from state agencies was available to the public but access was limited because the bulletin board system limited what was placed on it. We are in the electronic information age and we must adapt ourselves to it; therefore, the expansion of the bulletin board system. She said our state agencies as well as the public were very aware of what modern electronic communications could provide and state agencies were looking to provide more comprehensive information. There was no fiscal note because there were no additional expenditures; it was simply a matter of adding it onto another system as well as the bulletin board system itself. She stressed HB 75 didn't abandon the bulletin board system nor usurp anyone's authority or provide any system's operation use; it simply recognizes the changes taking place in electronic communications and public demand and allows for the transition to take place.

REP. HAGENER said the University System suggested friendly amendments (EXHIBIT 3) which simply clarified some points. She asked HB 75 BE CONCURRED IN.

#### Proponents' Testimony:

Tony Herbert, Department of Administration, read his written testimony. (EXHIBIT 4)

**John Shontz, Montana Association of Realtors**, said during the 1995 session, about 200 realtors accessed the state bulletin board on a daily basis; however, this session they encouraged their people not to use the internet access instead of the bulletin board because the state had provided an 800-line telephone service access into the bulletin board, which cost the taxpayers money. He said internet access cost wasn't there, so it actually was a money saver. He encouraged support of HB 75.

{Tape: 1; Side: B; Approx. Time Count: 10:57 a.m.}

Opponents' Testimony: None.

Questions From Committee Members and Responses:

**SEN. FRED THOMAS** asked about the amendments and **Tony Herbert** said they looked good.

**SEN. THOMAS** asked if the internet could access the legislators personally. **Tony Herbert** said if a legislator had an e-mail system at his or her home or business, and if there was an access method in, e-mail could be left.

**SEN. THOMAS** asked if they could leave him a message after accessing all the bills. **Mr. Herbert** said that capability could be provided but the Legislative Council had purposefully chosen to not allow that option.

**SEN. THOMAS** asked the same question of **John Shontz**, who said the legislature had effectively closed off the ability of any citizen who didn't live in Helena to reach a legislator without paying a cost, i.e. no 800 telephone access, no free FAX access and difficulty in calling and tracking a legislator down. E-mail access to/for legislators would be very useful because it wasn't an additional cost for many people.

**SEN. VIVIAN BROOKE** referred to Sections 4 & 5 the language was changed and wondered if those were the only other two areas in which "bulletin board" was referenced. **REP. HAGENER** said the reason fisheries was included was because of its reference to the bulletin board system; there were no other references anywhere.

**SEN. BROOKE** commented when she saw the fishery section in the bill, she thought the bulletin board would be referenced in other statutes and would have to be changed. She said she had faith in the editors that everything had been changed over. **REP. HAGENER** said she assumed it had been done.

**SEN. BROOKE** asked **Tony Herbert** the purpose of the amendments (**EXHIBIT 3**) and was told the intention of HB 75 was to broaden the ability to provide for electronic access and the University System as well as the State Library pointed out an inaccurate technicality -- the bill indicated the only electronic access for people would have to be provided through his office at the

Department of Administration, which certainly was not the intention. The amendment clarified that language and kept the bill on track.

**SEN. BROOKE** asked if **Tony Herbert** had any ideas about opening the electronic access for legislators and was told it would cost money; however, he suggested computer terminals at either their desks in their offices or on the floor, they could be connected to the Department's e-mail system which was connected to approximately 6,000 state employees, University people and Montana citizens who had an internet connection. He said there was a lot of equipment turnover so things could be worked out where messages could be directed if the legislators had PCs.

**SEN. BROOKE** said she had been told the Capitol building needed much more hard wiring for the kind of capability. **Mr. Herbert** said there were some wiring problems; however, that would be upgraded during the next interim from money in the Capitol Restoration Fund.

**SEN. DELYWN GAGE** referred to Page 2, Line 18, and said he assumed there was no charge for the public to access. **Mr. Herbert** said the language was in the old bulletin board language so they just kept it in. He said Amendment #4 added the language, "that the department provides" meant now that the Department sanctioned the systems offered elsewhere; there was no direct citizen charge.

**SEN. GAGE** asked if it was anticipated that as the electronic systems expanded, there might be a charge to recover the cost of the agency. **Tony Herbert** said there was an increase in the daily network rate because new services were being offered. He said in the future, he could see a requirement to reconcile the costs which came with providing this kind of access; however, he felt they would be worth taking on because both the legislature and executive agencies could offer better service to the public.

**SEN. FRED THOMAS** said an offset would be less usage of postal service and other related services; therefore, the whole cost would not be totally additional.

Closing by Sponsor:

**REP. ANTOINETTE HAGENER** asked for support for HB 75.

*{Tape: 2; Side: A; Approx. Time Count: 11:09 a.m.}*

**SEN. DON HARGROVE** relinquished the chair to VICE CHAIRMAN **KEN MESAROS** so he could present SB 123.

HEARING ON SB 123

Sponsor: **SEN. DON HARGROVE, SD 16, Bozeman**

Proponents: None.



Opponents: None.

Opening Statement by Sponsor:

SEN. DON HARGROVE, SD 16, Bozeman, said SB 123 came before the Committee and seemed like a simple bill; however, it didn't turn out that way. He said it removed the \$.30 levy per \$1,000 from the University System when it had a bond issue. He said he understood the University System got no benefit from the audit but when he checked the fiscal note and then checked with the auditor who said the University received significant benefit, though not exactly in the same way; also, other agencies would have to make up the difference. SEN. HARGROVE said he then determined he could not continue to support SB 123, though SEN. VAN VALKENBURG in coordination with Mr. Frazier from the University of Montana wanted to present it. He found an empty bill in which to draft it and SEN. HARGROVE assumed it would be the same bill as SB 123. He urged the Committee to discuss SB 123 and then TABLE it.

Proponents' Testimony: None.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. DELWYN GAGE commented he served on the Capital Advisory Committee which looked at the whole area of bonding and the \$.30 fee. At one of the meetings, the Fund had built to a point where they had to determine if they wanted to continue the fee or did they want to determine until the Fund got down to a certain level, the fee would be discontinued. He said as he recalled, it was decided to continue the fee for at least another year; therefore, it would not be missed greatly if the System didn't pay it. He said, though, there was no question in his mind the University System received some benefit from it, especially from the firm hired by the state to give bonding counsel; therefore, he hated to see the fee discontinued.

Closing by Sponsor:

SEN. DON HARGROVE said it was a fairness issue.

EXECUTIVE ACTION ON SB 123

Motion/Vote: SEN. VIVIAN BROOKE MOVED TO TABLE SB 123. Motion CARRIED UNANIMOUSLY.

VICE CHAIRMAN KEN MESAROS relinquished the chair to CHAIRMAN DON HARGROVE.

EXECUTIVE ACTION ON SB 170

Motion: SEN. VIVIAN BROOKE MOVED DO PASS ON AMENDMENTS sb017005.adn (EXHIBIT 5).

Discussion: David Niss explained the amendments.

SEN. VIVIAN BROOKE said she was proposing amendments which had language which clarified what the voter would do when voting "yea" or "nay". Mr. Petesch explained there were word limitations in the title on the ballot as well in the ballot itself. She said she understood the amendments fell within the legal limitations as well as giving the voters a clear message of what they were voting on, i.e. a change in both signature and percentage requirements.

SEN. DELWYN GAGE said he spoke in favor of those amendments because many people didn't read the information as it went out. He said the title on the ballot gave them a better understanding of what they were doing.

SEN. FRED THOMAS offered the amendments did the opposite because the addition of "when increasing the signature requirements from five to eight percent", it was not defined as to what was increased; therefore, something was added which potentially was confusing. "Increasing the signature requirements" covered what was being done, but detail was added without explanation, which couldn't be added because there was no room. He said he understood what SEN. BROOKE was trying to do but he wasn't sure it was being accomplished.

SEN. BROOKE asked if the prepositional phrases would still remain, "of the qualified electors," "[tape was too garbled to transcribe accurately]. David Niss said they would.

SEN. THOMAS said his concern was the majority of the voters would read the two sentences and make up their mind; however, the others would read the booklet and enter the voting booth knowing how they were going to vote. That was why the language was critical -- he felt language was being added which was potentially confusing to them.

SEN. GAGE said if it was read as it currently was, people wouldn't know what the increases were or what signature requirements would be.

SEN. DON HARGROVE asked if SEN. BROOKE would segregate Amendment #4 and she agreed. She suggested moving just the title change, separating #1 and #2 and then going to the other language.

Substitute Motion/Vote: SEN. VIVIAN BROOKE MOVED DO PASS ON AMENDMENTS #1 AND #2. Motion CARRIED UNANIMOUSLY.

Motion/Vote: SEN. VIVIAN BROOKE MOVED DO PASS ON AMENDMENT #3.  
Motion CARRIED 5-1 WITH SEN. FRED THOMAS VOTING NO.

Motion: SEN. VIVIAN BROOKE MOVED DO PASS ON AMENDMENT #4.

Discussion: SEN. DON HARGROVE said he was concerned it was changing pace and suggested it was confusing because it seemed to be hanging out there by itself.

SEN. BROOKE said any time administrative requirements for signature gathering were dealt with, many people wouldn't have the basic knowledge to reference any of this information. It's supposed to address the representative districts, rather than the 1/3 it was going to fix; however, the information seemed too cumbersome for the ballot language.

Vote: Motion DO PASS AMENDMENT #4 FAILED 1-4 WITH SEN. VIVIAN BROOKE VOTING YES.

Motion: SEN. FRED THOMAS MOVED DO PASS ON SB 170 AS AMENDED.

Discussion: SEN. VIVIAN BROOKE voiced testimony from the bill and said the 25-year process really hadn't shown the numbers warranted a change; in fact, she was appalled they were moving into a more professional initiative approach, which was what she thought SB 170 was. She said the Anti-Hate group paid someone from California almost \$30,000 [garbled], which was not a Montana effort; therefore, not a citizen ownership. She said she felt the Constitutional Convention intended for the citizens to speak through this process.

SEN. HARGROVE said they were now determining how to electronically accept valid signatures from long distances.

Vote: Motion DO PASS ON SB 170 AS AMENDED PASSED 4-1 WITH SEN. VIVIAN BROOKE VOTING NO.

{Tape: 2; Side: A; Approx. Time Count: 11:33 a.m.}

#### EXECUTIVE ACTION ON HB 75

Motion: SEN. FRED THOMAS MOVED HB 75 BE CONCURRED IN.

Motion: SEN. KEN MESAROS MOVED DO PASS ON AMENDMENTS hb007501.ash (EXHIBIT 3).

Discussion: SEN. FRED THOMAS said the University System was trying to prohibit a situation where they had their system and the Department had theirs. The way the bill was written so the Department couldn't charge the University System just because there was a system and not because costs were incurred. He said the amendments were designed to not allow the Department to be dictatorial with the whole arena of the electronic age.

Vote: Motion DO PASS ON AMENDMENTS hb007501.ash CARRIED UNANIMOUSLY.

Motion/Vote: SEN. FRED THOMAS MOVED HB 75 AS AMENDED BE CONCURRED IN. Motion CARRIED UNANIMOUSLY. SEN. FRED THOMAS will carry HB 75.

EXECUTIVE ACTION ON SB 197

Motion/Vote: SEN. KEN MESAROS MOVED DO PASS ON SB 197. Motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SR 4

Motion/Vote: SEN. FRED THOMAS MOVED DO PASS ON SR 4. Motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SR 5

Motion/Vote: SEN. KEN MESAROS MOVED DO PASS ON SR 5. Motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SR 6

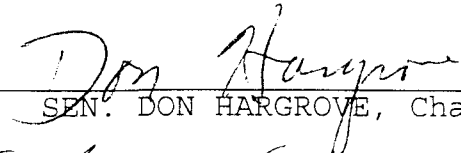
Motion: SEN. FRED THOMAS MOVED DO PASS ON SR 6.

Discussion: SEN. DELWYN GAGE gave a little background, saying he served on the Northwest Power Planning Advisory Council. Some of the things didn't get done, but he wanted the Committee to be aware one of the big issues was model standards for energy conservation in the area served by Bonneville, an area which was quite small in Montana; they were trying to convince the folks to exempt all of Montana or at least that part of Montana from the model standards. He said another question was how the model standards were going to be enforced on the Indian reservations.

Vote: Motion DO PASS ON SR 6 CARRIED UNANIMOUSLY.

ADJOURNMENT

**Adjournment:** The meeting adjourned at 11:44 a.m.



SEN. DON HARGROVE, Chairman



MARY MORRIS, Secretary

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JANICE SOFT

DH/MM