

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN DON HARGROVE, on March 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: HB 368, 3/5; HB 376, 3/5;  
HB 422, 3/5  
Executive Action: HB 376 BCI; HB 422 BCIAA  
HB 368 TABLE; HB 348 BCI;  
SR7 A

#### HEARING ON HB 368

Sponsor: REP. MATT BRAINARD, HD 62

Proponents: REP. DEB KOTTEL, HD 45

Opponents: None

##### Opening Statement by Sponsor:

REP. MATT BRAINARD presented HB 368. He said the bill would be creating nine committees which would be extensions of the standing committees. The members would meet once every four months to hear the rules that were being made and passed through those committees. He pointed out a number of bills on rule making authority. This bill would affect the oversight that was

needed on rules in dealing with the scrutiny on the agencies. This would not be exceeding constitutional legislative authority since the bill does not empower the legislature any more than it does today. However, it does supply the opportunity for members of the House and Senate committee to come together and oversee the rules, listen to the problems of citizens of Montana as they are affected by the rules. This will also give the members an opportunity to look at legislation which is being proposed prior to the session. Term limits are coming up and the question arises about preserving Legislative memory. This would help make that effective. Right now there is a small number of people on this committee who, when they meet, essentially have to deal with all the rules on all the legislation that has passed. It is basically impossible to have enough people on that committee to know what the hearings were like and what the legislative intent was like as it came through the committee.

**Proponents' Testimony:**

REP. DEB KOTTEL, HD 45, said she was marginally there as a legislator but rather here as a professor at the University of Great Falls-Dean of the College of Professional Studies. She said she taught for seven years at the University of Montana in the Masters of Business Administration Program in the area of administrative law. From that background, particularly in administrative law, she also is a member of the Administrative Codes Committee, and is in support of the bill. The bill creates nine standing legislative oversight committees and creates a positive partnership between the legislative branch and the executive branch of government to insure that rules promulgated are done by giving credit to the intent of the laws that are passed. There has been some outside pressures, such as the pressure to go to annual sessions. Another would be a full time legislature or a series of administrative code bill that want to give the legislative branch more and more power. She pointed out difficulties encountered by the legislative process such as the length of time of only ninety days, upcoming term limits and complexity of issues. The oversight committees, ad hoc committees, and piecemeal study groups could be changed into standing administrative code committees which will eventually replace the need for the ad hoc/oversight committees so there isn't duplication. The standing administrative code committees do not have any increased constitutional authority to veto rules and regulations but instead work hand in hand with the executive branch of government in terms of input and knowing what problems exist in the laws so that good rules are promulgated. By working with that, legislators will know what types of bills to carry in the next legislative session, bills that come out of a cooperative fashion with administrative agencies. {Tape: 1; Side: A; Approx. Time Count: 16.6 (10:12); Comments: examples.}

**Opponents' Testimony:**      None

**Questions From Committee Members and Responses:**

**SEN. GAGE** asked about effective dates or sunsets. **REP. BRAINARD** said the bill does get rid of the present Codes Committee. A sunset would be that it would revert back to the Codes Committee if it didn't work out. One or two interims would be sufficient to see if this would work properly.

**CHAIRMAN HARGROVE** asked for comments regarding the bill requiring the administration to coordinate rule making with the sponsor of the bill. **REP. BRAINARD** replied the concept was good and it would fit in with the scope of this bill since the sponsor was the best person to come back to the committees to discuss the matter.

**CHAIRMAN HARGROVE** asked about the necessity to replace Ad Hoc Committees since that was a functional area, a one time thing designed to get a handle on something. **REP. KOTTEL** replied that it could replace them. She discussed examples. *{Tape: 1; Side: A; Approx. Time Count: 34.3; Comments: Administrative Code Committee.}* She said the standing Administrative Code Committee would create a dialogue throughout the interim that lets agencies know where the committee stands with policy issues. Other oversight committees that are consistently promulgated, would not need to be in place if the standing Administrative Code Committee existed. She pointed out the opposition on the Floor of the House that said it would be additional work for nine committees.

**CHAIRMAN HARGROVE** asked about difference in interpretation. **REP. KOTTEL** replied that the difference was in being proactive or reactive. The Administrative Code Committee was only called together when there was a major crisis and then they were reactive rather than proactive. The positive nature of the standing committee, meeting four times, would be a proactive result with the Executive Branch rather than attacking them for rules that are made in hindsight. It would also create a working partnership which would replace the present distrust and misunderstanding between the branches.

**CHAIRMAN HARGROVE** asked how this would work, for example all of the Fish, Wildlife and Parks rules made in that quarter would be made in draft form and then go through the committee. **REP. BRAINARD** replied that he expected the committee would follow some of the procedures of the standing Codes Committee presently. He cited the example of the Contractor's Registration bill. It would allow the problems with the language of the bill with the rule making authority and the latitude which the department had turned into an administrative nightmare. Had those rules been presented to the Business and Labor Committees they could have discussed the rules and the legislative intent and worked them out before those rules were passed on to the public and the contractors. The flaws could be worked out beforehand.

**CHAIRMAN HARGROVE** asked what authority the committees would have. **REP. BRAINARD** replied that the committees would have no more authority than the Codes Committee has at present. It is not authority that the committee needs, it needs knowledge. He discussed the problems of getting up to speed in dealing with issues. It would be valuable to have the interim knowledge.

**SEN. MESAROS** discussed the interim committee work he was presently doing and how this would add to the work load for citizen legislators. **REP. BRAINARD** replied that this committee would be bipartisan and should be flexible as far as numbers on the committee. There are some members of both houses that have more time and it has to be voluntary. There would be four meetings during the interim.

Closing by Sponsor:

**REP. BRAINARD** closed. He said he was opposed to annual sessions and a citizen legislature would be cumbersome and there would not be the same types of people representing fellow citizens. This bill would be effective in helping with legislation.

Testimony from **Mike Collins** on HB 368 from the hearing on March 7, 1997, was distributed **EXHIBIT 1**.

HEARING ON HB 376

Sponsor: **REP. JOE TROPILA, HD 47, Great Falls**

Proponents: **Bob Lane, Chief Legal Council, Fish Wildlife and Parks**

Opponents: **None**

Opening Statement by Sponsor:

**REP. TROPILA** discussed the bill. He pointed out present statute where hearings are held in Helena before hearings officers that are not aware of the problem. The bill arose out of a problem encountered by the Great Falls Elks who had an elevator that needed more lift. A variance had to be requested to the Department of Commerce. In order to do that the trustees from the Elks Lodge had to travel to Helena to try to get the variance. The appearance before the hearings officer and other state officials proved fruitless. *{Tape: 1; Side: A; Approx. Time Count: 64.5; Comments: examples cited.}* The hearings officer had not seen the problem or had no knowledge of the problem and therefore could not act on this issue appropriately. This bill would make the hearings be held in the impacted community so the hearings officers and the people involved in it would have a better understanding of the problems and render more favorable decisions if they knew that the problems were.

Proponents' Testimony:

Bob Lane, Chief Legal Counsel for Department of Fish, Wildlife and Parks spoke in support of the bill, representing executive branch agencies at the request of Judy Browning at the Governor's Office. Generally, the department is in favor of the bill and the concept. Where there are issues of significant interest to the public in an area or community, the best way to do the job is to go out and talk to the community. Mr. Lane distributed amendments EXHIBIT 2. {Tape: 1; Side: A; Approx. Time Count: 71.2 (10:39); Comments: explanation of amendment.}

Opponents' Testimony:       None

Informational Testimony:

Sam Prestipino, Americans with Disabilities Act Coordinator for the Montana Department of Transportation discussed the bill. He provided additional information to the committee. He pointed out a concern that the Department of Transportation already meets the requirements of this bill most of the time. However, there are times when the department is involved in a public hearing with a small community that is affected by a transportation related project. In the small, rural communities, they do not have a handicapped accessible meeting facility. When this occurs, the hearing is moved to the closest community with an acceptable facility. The department, between the meetings held in the five districts and the meetings involving the department, are between 300-500 public hearings throughout the state annually. The meetings include scoping, interdisciplinary teams, informational and meetings in affected areas for transportation related projects. He noted that in 1996 there was only one community in 500 that did not have a handicapped accessible facility. {Tape: 1; Side: B (10:45)}.

Questions From Committee Members and Responses:

SEN. BROOKE asked about cleaning up other sections of the law. REP. TROPILA said the only section of law that says you have to come to Helena is the Resort License Law. The departments are aware of the bill.

Closing by Sponsor:

REP. TROPILA closed.

HEARING ON HB 422

Sponsor:           REP. KIM GILLAN, HD 11, BILLINGS

Proponents:       Angela Fultz, Chief Deputy Secretary of State

Opponents:       None

Opening Statement by Sponsor:

REP. KIM GILLAN presented HB 422. She said the bill was business friendly because it would allow but would not require businesses to file their transactions with the Office of the Secretary of State through the fax machine. They would no longer be required to send in an original five days later but could use their fax filing. She circulated a sample fax which demonstrated that plain paper faxes are comparable to an original. She noted that fax transmissions are now acceptable by banks and real estate offices.

Proponents' Testimony:

Angela Fultz, Deputy Secretary of State spoke in support of the bill. She said this would be easier for businesses to file their corporations and UCC papers with the office. In 1991 the legislature passed a law allowing business entities to file their papers through the fax machine. At that time plain paper faxes were not common. Those didn't meet the records management requirements and an original was necessary within five days. Now with plain paper fax machines, the hard copy does meet the requirements of the records management program. She pointed out that there are sections in the bill where the Secretary of State's Office "may" accept these copies. The recommendation is to change "may" to "shall" and the date of filing is the date of receipt of the facsimile copy, **EXHIBIT 3**.

Opponents' Testimony:       None

Questions From Committee Members and Responses:

SEN. GAGE asked how close they were to electronic filing. Ms. Fultz replied that there was a bill to examine that over the next two years. The current technology exists but the state mainframe system needs to update, which would be quite expensive.

CHAIRMAN HARGROVE asked if there were any legal problems with fax signatures. Ms. Fultz replied that there were no problems, that it was now a widely accepted practice as long as it did not have to be notarized. However, a notarized copy could be faxed as well. An original would not be necessary.

Closing by Sponsor:

REP. KIM GILLAN closed.

EXECUTIVE ACTION ON SR 7

Motion/Vote: SEN. GAGE moved to adopt SR 7, confirming the appointment of Mark Simonich to the Department of Environmental Quality. The question was called. The motion PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 348

Motion/Vote: SEN. GAGE moved DO CONCUR HB 348. The question was called. The motion PASSED UNANIMOUSLY. SEN. GAGE will carry the bill.

EXECUTIVE ACTION ON HB 368

Amendments: SEN. WILSON said a small change was needed on page 16, line 15 where the Business and Labor Committee was grouped in with the Secretary of State, since they rarely appear before those committees the Secretary of State should be inserted to State Administration on line 27.

Discussion: CHAIRMAN HARGROVE said he had concerns about the value here. He agreed, but it seemed like a duplication. {Tape: 1; Side: B; Approx. Time Count: 53.2; Comments: discussion.} SEN. GAGE said the bill requiring notice be given to the sponsor would solve the problem, rather than this bill. SEN. WILSON said things will change especially after the term limits. This will be necessary later. SEN. GAGE pointed out that the House holds a different view of the interim committees since that have twice the members to go on them.

Motion/Vote: SEN. GAGE moved to TABLE HB 368. The question was called. The motion PASSED with one no by SEN. WILSON.

EXECUTIVE ACTION ON HB 376

Motion/Vote: SEN. GAGE moved to DO CONCUR HB 376. The question was called. The motion CARRIED UNANIMOUSLY. SEN. MESAROS will carry the bill.

EXECUTIVE ACTION ON HB 422

Amendments: SEN. GAGE moved to amend HB 422 for an immediate effective date, EXHIBIT 4. The motion CARRIED UNANIMOUSLY.


Motion/Vote: SEN. MESAROS moved HB 422 AS AMENDED. The motion CARRIED UNANIMOUSLY.

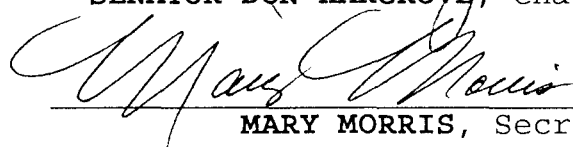
COMMITTEE DISCUSSION - HB 361

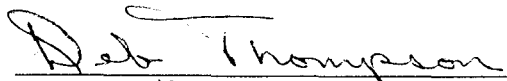
David Niss discussed amendments to HB 361, EXHIBIT 5, 5a.

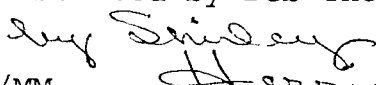
ADJOURNMENT

Adjournment: 11:22 A.M.

  
SENATOR DON HARGROVE, Chairman

  
MARY MORRIS, Secretary

  
Transcribed by Deb Thompson

  
DH/MM