

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on March 6, 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. Bill Wilson (D)

Members Excused: Sen. Fred Thomas (R)

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: HB 193, 2/24; HB 227, 2/24;
HB 199 2/24
Executive Action: HB 74 BCI; HB 42 BCI;
HB 134 BCIAA; HB 227 BCI;
HB 199 BCIAA

HEARING ON HB 193

Sponsor: REP. SONNY HANSON, HD 1, presented HB 193.

Proponents: None

Opponents: Richard Crofts, Commissioner of Higher Education
Larry Moreland, University of Montana Foundation
George Dennison, University of Montana
Mike Malone, Montana State University- Bozeman
Leroy Schramm, Montana Board of Regents
Bob Bashini, self
June McCray, MSU Student Body
Jeremy Fraz, ASMSU Student Body

Opening Statement by Sponsor:

REP. SONNY HANSON presented HB 193. He said the bill would clarify the authority of the Legislative Auditor to assess certain transactions between public entities and private foundations or organizations who support the University System. He pointed out the changes in the bill that would include funds and property transactions in the audits. The audit is further defined to insure that the items are administered in accordance with any restricted terms and conditions of the transfer. Funds under the control of the Board of Regents are subject to the same audit provisions. Money received by the University System would be accountable and recorded by the University System before it is transferred to the foundations. He emphasized there was no interest in monies received from the private sector. This was only public money. The records had to be available to show that transfer. *{Tape: 1; Side: A; Approx. Time Count: 2.3-; Comments: he discussed the strict accountability of revenue received by governmental entities.}*

Proponents' Testimony: None**Opponents' Testimony:**

Richard Crofts, Commissioner of Higher Education, discussed two areas of concern. He said there were fundamental reasons why the bill was unnecessary and has the potential of having bad results on the work of the foundations. He said there was uncertainty about what the bill really meant as far as what the bill would add that wasn't already taken care of or covered by existing statute. The foundations have agreed to make their annual reports and audits available. They already provide to the IRS a federal tax form 990 and that is public information. Every activity that the University System engages in, either with cash, property, or land of any sort, the details of transactions between the University System and any outside organization are already subject to full audit by the Legislative Auditor. The passage of the bill is unclear as to what additional information would be required. Most importantly, what additional access would state officials have to the records of private organizations including the foundations. This leads to the second concern which is the unintended consequences. This would be the negative impact on the ability of the foundations to raise money on behalf of the campuses. He discussed what the foundations do and the people that give money to the foundations. The foundations are important as they raise millions of dollars to provide services and programs and especially financial support to students that would not be otherwise available. The concern is the degree of access to records of private organization. Donors choose to give money to the foundations and want their contributions to be confidential. Once a record becomes a part of the public record through the Legislative Auditor it is highly questionable to whether that record can be held confidential. Donors are concerned that their money goes exactly to the purpose

that they have identified. They want to be sure that a university official or a state appropriations body doesn't take money away. They do not want their donations to replace budget dollars but rather to supplement them. *{Tape: 1; Side: A; Approx. Time Count: 11.4 (10:26); Comments: spoke in opposition.}*

Larry Moreland, Director, University of Montana Foundation, spoke in opposition to the HB 193 presented testimony from **Nancy Davidson EXHIBIT 1**. He commented that they are well regulated and aware of the rules on the transfers of property and transfers of checks between the universities and the foundation and make sure they are well accounted for. A yearly audit is performed with line item information available relative to any public monies. There is basically only one source of public money which is a contract covered by other state statutes. The foundation is a private corporation as well as a public foundation. **EXHIBIT 2** *{Tape: 1; Side: A; Approx. Time Count: 30.2.}*

George Dennison, President, University of Montana, agreed with a need for public accountability, however the foundations are critical. Raising funds for the university through the foundations is very important. For a long time the philosophy was to rely on the state for support and leave the private section to support private higher education. This no longer works today. Priorities were outlined and the campaign was initiated. The projects were not regular operations but projects that people could get excited about, such as scholarships, construction, program enhancement and faculty development. *{Tape: 1; Side: A; Approx. Time Count: 38.0 (10:21); Comments: spoke in opposition to the bill.}*

Mike Malone, President, Montana State University-Bozeman. **Dr. Malone** pointed out the importance of foundations. Tuition cannot be wholly relied on. The issue is not accountability since that is addressed on a yearly basis. Confidentiality is very important to some donors. *{Tape: 1; Side: A; Approx. Time Count: 47.0 (10:25; Comments: spoke in opposition.}*

Leroy Schramm, Chief Legal Counsel, Montana Board of Regents, EXHIBIT 3. **Dr. Schramm** noted that section 1 did not make any reference to foundations. That is the section that gives power to the Legislative Auditor. Right now in section 7 it says the Legislative Auditor has the power to audit records of organizations and individuals receiving grants from the state to make sure that the grant was lived up to. That is expanded so it now applies to organizations and individuals receiving funds or property from the state. This is an enormous broadening of that section. He said this could include people receiving unemployment benefits, AFDC benefits, water or mineral, grazing leases. This gives the auditor some access to their records and the purpose of that is unclear. The bill appears to single out foundations. Donors will not give willingly or generously to the foundations if they think there is even a possibility that their will is going to show up or some detail of their financial status

would show up in the newspaper. *{Tape: 1; Side: A; Approx. Time Count: 55.8-71.5 (10:28); Comments: opposition to the bill.}*

Bob Bashini, formerly of the MSU Northern Board said the boards and foundation abide by all the laws of the state and federal. He spoke against the bill. This bill would shrink up the donations given to the foundations. Confidentiality is very important. *{Tape: 1; Side: A; Approx. Time Count: 72.5 (10:37); Comments: opposition to the bill.}*

Questions From Committee Members and Responses:

SEN. BROOKE asked **Dr. Schramm** about the public money or property being transferred to a private foundation. *{Tape: 1; Side: A; Approx. Time Count: 77.4 (10:39).}* **Dr. Schramm** replied that most of the foundations have receipt of public funds or property, such as rent property from the campuses or sometimes perform services for the campus for which the campus pays. The ambiguity of the bill would have the unintended result of having confidential records become public. If the intent was for the auditor to have access to documents that were directly relevant to the contract between the state and the foundation, this is already done. This bill has to mean something more, he stated.

{Tape: 1; Side: B; Approx. Time Count: 12.3 (10:44).} **SEN. BROOKE** asked whether there was concern about the scholarship funds. **Dr. Schramm** replied that the concern was where the access of the Legislative Auditor precisely stopped since it was not well defined. **SEN. MESAROS** asked for clarification of current practices. **REP. HANSON** replied that money from the private sector going to a private foundation has nothing to do with this bill. This only addresses money received from the University System that is given to the Foundation which should be accountable. He cited an example about an audit performed at Montana Tech, February 1995. Unrecorded donations activity, money that had been willed to the college, not the Foundation, based on review of the will, the college was the intended beneficiary. The asset had not been recorded on the College accounting records. The Foundation had received money from the estate. The auditor should be able to review and find out what happened to that money. There is no access to the records by the Legislative Auditor.

SEN. MESAROS asked **Dr. Crofts** about assurances this would not happen if this legislation was not in place. **Dr. Crofts** replied that it was clear that the University System was committed to appropriate performance. He felt the information presented had been the result of an audit process which proves there was already sufficient access to raise the issue and have it become an audit finding and have it tracked in the record. He asked what was the point of requiring it a second time in the law. *{Tape: 1; Side: B; Approx. Time Count: 24.6 (10:50).}* He noted the concern about the perception that donors will have that now the Legislative Auditor is up to something different than they

had done in the past. There is nothing added by this bill that is not already covered in statute.

SEN. GAGE asked **Dr. Schramm** about outside discussions with the sponsor of the bill. **Dr. Schramm** replied that he had not discussed it. He said the concern was what kind of information could the Legislative Auditor access that they can't access now. **SEN. GAGE** asked about the public vs. private foundation and whether any of the colleges dealt with private foundations. **Mr. Moreland** replied there were donations received from private foundations. Proposals and donations are solicited from private foundations, for example the Dennis and Phyllis Washington Foundation. **SEN. GAGE** asked about the increases in the real property from a half million in '95 to over five million in '96. **Mr. Moreland** replied in that case it was a public donation that was made, specifically the Salmon Island Property.

CHAIRMAN HARGROVE asked if the bill would allow the auditor to get into the financial records of a private donor to the foundation. **Dr. Schramm** replied only if it was part of the gifting process when the Foundation had come into possession of those records. **CHAIRMAN HARGROVE** asked the sponsor whether the auditor could keep a secret. **Rep. Hanson** replied yes, by their ethics they could not reveal certain information. However, the only money the bill was addressing was public monies. For example, the Montana Tech money, the \$675,000, they just wanted to know what happened to the money and they can't find out because they can't go into the Foundation records. *{Tape: 1; Side: B; Approx. Time Count: 39.4.}*

CHAIRMAN HARGROVE asked **Dr. Dennison** if part of the funds were occasionally used for building and if the long term maintenance costs used private funds. **Dr. Dennison** replied they did, for example the Davidson's family donation to build the Davidson Honor College. The university assumes the responsibility to maintain it, the state does not provide the funds for it. In the event of joint participation, such as the Gallagher Building, it was clear with the Long Range Building Committee that it was hoped the state would pick that up, however the state has the option of picking up only a portion.

CHAIRMAN HARGROVE asked **Dr. Crofts** about records in the Foundation that were not available to the public. **Dr. Crofts** replied yes, it was principally donors but these organizations were private and there is no more legitimate access to their records than any other private individual organizations records. When the University System transfers money or property, makes a contract, enters into a lease arrangement, then those records are legitimately available.

Dr. Dennison commented about the audit issues. *{Tape: 1; Side: B; Approx. Time Count: 45.2.}* The auditor does find it since it part of the audit. In the event that the auditor arrives at the conclusion that it should be appropriately on the university

record as opposed to the Foundation record then it is part of the audit finding. The university has to defend that before the audit committee. If the audit committee disagrees, such as the case of Montana Tech, and there is no legitimate reason that you cannot show by the intent of the donor that it was to be to the Foundation then it is transferred back.

SEN. GAGE asked if the bill would pass would it be a stimulus enough for foundations to be formed, one that would not take any public funds or public property and the other which would. **Dr. Dennison** replied that would potentially be the outcome that foundations would no longer accept them. The foundation is simply the administrator and there has to be an audit trail to determine that it was administered appropriately.

Closing by Sponsor:

REP. SONNY HANSON closed. He pointed out that the Dennis Washington Foundation was mentioned and they oppose this bill since there was not a sufficient amount of definition dealing with public monies. Therefore, the bill was modified in the House to say that only public money coming from the universities. *{Tape: 1; Side: B; Approx. Time Count: 53.4 (11:07).}* The IRS has rules that cover private foundations. He read some policy from the Board of Regents Policy and Procedures Manual, page 901.1, effective July 8, 1993, regarding cash donations, documentation and forwarded to a separately incorporated foundation for investment or endowment management. However, the university must maintain assets on a statewide budgeting and accounting system of records. The bill is strictly a bill of accountability and allows additional access by the Legislative Auditor to find out more information. It is not talking about access to private contributions to the Foundation.

HEARING ON HB 199

Sponsor: REP. DICK KNOX, HD 93

Proponents: SEN. DEL GAGE, SD 43

Opponents: None

Opening Statement by Sponsor:

REP. DICK KNOX said the bill arises out of a concern over the rule making process, a bill may not have the same intent it started with. When the rule making process starts, the sponsor of the bill would be notified and the sponsor could be involved in that process. *{Tape: 1; Side: B; Approx. Time Count: 65.2 (11:11).}*

Proponents' Testimony:

SEN. DEL GAGE spoke in support of the bill. He said this was a courtesy to the legislators to try to protect themselves from rules that may be implemented that were never intended.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. BROOKE asked the sponsor about the Secretary of State keeping track of information. **Angela Fultz, Chief Deputy, Secretary of State**, replied that a list was kept now through the elections process and the agency is in charge of the Administrative Rules Office.

SEN. GAGE asked if there was objection to an amendment be added for the bill to be effective on passage and approval.

CHAIRMAN HARGROVE asked if there was a policy in the administration along these lines. **Ms. Fultz** replied that there had been an order issued in 1995 by the Governor to involve sponsors in preparing rules. The Secretary of States' Office does not have the authority. **CHAIRMAN HARGROVE** asked what the intent was in regard to definition of sponsor, co-sponsor, or chief sponsor. **Ms. Fultz** suggested sponsor be defined more clearly. The responsibility will be the agency implementing the rules to contact these sponsors.

Closing by Sponsor:

REP. DICK KNOX closed. He said it was policy that the Governor requested agency heads to have their people notify sponsors of bills but it was not done in all cases. If the bill passes it would solve this problem and be simple to administer. {Tape: 1; Side: B; Approx. Time Count: 82.2 (11:17)}

HEARING ON HB 227

Sponsor: REP. DEB KOTTEL presented HB 227.

Proponents: Bonnie Ramey, Jefferson County Clerk and Recorder,
Local Government Records Committee
Robert Throssell, Montana Association of Clerk and
Recorders
Angela Fultz, Chief Deputy Secretary of State

Opponents: None

Opening Statement by Sponsor:

REP. DEB KOTTEL said that inadvertently the law created a conundrum. She pointed out the original statute says the ballot could not be opened without opening the packet under section one.

Under section two it said they had to be destroyed. She said that "destroyed" is a very technical word. There are two ways to destroy ballots. One is to shred them and the second is through burning. The problem is that you can't shred big packages. Even burning is difficult without an incineration devise unless you can open the package. The administrator may dispose of the packets so that the packages could be opened at the time of disposition and the word destroyed was taken out and replaced with disposed, which could mean a landfill *{Tape: 1; Side: B; Approx. Time Count: 85.4 (11:20).}* Whatever the local counties do with election records it has to be pursuant to a plan that is submitted to the Secretary of State's Office and that plan has to be approved, which are the safeguards in the law.

Proponents' Testimony:

Bonnie Ramey, Jefferson County Clerk and Recorder Election Administrator and vice-chair of the Local Government Records Committee, spoke in favor of the bill. *{Tape: 2; Side: A; Approx. Time Count: 0-4.}* Record disposal is a major issue for all the counties. This bill would allow the counties to dispose of election materials the same as all other county records are disposed. This bill would allow several options in disposing the packets. In the past, packages could not be opened, most were just put in the landfill which did not destroy them but preserved them. Unsealing the packages would allow for burning or shredding. She cited an example of the amount of ballots that need destroying. The plan would allow for the specific needs of different counties.

Robert Throssell, Montana Association of Clerk and Recorders spoke in support of the bill.

Angela Fultz, Chief Deputy Secretary of State spoke in support of the bill and said the plan approved by the Secretary of State would address any of the issues.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. GAGE asked how long after an election could a ballot issue be challenged on the basis of voting. Ms. Fultz replied that the plan would take into account when ballots could be destroyed and takes those laws into account and insures there is no legal need for ballot issues and petitions.

CHAIRMAN HARGROVE asked about whether a landfill disposition would be considered destroyed. Ms. Fultz said she believed in the past the counties needed a way to deal with it rather than storing the huge number of ballots and have tried to broaden the definition of what destroyed means. She pointed out the unique combination of the Secretary of State's Office being in charge of elections and also records management; that there is a need to

insure that both the elections and the need to keep the records is accommodated and also the best way for the counties to destroy these records.

CHAIRMAN HARGROVE asked Mr. Robert Throssell if this was considered heavy handed by the state to be looking over their shoulders. **Mr. Throssell** said the Clerk and Records Association believes there is good cooperation in this area over the years and believes this bill will allow each county to make a proposal regarding what their local county needs and have the Secretary of State's office respond appropriately. {Tape: 2; Side: A; Approx. Time Count: 14.1 (11:26).}

Closing by Sponsor:

REP. DEB KOTTEL closed.

EXECUTIVE ACTION ON HB 74

Discussion: **CHAIRMAN HARGROVE** asked if this would provide a cap. It appeared that actual cost was okay but that it could go up to the prescribed maximum standard federal rate. **Ms. Connie Griffith** said that lodging did not change, but a receipt had to be presented on lodging and, if exceeded what was allowed, they did not get reimbursed more than what was allowed. The meal change in the law previously was a specific dollar amount, they did not have to present receipts, that is just what they got. Since it changed based on the federal rate, an amount was not specified because the federal rates will change eventually. The meal reimbursement will be either the 75% or the federal standard but will not exceed that. It would not be a problem to say that meal reimbursement will be at the federal rate.

SEN. GAGE asked about subsection 9, page 3, line 11, regarding commercial air travel must be by the least expensive class available, that would be handled internally if a person traveled at a higher class they would only be reimbursed at a lower class. He felt that state people would continue to do that. **Ms. Griffith** pointed out that travel is the oversight of the department and the department would approve any travel within their department and the reimbursement is well documented.

Motion/Vote:

SEN. BROOKE moved HB 74 BE CONCURRED IN. The motion PASSED unanimously. Sen. Gage will carry the bill.

EXECUTIVE ACTION ON HB 42

Discussion: {Tape: 2; Side: A; Approx. Time Count: 39.9.} **SEN. GAGE** asked about the technical correction.

Motion/Vote: **SEN. GAGE** moved HB 42 BE CONCURRED IN. The question was called. The motion carried unanimously.

EXECUTIVE ACTION ON HB 134

Discussion: CHAIRMAN HARGROVE noted concerns about the courts. SEN. BROOKE commented about prior cases where the retirement money was only sent to the spouse whose retirement it was. David Senn, Executive Director of the Teachers' Retirement System said the intent was not that the board wanted authority over the courts. When an order is received everyone will know what they are going to receive at the time a payment is made. {Tape: 2; Side: A; Approx. Time Count: 50.1-60.3.} A family law order is an order to divide a payment. He discussed examples of the family law orders. David Niss had amendments distributed. (EXHIBIT 4)

Motion/Vote: SEN. GAGE moved the amendment. The motion PASSED UNANIMOUSLY. SEN. BROOKE moved HB 134 BE CONCURRED IN AS AMENDED. Mr. Niss explained the administration of the Teachers' Retirement System. The question was called. The motion PASSED unanimously. Sen. Chris Christiaens will carry the bill

EXECUTIVE ACTION ON HB 227

Motion/Vote: SEN. WILSON moved HB 227 BE CONCURRED IN. The question was called. The motion carried unanimously.

EXECUTIVE ACTION ON HB 199

Discussion: David Senn discussed the need for an effective date. He said the purpose would be to include all of those bills in the current legislative session that grant immediate rule making authority. The reason why that is important is because the great majority of bills that deal with the implementation of rules of new law, it is a typical solution to the issue of when does the agency get to adopt those rules by providing for a delayed effective date of the section which allows the agency to start its rule making immediately upon signature by the Governor even though the statute being implemented by those rules might be effective July 1 or October 1 or even two years down the road. Sponsors typically want agencies to be able to give that rule making scenario right off the bat. The only other alternative is when the law becomes effective on October 1, there are no rules to implement them so the door is open.

Mr. Senn said the other amendment suggested by Sen. Wilson was to add the sponsor or the person who speaks for the bill to make sure that person receive notice. The third one was the distinction between sponsor and co-sponsor. The distinction does not appear in the statute, but does exist in both Senate and House joint rules. {Tape: 2; Side: A; Approx. Time Count: 75.4.}

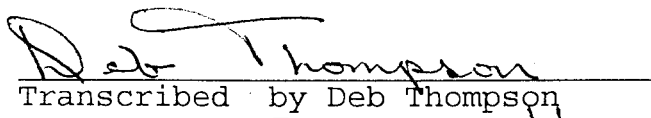
Motion/Vote: SEN. GAGE moved the amendment. The motion carried unanimously. SEN. GAGE moved the bill as amended. The motion carried unanimously. SEN. WILSON will carry the bill.

ADJOURNMENT

Adjournment: 12:00 P.M.


SEN. DON HARGROVE, Chairman


MARY MORRIS, Secretary


Transcribed by Deb Thompson

DH/DT

