

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN DON HARGROVE, on February 10, 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: SR 8, 2/5/97; SB 271, 2/5/97
Executive Action: HB 41 BCIAA

HEARING ON SR 8

Sponsor: CHAIRMAN DON HARGROVE

Proponents: David Owen, Montana Chamber of Commerce
Judy Browning, Chief of Staff, Governor's Office

Opponents: None

Opening Statement by Sponsor:

CHAIRMAN HARGROVE welcomed Pat Haffey, Commissioner of Labor, Department of Labor and Industry, stating that this is not just a pro forma process, but is a very significant portion of the democratic process in Montana, in that it allows the people to participate in the confirmation, through their elected representatives, of those people who do have an effect over the lives of almost everybody in the state, noting that is why **Ms.**

Haffey is here. He explained that she would be given an opportunity to make a statement concerning her feelings about her qualifications, why it is important that she continues to serve the people in this particular capacity, and anything else that she may feel is pertinent. He indicated that the regular hearing format will be followed as closely as possible, that proponents and opponents will be given an opportunity to testify following **Ms. Haffey's** comments, the Committee will have an opportunity to ask questions, and then **Ms. Haffey** will be given an opportunity to make a closing statement. He added that he anticipates this process to take no longer than an hour.

Pat Haffey, Commissioner of Labor, Department of Labor and Industry, remarked that she appreciates the friendliness and comfort with which the Committee has welcomed her, and indicated that she also appreciates the professional comments **CHAIRMAN HARGROVE** made in terms of the Committee's responsibility to the people. She stated that it reminds her, and each of the appointees, what their job is really about.

Ms. Haffey reported that she graduated from Carroll College in 1983, as a returning student, noting that she really appreciated going back to school at time, that her children were off to school and that, by this time, she had a pretty good idea of what she wanted to do. She indicated that she was interested in organizational communications, that she formulated a major program for herself, and worked out of the communications unit at Carroll College. She added that she received her degree in three years, and then worked for a short time with IBM on a marketing survey to find out what the computer needs of the 28,000 registered businesses in the State of Montana would be in the next three to five years. She indicated that it was very interesting to look at the economy and the market, and working with some of those businesses who are now filing unemployment insurance contributions and dealing with Workers' Compensation, and recognizing that even the small operations probably have some type of automation that they are using. She continued that she then went to work for the State of Montana in various personnel positions, progressively moving into the position of Personnel Officer, that she worked at the Department of Fish, Wildlife and Parks, the Department of Administration, the Department of Revenue and the Department of Justice in personnel functions. She reported that, for the last four years, she served as the Education Policy Advisor to the Governor, noting that she met many educators with advanced degrees who wondered what she was doing as an education policy advisor to the Governor, that she spent some time justifying her existence, but she feels very satisfied that they had a good relationship, and believed it was a good fit. She explained that she thought it was a good fit because she had spent years trying to match job skills and education accomplishments of applicants applying for jobs in state government, with the required skills outlined in the many positions she worked with in those four agencies, and that it was often a challenge. She added that she recognized they spent a

lot of money training individuals to fit into positions, and a lot of time replacing people who did not quite fit, the fit was never right to begin with, and that takes a lot of management time and supervisory time. She indicated she found that a very important piece to bring to the education realm. She further reported that she was the advisor, during a time when businesses were starting to listen to educators and visit with educators, and explain to educators exactly what they would like the education system to provide, noting that it does not seem that unusual but that, about four to six years ago, that was unusual, that it seemed as if the business world existed in one place, and the education world existed in another, and she would like to believe that she helped facilitate, at least in Montana, some of the connections that were made.

She stated that she is proud to say that she participated in a number of good projects during the last four years, one of which included the collaborative bargaining agreements that are present on every campus, now, noting that a lot of time was put into those issues, and there was some controversy, but that she really believes they accomplished a good deal in terms of credibility to the taxpayers for education. She added that educators came a long way in sharing some of the things that, previously, they did not think was necessary to share, and she thinks they brought some issues forward to the legislators, the Board of Regents, and the public, that were worthy of discussion. She noted that she spent several Saturdays driving to Missoula, where the first agreement was worked on, and remarked that she thinks it was time well invested, that, after spending eight-hour days talking about issues, suddenly the controversial aspect, or the polarization is eliminated, and they start working on issues that really have some meat to them, and she appreciated that opportunity.

Ms. Haffey reported that she also had the privilege of working on some of the 1995 legislation dealing with creating an agency that would be known as the Department of Education, with the head of that agency as an appointed position. She stated that she assisted with working some of those bills through the legislature, and had an opportunity to look at those bills from every side, noting that they continue to look at some of those bills, although the election was pretty decisive. She indicated that was a good legislative exercise for her, that she values that opportunity, and thinks it was a good experience.

She stated that another significant project she worked on at her former position in the Governor's office, and will continue to work on in this position, is the Workforce Preparation Coordinating Council. She explained that it is a little-known Council comprised of representatives from local governments, state government, business entities, workforce entities, labor organizations, people involved in economic development, welfare programs, job training and education, from all across the state, who came together to figure out a way to spend money once, and spend it right, recognizing that the money is declining and the

federal government is looking at block grant opportunities, and trying to get out in front of that and decide what is best for Montana, starting at the local level. She added that the Council has been in place for a little over a year, that they struggled, at first, with their mission, that there were a lot of competing interests and they needed to get all those things out on the table, but that, during the next year, they hope to be able to give some direction to the Governor and the legislators in terms of where they think jobs are being developed, according to economic development, and how they might influence the spending of job training monies, including Welfare reform programs and education, so that the money is being spent correctly and productively.

She stated that, with that background, she would say that she has an educational preparation for this job, that she thinks she has a professional preparation, with her experience, and would like to add that she thinks she has a personal preparation or experience in terms of job programs and job placement. She explained that a lot of the programs they are looking at now, at the Department of Labor, deal with adult education, noting that the old acronyms were CETA, for Concentrated Employment Program, and now it is Job Training Partnership Act. She added that the history of these programs goes back quite far, at least back to the mid-50's when her mother, who raised three children as a single parent, took a typing class at the Anaconda High School, which was part of an adult education program. She noted that she did not appreciate that, when she was eight years old, but that she has come to appreciate it, now. She pointed out that, what she did appreciate was, they did not have places for her to study in or practice in, they did not have computers, that they had those old, difficult to work on, typewriters, and her mother would come home after her Thursday night lesson with a keyboard printed on a piece of paper, that she would sit at the kitchen table and work on that keyboard, but she could not get her small finger to stretch. She continued that she remembers thinking, if her mother could not get the finger to stretch, she would not pass the typing test and, if she did not, she wasn't going to get a job that could help her feed her children. She noted that her mother did not pass the typing test, but she did get a job, that she became the manager of the bookstore at Carroll College for over 20 years and, prior to that, held another job. She explained that this experience has always stayed with her in terms of investment of taxpayer dollars in programs that we sometimes wonder whether they work, noting that she can guarantee her mother paid her taxes, over the years, and it was a pretty good investment for the citizens of Montana.

Ms. Haffey pointed out that she was asked about LC 0967 submitted by **SEN. VIVIAN BROOKE** and, noting that her personnel background came to the forefront, she indicated that she immediately thought of the pieces already in place to address this issue, including the Wrongful Discharge Act, the progressive disciplinary policies in place in state government, and an ethics code, and that she

thought that a number of pieces are already present, which she believes they operate pretty well from. She noted that one of her responsibilities during the last four years was to welcome new employees to state government, on behalf of the Governor, and she knows that the program run by the Department of Administration is very specific about ethics in state government as part of their training system, but that, as an individual representing the Governor, she always made a point to those employees, about four times a year with about thirty people in each group, of an obligation to the taxpayers of the State of Montana. She added that the best way to recognize that obligation is to recognize that we are taxpayers, too, and need to watch ourselves, in terms of how taxpayer dollars are spent. She indicated that she thinks the pieces are already in place, but her concern is that they must not be doing something right because there must be some constituents out there saying that they need to have one more piece, noting that maybe it is that the need to send a message to the people in Montana that those who are spending their money to accomplish statutory obligations are doing it efficiently, and that is okay, that she thinks, if a statute needs to be passed to send that message, that is a good thing. She stated that, in that light, she would be happy to work with **SEN. BROOKE** to see how they can make those pieces dovetail, and make it not just another piece of legislation, but one that sends a good message to supervisors, managers, and employees in state government, and to the taxpayers. She expressed her disappointment that this message is out there, somehow, but said that she recognizes that it is, and hopes that they can work on it.

Proponents' Testimony:

David Owen, Montana Chamber of Commerce, indicated that he endorses **Ms. Haffey's** appointment, that he has the privilege of working with her as part of the Workforce Preparation Coordinating Council. He stated that he has had some conversations with the Commissioner-designate, where she has challenged some of what they have had to say, and he thinks that is her role, there, that they are not looking for someone who will always agree that employers have problems. He indicated that, as he continues to work in defining what the State Chamber does, the Department of Labor is probably becoming more important to them than the Department of Commerce. He remarked yes, they are concerned about economic development and a good business atmosphere, but pointed out that the issues that they really go to task on are representing employers, and the Department of Labor is a big part of that. He added that he is looking forward to working with **Ms. Haffey** in this relationship.

Judy Browning, Chief of Staff, Governor's Office, stated that she knows the Governor endorses **Ms. Haffey** as Commissioner of Labor and Industry, adding that she thinks **Ms. Haffey** is a perfect fit for the job, and knows she will be a terrific Commissioner.

{Tape: 1; Side: A; Approx. Time: 10:23 a.m.; Comments: None.}

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. BROOKE asked Ms. Haffey to describe four goals for the department, and what kinds of legislation are her top priorities this session.

Ms. Haffey responded that, regarding goals for the agency, what she would like to do is continue the good work begun by former Commissioner Laurie Ekanger in terms of focusing on service, quality and efficiency. She noted that she thinks that will entail lots of visits with lots of people who run small business programs, and who are frustrated with some of the convoluted and laborious personnel issues they have to deal with, or legal issues they have to deal with. She stated that she thinks they are on the way to doing some of that, reporting that the Unemployment Insurance Contributions Program has been working with the Department of Revenue since 1993, when the Governor asked them to look at ways they can simplify some of their wage reporting issues and, in 1995, the legislature instructed them to follow through on that project and find out if there are some ways that reporting process can be completely simplified. She added that the Department of Revenue and the Department of Labor will be proposing legislation dealing with moving the Unemployment Insurance Contributions Program into the Department of Revenue, providing for employers to fill out one form supplying all the information they need for wage reporting, for old fund tax liability and for unemployment insurance reporting and contribution. She indicated that program was well on its way by the time she got there, but she can see where there is a need for that in terms of efficiency, noting that this is one piece of legislation she can address, and also touch on the goal of providing service, particularly to small employers.

She pointed out that another approach to providing service to small employers, which is not just in the unemployment insurance area, is in the Workers Compensation responsibility at the Employment Relations Division, and the attached responsibilities of the Human Rights Commission in working with employers to simplify some of the personnel issues that they have before them. She noted that this steps away from the reporting process, and gets down to some of those disciplinary issues, some of the responsibilities under federal guidelines which overlap with those things at the Human Rights Commission. She stated that they hope to continue to work with small business people, just in discussion formats and also in major meetings, to share information with them about the laws they are required to labor under. She added that they also hope to simplify some of the dispute resolution processes available to employers or required by employers. She indicated that a diagram of their agency would show the several levels of appeals processes available, noting

that the intent was good because they wanted to give everyone an opportunity to get all of their issues brought forward, but that the process involves having an attorney, or someone to represent these individuals, and it takes a lot of state government attorney or hearings officer time, and personnel officer time, to carry the same facts forward to three, four or more venues, so they hope to simplify that responsibility, which is another goal in the broad category of serving employers.

With regard to Workers Compensation, she stated that she thinks she has to set a goal, and has had many good visits with **Chuck Hunter, Administrator, Employment Relations Division**, which houses the Workers Compensation function. She indicated that they would like to clearly define the role of that program within the Employment Relations Division, so that they are providing service to the insurers and the providers of services in Montana, and the employees who need to use Workers Compensation Insurance, and that they provide that service, as well, to taxpayers and legislators, so they are real clear on what their authority and responsibility is. She added that she thinks this is just a natural evolution that, over the last six or eight years, that whole Workers Compensation System was something which had to be looked at and dealt with, that she thinks the Governor and the legislature have done a fine job of doing that, in terms of the Workers Compensation Fund, and bringing others into the market and getting some balance out there, but they do need a service, that they have all indicated they appreciate the service, but that they have to work on where they are regulatory, where they are enforcement, and where they are providing services. She stated that one of her goals will be to work with all those people to nail down what information they need, what services they would like to have, and clearly identify what our role is. She noted that she thinks that will be a challenge, and she looks forward to it, that she thinks it will help everybody.

SEN. BROOKE asked **Ms. Haffey** what role she sees the Department of Labor and Industry taking within the FAIM (Families Achieving Independence in Montana) program.

Ms. Haffey thanked **SEN. BROOKE** for the question, stating that she thinks that is another area where she thinks they can do some cooperative work with another state agency, particularly at the local level. She reported that, in Billings, within a block or so of each of the two Job Service offices, there is an office of the Department of Health and Human Services, rendering one or another of their services. Pointing out that she recognizes the leasing responsibilities, and that they can not combine all of those offices, she indicated that she thinks they can start to combine a lot of those services. She reported that there are 23 Job Service offices throughout the state who have done their work the same way for about 60 years, that it is good work, but everyone else is looking at how they provide their services, and the Department of Labor and Industry is starting to look at how they provide services through Job Service. She added that, as

part of that study, they have come up with a three-tiered system that introduces technology, allowing for those who are independently driven to look into the technology system. She noted that it is a pretty good system called "America's Job Bank", that it has a portion for holding resumes and applications for positions based on skills, etc., that there is another section dealing with employer needs, listing the kinds of job skills they need and the kinds of jobs that are available. She indicated that another area deals with training and education for the jobs that are available, and that it even reaches into the Virtual University and some of those programs. She continued that a third portion is a labor-management information system which connects the other pieces together. She pointed out that, as part of this three-tiered program they are going to offer through Job Service, they know some people can come in and do job searches on their own, that others might need some skill assistance, once they have determined what kind of training they need, but they know that a lot of people who are involved in the FAIM program, and others, need someone to sit with them and do some career counseling, and even search for day care assistance, maybe some search for unemployment assistance, and all those things they might be eligible for, but do not know about. She noted that it will be an interesting challenge because they have Job Service professionals who have spent a lot of their years finding jobs for a host of Montanans, and their mission is not simply to find jobs for those Montanans who are on Welfare, and, at the same time, there are Welfare Counselors whose mission has been defined, in terms of lots of assistance for those individuals, but that it did not always move into the jobs area. She indicated that what they will do, which focuses on the Workforce Preparation Council, is spend the money right, the first time, and work with **Laurie Ekanger** to combine some of those programs and efforts.

SEN. FRED THOMAS asked **Ms. Haffey** to go through her top three or five legislative initiatives this session, what they are and what their status is.

Ms. Haffey responded by stating that she supposes she should begin with contractor's registration, noting that appreciates all the work **SEN. THOMAS** has put into understanding that complicated piece of legislation and helping simplify it. She pointed out that, as she walks into this agency, she thinks that is the one issue that needs the most tending, contractor's registration and independent contractor exemption, and she thinks that will be a piece they will try to work closely with, noting there are all kinds of innuendos, and her goal is to be sure they remember what their role is, which is service to the public with whatever piece of legislation passes, but their obligation to legislators is to make sure they are fully informed before they pass it. She reiterated that this would be the top priority. She then indicated that the combination of responsibilities, or the integration of Unemployment Insurance and Department of Revenue responsibilities is another one she thinks is good government,

that it is an efficient opportunity for employers, and should save employers about \$13-14 million a year, not all in hard cash, but certainly in time and reporting and follow-up. She added that she would like to follow through with that.

With regard to the technology bill they are involved in, she reported they had a very outdated Unemployment Benefit System and she has been examining that process and, recognizing that the system was built in the 1980s, was implemented in the mid-80's, but has 70's software and hardware, there have been many modifications to that system, and that she thinks the pieces that should be working well, are not. She cited the example of how they track over-pays, that it is extremely laborious and time-intensive, and she thinks they are missing something there. She pointed out that it is a piece of technology, that it is going to be expensive, and they need to look at that closely.

She indicated they do not have any legislation dealing with Job Service, specifically, but they are watching closely what happens at the federal level because the funding is decreasing, noting that she is learning up-close and personally what the term "devolution" means because, both in Unemployment Insurance and Job Service, they will be tuned into that.

SEN. THOMAS indicated that he assumes the Job Service offices are available through the Internet, and people on the Internet can contact them directly. He asked if that is the case.

Ms. Haffey reported that is the plan, the ideal, but that she does not think that has happened, simply because of staff time and the ability to prioritize and respond to that piece, noting that they have to get that piece in place because it is so much a part of the national system. She indicated that they are struggling with enough people and talent to do that job, adding that, at the same time, they are really focusing on local desires, that she is meeting the Job Service personnel in all of the Job Service offices throughout the state to find out what it is the local people want, and a lot of the people say they do not want a computer that, in the small communities in Montana, they are personally familiar with the staff at the Job Service office, who have helped them with issues over the years.

SEN. THOMAS asked, with regard to people who are on Unemployment, and are validating their unemployment, if they have to fill out something regarding the businesses or employment places they are checking, or if they just do a verbal inquiry, or what.

Ms. Haffey responded that she has asked the question, and the answer may surprise them all, or perhaps will not. She reported that, unfortunately, they do not have enough staff to be out there making sure that individuals are actively pursuing employment. She indicated that they have a pilot project, in Billings, whereby Unemployment Insurance claims are processed by telephone, noting that this seems to remove it even further, that

it does not require the individual to come into the office and make a claim, and talk to someone and confirm they have been looking for work. She indicated that, however, she is told that, in the past, a form was supplied, but that there are people in the community willing to sign a form that confirms an individual is looking for work. She stated that is a real loose piece, and they have to rely on the belief that most Montanans do want to work and are actively seeking employment. She reported they are moving ahead with the pilot project in Billings, and 90% of the people eligible for unemployment claims are using a dial-in process.

SEN. THOMAS commented that, the reason he asked the question is because a few people, recently, have asked him if they were hiring. He stated that he was almost taken aback that a couple of these individuals were so unprepared, that they were seeking employment looking the way they looked, and that his thoughts were that they were not looking for work, and why were they asking him. He added that it occurred to him that they might be on Unemployment. With regard to job training, **SEN. THOMAS** indicated that he would hope that the department, under **Ms. Haffey's** tenure, would look very carefully to any of the job training programs that they have and promulgate in the future. He remarked that he does not know that these programs have a great deal of success. He noted that, with regard to **Ms. Haffey's** mother's circumstances, that was extremely successful, but that it was the will, probably, more than education, although it took both. He then asked **Ms. Haffey** what problem areas does she see coming down the pike, the biggest three challenges in her tenure now, what they might be, if she identifies any, that the legislature might look to, particularly next session, perhaps.

Ms. Haffey responded that she would have to say the funding issue. She pointed out that, for once, she is not laying it on the state legislature, because her department is predominately federally funded, but that they certainly can see, from every indication, that the funding is going to be reduced. She pointed out that it is the devolution issue, that, at the same time they are going to be given more responsibilities, they will not have that oversight at the federal level, and they will have to take on a lot of responsibility, in terms of administration, and being sure what they do is appropriate and consistent with other states, but still appropriate for Montana. She stated that she thinks the funding issue, from the federal level, the decrease in funding is going to be a problem. She then pointed out that she thinks they need to pay attention to employee morale, because there is a lot of change going on in an agency where they have been pretty much doing the same thing since 1936. She stated that her concern is that the department be brought through that change, doing exactly what this agency is about, which is helping people adjust to change and train for future responsibilities, whether it is technology, or whether it is more client service. She added kind of changing the mentality from so much regulation to prevention kinds of things. She declared that she thinks that

will be a challenge, but she also thinks everyone can come out a winner, if they do it right, that it will take a lot of involvement and a lot of one-on-one meetings, in the communities, where barriers have been put up, particularly in job training program areas. She noted that she has already suggested that, when they go to communities, they do not just meet with the Job Service personnel, that they meet with the other providers of training in those communities, and find some commonalities, which would also be part of employee morale and customer satisfaction.

She indicated the third piece would be to uphold the reason that the Department of Labor was created, and to try to focus on the mission of providing Unemployment to people who are eligible for Unemployment because they have lost work through no fault of their own. She noted that she thinks the message out there is, if you are collecting Unemployment, there is something wrong. She pointed out that they need to work hand-in-hand with employers, and make life easier for them. She referred to the Workers' Compensation piece, reporting that they had an opportunity to define that role and she is looking forward to that. She then said that defining their role as an agency would be the third piece.

CHAIRMAN HARGROVE noted that the Department of Labor, at the federal level, provides some grant funds to our universities for research and certain projects, and asked if the State Department of Labor has any relationships with them concerning that, or any input either through the university or through the federal government.

Ms. Haffey replied that, at this point, she is not aware of one, but that she can think of a couple of vehicles, one of which would be the Workforce Preparation Coordinating Council where the Commissioner of Higher Education has been a very active participant. She indicated that she thinks, at the higher education level, they see the importance of two-year programs, noting that much of the money that comes down from the federal government focuses, through the Carl Perkins Act, on two-year programs.

CHAIRMAN HARGROVE noted that he thinks those are very good programs, that the funds are there and we should make good use of them. He then indicated that, not to be cynical, sometimes he thinks the University looks at them in terms of what is a good research project, as opposed to what the Department of Labor may be able to provide as being more practical, so that it might be worth looking in to.

{Tape: 1; Side: A; Approx. Time: 10:47 a.m.; Comments: End of Tape 1, Side A.}

He asked **Ms. Haffey** to expand a little, without taking a precise position, if she does not care to, on the pros and cons of the contractor registration bill.

Ms. Haffey stated that they have been fortunate to work with **SEN. RIC HOLDEN** over the past couple of years to see if they could all come to an agreement, and come up with a bill that resolves the issues inadvertently raised from the last piece, noting that she thinks some of that was a good deal of miscommunication and fear. She indicated they are a little concerned, at this point, with some of the provisions of that bill, and are hoping that the process will take its course. She added that they do not have a problem with some of the issues, that they think contractor registration, in itself, is a good thing, that they are not trying to hold on to it because it is their program. She indicated that there was evidence from the contractors who were present, that they think it's good. She noted that the increase in the construction industry, over the past twelve months, has been about a 6% increase. She cited the example of an independent contractor who registered, claiming the exemption, reporting that his business increased significantly. She stated that she thinks there are good reasons for that program to be in place, and they hope to work with legislators and users to keep it intact.

CHAIRMAN HARGROVE asked **Ms. Haffey** if she has a philosophy that governs the relationship her department has with the legislature, specifically outside the session. He explained that legislators have leverage to intrude themselves, by virtue of representation and oversight, and even as individuals on behalf of constituents, noting that he has had many opportunities to make a call to the various departments, present the problem, and ask what they are going to do about it. He asked **Ms. Haffey's** what her policy would be in that regard.

Ms. Haffey stated that her policy would be to provide service, to fully research the issue and respond both to the legislator, and also to whoever it is they might be representing, noting that sometimes there is a piece of information that they might need to go right to the individual with. She reported that she explained to their Budget Subcommittee that she thinks legislators play such an important role in terms of they are a Board of Directors, that they overview what they have been doing in terms of policy, and how they have been spending their money, and that is important oversight that she recognizes as their responsibility. She further stated that she thinks most legislators are also the department's clients, that most of them are involved in business, that some are employees, but they are out there feeling the ramifications of what they do during the session, together, through laws passed by the legislature, and the department carrying through those laws. She added that, as clients, they get a chance to fill out an "Are You Satisfied" card, and the department should pay close attention to that because the legislators are representing people who have related a problem. She added that she sees the legislators as their partner and she thinks, when they bring a problem to the department, it is because they are trying to help them fix it, but that the legislators will probably participate with them in the fix as

they address the issue, and work with whatever constituent brought the issue to them. She added that, by personal example, she is going to spread the message at the Department of Labor that they are client-centered, noting that she spent four years in the Governor's office, very much focused on that kind of activity, and she thinks that is the best example to spread across the street.

CHAIRMAN HARGROVE referred to budgeting, specifically prioritization, or self-evaluation. He indicated that, while the legislature may have the responsibility of conserving the taxpayers' dollars, the only people who can make intelligent decisions regarding budget priorities are those people who work with the programs in each department. He asked **Ms. Haffey** if she has a policy approach, or has given any consideration to how her department will handle self-evaluation and prioritization.

Ms. Haffey indicated that she can relate two examples which would be instructive. She reported that one administrator in the Department of Labor has indicated that they are just there to administer the program and that, if the people do not want that program, they need to be responsive to that. She indicated that she appreciated that comment because that administrator has employees, that there is a certain camaraderie and allegiance to those employees, but they are not working just to preserve a system that is in place. She then related that she hears comments about federal funding, that they need to make adjustments to comply with federal directives. She remarked that, while she has an appreciation for that, she has picked up on the spirit of the legislature which asks why we need it, why do we need to be in compliance, that, obviously, to get more money but, does the money justify the programs. She indicated that she thinks that kind of close scrutiny has gone on, in the past, in that agency, and she is not going to change that direction. She stated that they have been good, that they are working with thirty fewer FTE, adding that **Commissioner Ekanger** did an excellent job of setting the tone that they were going to be efficient, and she appreciates dealing with the results of those actions. She noted that they have a CPA who does the accounting functions, as well as some of the hearing responsibilities, and the communicator in her wants to be sure the numbers person understands the issues addressed through hearings. She indicated that they do have some combined responsibilities, noting that the administrator of their Central Services Division is an attorney, adding that she thinks they have the message, but it never hurts to continue to address it from that standpoint.

SEN. THOMAS indicated that, with regard to contractor registration and independent contractor exemption, it has been suggested, and he would like to pass this along to **Ms. Haffey**, that a 900 number be established whereby people could access the pertinent information. He stated that this could potentially

help the department immensely, and would be of great value to the public.

Closing:

CHAIRMAN HARGROVE offered Ms. Haffey the opportunity to make a closing statement. She stated that she appreciated the opportunity to respond to the Committee's questions, all of which were very good, and reminded her of their service responsibility, noting they appreciate that. CHAIRMAN HARGROVE thanked Ms. Haffey for her willingness to serve the state in a very difficult position, and for appearing before the Committee.

{Tape: 1; Side: B; Approx. Time: 10:58 a.m.; Comments: The Committee recessed for 5 minutes.}

HEARING ON SB 271

Sponsor: SEN. LOREN JENKINS, SD 45, BIG SANDY

Proponents: None

Opponents: Judy Browning, Chief of Staff, Governor's Office

Opening Statement by Sponsor:

SEN. LOREN JENKINS, SD 45, BIG SANDY, explained that SB 271 provides that, if a rule passed by an agency is objected to by a majority of the Code Committee, in writing to their Chairman, the Chairman will notify the agency of that objection. He added that, if the Committee meets during the six-month period the agency has to put the rule into the register, the agency will have to meet with the Code Committee and, if they reach an agreement, the rule can be implemented as usual. He pointed out that, if no agreement can be reached, then that rule or portion of a rule objected to can not be implemented until after the next full legislature reviews the rule. He reported that he sat on the Code Committee in 1989, and one of their problems was that they could register objections, but the only strength they had was that the objection was on record. He added that they could poll legislators, proving a rule is outside of Legislative intent, but that they could not stop implementation of a rule that they felt was outside the scope of Legislative intent, until the next Legislative session enacted another law.

He indicated that he felt helpless because somebody had to sue the agency, and the court had to rule that the Code Committee had objected to the rule as being outside of Legislative intent, noting that he does not think the legislature should have to have the courts uphold their intent. He pointed out that legislators are elected for two years, not ninety days, that they work full-time and serve on various committees during the interim, including the Revenue Oversight Committee and the Legislative Finance Committee, and he does not think having legislators look

at the rules implementing laws passed by the legislature is outside the scope of their business. He added that the rules cause more problems, after they get home, than the legislation they pass.

Proponents' Testimony: None

Opponents' Testimony:

Judy Browning, Chief of Staff, Governor's Office, stated that she hesitates to rise as an opponent because of her respect for SEN. JENKINS, but pointed out that this bill, with minor changes, is the same bill proposed in the 1995 Session, which was vetoed by Governor Racicot. She distributed copies of the Governor's veto message (EXHIBIT 1), attached, and explained that this is a separation of powers argument, that the Executive Branch has the authority to execute the laws and, while they understand the frustrations legislators have with rulemaking, a committee can not be delegated authority to delay implementation of the law, because only the full legislature may repeal a law. She pointed out that the Administrative Code Committee does have the ability to lodge comments and concerns, that it can poll the legislators, noting that their practice is to contact the sponsor of the proposal before the agency does their rulemaking. She indicated that a bill has just been passed by the legislature, sponsored by SEN. J.D. LYNCH, which requires the legislature to make clear, when it delegates rulemaking, what kinds of rules it does not want an agency to issue, and there are protections. She stated that the Governor's objection is that it usurps the power of the Executive to implement laws, by giving a committee the ability to, essentially, appeal the effect of the law.

Questions From Committee Members and Responses:

SEN. KEN MESAROS asked SEN. JENKINS what the changes are, from the 1995 bill.

SEN. JENKINS responded that the only change is that the 1995 bill provided that a rule would not become effective until May 1st, after the regular Legislative session, and SB 271 provides a rule would not become effective until the day after adjournment of the regular session.

SEN. THOMAS asked SEN. JENKINS if the Committee indicates they have difficulty with a rule or a portion of a rule, does the legislature have to act on it in the next session, or do they act on it only if they wish to.

SEN. JENKINS responded that is correct.

SEN. THOMAS pointed out that this would not allow the Committee to repeal a rule, that the rule will still take effect, just at a later date, and that this is not so much an expansion of Legislative power, but an expansion of the rulemaking process in

that the legislature is not granting the authority to repeal a rule, but is asking that the Committee have oversight and, if there is a problem, delay implementation of that rule. He asked **Ms. Browning** if that is a lot different than a repeal.

Ms. Browning indicated that she sees **SEN. THOMAS'** point, but stated that the bottom line is that the Committee, under this proposal, would have the authority to delay or suspend implementation of any or all rules until the next set regular session is held. She pointed out that the legislature could then appeal any rules that it felt were beyond the authority of the Executive Branch, but the ability to delay or suspend, for two years, implementation of a rule is the ability to repeal the effect of a law that has been passed by a majority of the legislature. She noted that this would be giving the committee the authority to, in effect, do away with the intention of the majority of the members of the legislature.

CHAIRMAN HARGROVE mentioned separation of powers and the fact that the Governor referred to constitutional questions in his letter, and said that he does not know how far that would be pursued. He indicated that they have trouble defining what representational government is, and pointed out that a committee of 150 represents the 800,000 people of the state, and asked if they could keep boiling that down so that a committee of 8 could represent those 150, in terms of enforcing legislation, as far as a constitutional look at the issue.

Ms. Browning responded that, if his question is would this be legal, if the majority of the legislature was eight members, they could take action when they are acting as a legislature but that, when there are 150, there is a legal problem with delegating authority to a committee when the whole legislature is required to act. She reported that this has been addressed in *Board of Regents vs. Judge*, that the Montana Supreme Court ruled, when there was an attempt to give authority to the Legislative Finance Committee, that this authority should be exercised only by the entire legislature, when it is acting as a legislature, that is, passing legislation and repealing legislation, that it has to act as a whole body, rather than delegate that authority to a committee. She added that she understands the intention is well-meaning, that **SEN. JENKINS** is obviously trying to get to a problem that many legislators are concerned with, and that she is just speaking to the Constitutional problem with this proposal.

CHAIRMAN HARGROVE asked **SEN. JENKINS**, if the Administrative Code Committee could not reach an agreement, would they bring a committee bill before the legislature.

SEN. JENKINS indicated that they could bring a committee bill before the full legislature in that session. He explained that, if the problem is not addressed by the full legislature, the rule goes into effect in law. He noted that he agrees with **Ms. Browning**, that they can not delegate the authority to the

Committee, as a body in itself, to change that rule, pointing out that this would only delay implementation of a rule until after the next Legislative session in order to give the full legislature a chance to look at it.

CHAIRMAN HARGROVE noted that most bills have an effective date, and that this would effect them all, in a sense. He asked if they would have to place an exception clause in all legislation.

SEN. JENKINS responded no, that legislation without a specific effective date becomes effective October 1st after the session. He indicated that rules have to be within the scope of the law or the intent of the legislature and, if they are, the Code Committee has no objections.

CHAIRMAN HARGROVE indicated that he was on the Administrative Code Committee in the last interim, that they only met twice and, in at least one instance and perhaps both, the Committee sent a letter to the Governor that they felt the complaints were valid. He asked **Ms. Browning** how she felt the Governor would respond if the Committee says they think the department was wrong, and gave the reasons.

Ms. Browning responded that she thinks she knows the instance he is referring to, and stated that it is the Governor's personality to address these things as a judge would, that he did take the concerns expressed by the Code Committee seriously. She reported that the Governor talked with the department and gathered all the evidence, and that he felt the Administrative Code Committee had not had all the evidence before them when they made that decision and determined that, although he did not take their concerns lightly, they were in error. She stated that, from experience, she knows that is pretty rare, although it was a unanimous decision of the Code Committee to object to that particular rule. She added that she thinks, in most instances, especially since they contact the sponsor when the rulemaking process begins, they take the concerns seriously and, obviously, if a member of the legislature who has experience with the law being passed, for which the rules are authorizing, has some concern, that is serious and probably reflects other people's feelings, and they try to address those. She indicated that she knows there is a real problem with separation of powers, and knows legislators would like to have more ability and authority, but pointed out that there are oversight committees, audit committees, and the ability through the Code Committee to make comments and poll legislators. She added that they do try to reach out and find out what legislators want, but that, obviously, if someone calls because they have heard about a rule, it is a problem and they try to address it, but the fact of the matter is that implementation of laws is to be carried out by the Executive Branch, and this is the way the system is set up.

{Tape: 1; Side: B; Approx. Time: 11:23 a.m.; Comments: End of Tape 1, Side B.}

CHAIRMAN HARGROVE asked **SEN. JENKINS** if he thinks there is potential for someone to write an emotional letter to the Code Committee regarding a personal issue, and that the Code Committee would meet and, perhaps, act on that basis in their ruling.

SEN. JENKINS indicated that he thinks a lot of the issues brought before the Code Committee are personal and, sometimes, emotional issues. He pointed out that these issues can sometimes be handled through mediation, that the object is not necessarily to lock a rule out, but to make sure that legislative intent is included and, if there is an objection to the intent or the scope of the law, the Code Committee should have the right to present that objection to the agency. He added that, if an agreement can not be reached, then they should have the right to wait until the next full legislature meets, noting that the very worst case scenario would be a delay of two years, that it would be a year in most cases.

SEN. MESAROS noted that, with regard to implementation of legislation, anything and everything the legislature does is open for interpretation. He reported that he introduced a piece of legislation, last session, which was quite narrowly focused but that, through interpretation, the rulemaking process ended up somewhat different than the intent. He congratulated the Governor on his intent to have more involvement in the process, but pointed out that there were several opponents in trying to clarify the intent and, although it seemed to be fairly simple, it fell on deaf ears. He noted that, to carry that through to full resolution, he perhaps should have had another bill drafted to clarify the first piece of legislation. He asked **Ms. Browning** if there is any more that the administration, the Governor's office can do to open up communication and coordination with sponsors of legislation to see that the intent is carried through from the Legislative process to implementation.

Ms. Browning replied that she thinks there probably are more things that can be done, that they could work harder with the agencies to try to get them to focus on interpreting bills that have been passed. She noted that the Montana legislature passes a lot of legislation in a very short period of time, and does not have the luxury Congress has for very long deliberations about the meaning of a bill. She reported that, in her experience, bills have passed that she does not think the members had full knowledge of the extent of the legislation, that there is not enough time to discuss how a bill will impact their constituents, and perhaps it has an impact they did not even know existed. She added that sometimes a bill is passed and, by the time it gets to the rulemaking stage, agencies will not accept what one or two members say is the intent, that they sat through the hearings and think they understand the intent, and are trying to carry it out the way it is written. She stated that it would be much more helpful if there were more legislative history, more discussions by the sponsor when a bill is proposed and discussed, instead of it being rushed through. She acknowledged that there is not very

much time, and it is a problem, but pointed out that what happens often, and what they are doing with this bill is, when a law is passed, they want it to go into effect October 1st, but this bill will give a small committee authority to delay implementation of that law, through its rules, which is going to the other extreme, noting that they consider it to be unconstitutional.

She maintained that there must be a way to create a better legislative history, and reiterated that the bill **SEN. LYNCH** sponsored, and which passed, may be helpful in that they should try to make clear, on the record, what kinds of rules they are not suggesting that a particular piece of legislation authorize. She added that would be very helpful to the agencies, that they rely on legislative history in the rulemaking process, and she thinks the best way to address the problem is to make sure there is clear legislative intent on the record.

SEN. THOMAS stated that it seems to him the rulemaking process is not the Executive Branch's business, at all, in that it is a function of finalizing the writing of the law, because the rules really have the same authority as law, that they carry out the law. He pointed out that the legislature gets their authority from the Constitution, which is very brief law, that they write further laws which are not as brief, and the rules are even less so, and it is really just an extension of the process of writing law. He then referred to the letter distributed earlier (**EXHIBIT 1**), noting that the Governor has pointed out that faithfully executing the law is in the Governor's hands, and is different than writing the laws. He noted that the legislature can grant to a department the ability to write rules, and asked can the legislature not have the ability to delay implementation of those laws because they think it is outside legislative intent.

Ms. Browning replied yes, that is correct, that the legislature does not have the authority, under the Constitution, to give a small number of its body the authority to suspend implementation of a law that a majority of them have passed.

SEN. THOMAS noted that was in the *Judge vs. Legislative Finance Committee*, and he would think delaying a rule from going into effect is different from that case, which was regarding giving the committee the authority to levy bonds, or something similar, noting that he does not know what was in there. He pointed out that was a ruling at that point in time, that it could have been an error, as well, noting that he brings this up only for discussion purposes.

SEN. BROOKE referred to **SEN. DELWYN GAGE's** bill revising the rules about budgetary hearings, and noted that it seems like this is the same type of issue, that they could not just transfer that same decisions-making power to that committee.

SEN. THOMAS indicated that he thinks there is a lot of error regarding what the legislature can not do, that the rules have

been drawn over time with the way they have practiced their abilities, more than the reality, and he thinks they have the ability to do a lot more than they are told they can do.

SEN. BROOKE referred to **Ms. Browning's** testimony that they go back to legislative intent, and what is on the record, and asked what they will do now that the House is not keeping written minutes of hearings, or if they will just refer to the tapes.

Ms. Browning replied yes, they would have to listen to the tapes.

SEN. BROOKE asked if that will be more difficult than actual transcriptions?

Ms. Browning answered that she thinks it will be, when they are time-intensive, but that it will probably be more reliable because the minutes were summaries, for the most part, of what was going on and, often times, they did not get the full discussion.

CHAIRMAN HARGROVE asked both **Ms. Browning** and **SEN. JENKINS** if they should consider putting a requirement into the bill that rulemaking be coordinated with the sponsor of the bill, noting that seems to be a step towards the solution.

Ms. Browning stated that she thinks they would run into a problem if the sponsor were permitted to suspend the implementation of a rule, and that would be giving one member the ability to suspend implementation of a rule.

CHAIRMAN HARGROVE clarified that he was referring to a requirement that the administration simply coordinate rulemaking with the sponsor, whether they agree with it or not.

Ms. Browning replied that she would not see any problem with that.

SEN. JENKINS indicated that he thinks there is jealousy between the administration and the legislature, and they will not be happy because they will have to have the sponsor sign off on what his intent in the legislation was, and they might not agree. He pointed out that the sponsor can not stop the rulemaking authority, by himself, and it would still be bounced back and forth. He indicated that he realizes **CHAIRMAN HARGROVE's** intent is to promote mediation, and stated that this bill has done more towards getting mediation going in the last year than anything that has been introduced.

Closing by Sponsor:

SEN. JENKINS stated that he believes this is constitutional, that lawyers from both sides may disagree, but that, although he is not a lawyer, he can read law and, under the **Judge** case, this would still be considered constitutional. He reiterated that it

does not stop the rule from being enacted, that only the full legislature can do that, that it merely delays the effective date of the rule. He indicated that the Code Committee is narrowly scoped, that it looks at legislative intent and within the scope of the law, that it will be a committee which review rules passed by the legislature, that there are always questions about whether they are constitutional, but they do the best they can and he believes the Code Committee will do the best they can, that they will look at it from those two aspects, only. He explained that it allows the Code Committee and the agency to set up mediation between them and, if they can work out an agreement, then the rule is implemented. He noted that this is all they are asking for, but that they need a "club" to make it work, which is the delay of the effective date. He pointed out that it allows for emergency rules to be passed, noting they are only effective for a certain length of time, but can be passed and implemented immediately. He stated that he has served under three administrations, that it has been a problem in all three and, although this bill has done more to change things, the problems have not been solved. He indicated that he thinks legislators are elected for two or four years, full-time, not just for ninety days, and he believes they should be doing their business through the Code Committee the entire time.

EXECUTIVE ACTION ON HB 41

Amendments: SB004101.adn (EXHIBIT 2)

Motion: SEN. THOMAS moved that SB004101.adn BE ADOPTED.

Discussion:

There was brief discussion concerning the amendments.

Vote: The motion that HB 41 BE CONCURRED IN AS AMENDED CARRIED UNANIMOUSLY.

Motion: SEN. THOMAS moved that HB 41 BE CONCURRED IN AS AMENDED.


Discussion:

There was brief discussion regarding the bill and the fiscal impact.

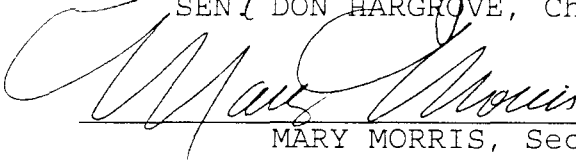
Vote: The motion that HB 41 BE CONCURRED IN AS AMENDED CARRIED UNANIMOUSLY. SEN. THOMAS will carry HB 41.

ADJOURNMENT

Adjournment: 11:52 a.m.



SEN. DON HARGROVE, Chairman



MARY MORRIS, Secretary

DH/MM