

MINUTES

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

Call to Order: By **CHAIRMAN DON HARGROVE**, on March 26, 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 579, 3/18/97;
HJR 4, 3/18/97
HJR 25, 3/18/97
Executive Action: HB 142, TABLE

HEARING ON HB 579

Sponsor: REP. SAM KITZENBERG, HD 96, GLASGOW

Proponents: Chris Tweeten, Chief Deputy Attorney General
Debbie Smith, Montana Common Cause

Opponents: Judy Browning, Governor's Office

Opening Statement by Sponsor:

REP. SAM KITZENBERG, HD 96, said this was a companion bill to HB 394. He said HB 394 was drafted with some elements left out of it and that was why HB 579 was drafted. HB 579 does three things, it revises the ethics laws (ethical requirements for public officers and employees), allows a public officer or public employee to use public facilities and equipment in fulfilling a

pro bono obligation, and provides for penalties (the penalty would be a misdemeanor by a fine not less than \$50 or not more than \$1,000 and imprisonment in the county jail for not more than six months or both). **REP. KITZENBERG** said he had strong feelings about the Fish and Game Commission and the lobbying efforts by them against HJR 1. He said he was in the middle of a conflict in his district between the Fish and Game and the Valley County Sportsmen, and he gave the Fish and Game seven recommendations by the Valley County Sportsmen not one of them was adopted.

REP. KITZENBERG stated his part of the state had a terrible winter in which a lot of deer died and the coyotes were running in packs as a result of the dead deer. He said Pat Graham spoke to him about doing a study in his county but, as it turned out, District 5 was where the study was conducted. He said he introduced HJR 1 to study the Fish and Game and have them involved in long-range planning. He said the lobbying efforts by the Fish and Game against HJR 1 was intense. **REP. KITZENBERG** gave the committee **EXHIBIT 1** on the costs of state personnel lobbying efforts in the month of January. He said HB 579 would not inhibit state employees from testifying or infringe on their freedom of speech, nor from testifying on their own time. He said an agency could not use tax dollars to promote or defeat a piece of legislation. Under the constitution, state agencies were created to enact policy created by the legislative branch and it was not the intent of the constitution for state agencies to create legislation.

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

Proponents' Testimony:

Chris Tweeten, Chief Deputy Attorney General, provided written testimony, attached (**EXHIBIT 2**), and stated that the department took no position with respect to the advisability of restrictions on lobbying activities by state agencies, and he directed his testimony to the second amendment in HB 579. This portion would amend the ethics law to clarify that it would not be a violation of the ethics law to make limited use of state resources in order to fulfill a pro bono obligation.

Debbie Smith, Montana Common Cause, urged the committee to support HB 579. She said there was no reason why any employee, state or private, should be present at the Capitol and engage in activities without filing lobbying reports. She felt it was the right of the public to know the lobbying efforts by state paid employees and it would increase the perception of accountability and responsibility in state government.

Opponents' Testimony:

Judy Browning, Governor's Office, stated the language on page 2, line 18 through 20, was the provision she opposed. This language was in HB 394 to require people who are working on federal

legislation to register as a lobbyist. She said that if the language of this bill was adopted, a greater number of state employees would be registering and reporting as lobbyist. She said anyone working in the Department of Revenue collecting data or doing requests by the legislators would also have to register and report as a lobbyist. She thought the legislators would want state employees to testify but also to observe what was going on in case information was needed by legislators to make important decisions.

Questions From Committee Members and Responses:

SEN. VIVIAN BROOKE asked **REP. KITZENBERG** about the issue of the federal legislation was discussed in the House. **REP. KITZENBERG** indicated it had been discussed and thought the committee would deal with that issue.

SEN. BROOKE asked **REP. KITZENBERG** if it was cumbersome for agencies to deal with legislation being in sync with federal legislation. **REP. KITZENBERG** said he was sensitive to the concerns and welcomed the committee to address those concerns. He said one of the reasons that HB 579 was drafted was a result of what Fish, Wildlife and Parks had done on federal legislation.

SEN. BROOKE asked **REP. KITZENBERG** if the penalty was new language or if it applied to current law. **REP. KITZENBERG** indicated it was current law and the new part of the law was the pro bono obligation. He said the pro bono language states employees are allowed to use equipment up to ten hours. He said the pro bono aspect had the support of the Governor.

SEN. BROOKE asked **REP. KITZENBERG** if a state employee, such as Rick Day, was lobbying and did not record it on the Commissioner of Political Practices form, would she then call the county attorney. **REP. KITZENBERG** stated no, he would be exempted.

SEN. BROOKE asked **REP. KITZENBERG** if a state employee was lobbying and did not record it on the Commissioner of Political Practices form, would she then call the county attorney. **REP. KITZENBERG** said it would depend if the information was requested or if they were lobbying.

SEN. BROOKE asked **REP. KITZENBERG** what would the legislator do when the law had been violated. **REP. KITZENBERG** said you would contact the Attorney General's Office to see if it was a violation and ask them to pursue it.

SEN. DELWYN GAGE asked **REP. KITZENBERG** if he would go to an employee of Fish, Wildlife, and Parks and a member of Ducks Unlimited and ask where Ducks Unlimited stood on a particular piece of legislation. The employee could ask his employer for a 15 minute break to visit, or would violate the law. **SEN. GAGE** asked if that scenario would be true if HB 579 was passed. **REP. KITZENBERG** said no because he went and asked the employee. He

said if the employee came to the Capitol to share his opinion and was not registered while employed by the state, then it would be a violation.

SEN. GAGE indicated he was concerned with the language on imprisonment upon conviction. He felt one of the purposes of imprisonment was to rehabilitate the offender and he felt six months in prison would not rehabilitate a person convicted of violating an ethics law. **REP. KITZENBERG** agreed.

SEN. KEN MESAROS asked **REP. KITZENBERG** if he was trying to differentiate between informational sources and lobbying influences by state employees. **REP. KITZENBERG** stated he was correct.

SEN. MESAROS said HB 394 had been modified to exclude the federal legislation and asked if **REP. KITZENBERG** would have a problem modifying his bill on the federal legislation. **REP. KITZENBERG** said he would welcome improvements to the bill.

SEN. GAGE asked **REP. KITZENBERG** if state employees are registered as lobbyists could they engage in efforts to lobby on a particular bill. He asked if it was a major difference between HB 579 and HB 394. **REP. KITZENBERG** said HB 579 placed a fine on violators and it had the pro bono portion. He thought the two bills should be combined.

{Tape: 1; Side: A; Approximate Time: 10:49 a.m.; Comments: End of Tape 1, Side A.}

CHAIRMAN DON HARGROVE asked **REP. KITZENBERG** if the directors of the departments would be exempted. **REP. KITZENBERG** indicated they would.

Closing by Sponsor:

REP. KITZENBERG closed.

HEARING ON HJR 4

Sponsor: **REP. MATT McCANN, HD 92, HARLEM**

Proponents: **Debra Fulton, Administrator, General Services Division, Department of Administration**

Opponents: **None**

Opening Statement by Sponsor:

REP. MATT McCANN, HD 92, Harlem, said the purpose of the bill was to create an interim committee to review the state property management. He said the Department of Administration would be paying for the cost of HJR 4.

Proponents' Testimony:

Debra Fulton, Administrator, General Services Division, Department of Administration, stated the way the state has managed facilities over the years had become outdated. It was time to take a look at better ways of management of state buildings. Ms. Fulton handed in her written testimony. (EXHIBIT 3)

{Tape: 1; Side: B; Approximate Time: 11:01 a.m.; Comments: None}

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. BROOKE asked **Debra Fulton** about the Department of Administration funding HJR 4. **Ms. Fulton** said she did not know if they needed to language to ensure the Department of Administration would pay for the costs.

SEN. GAGE asked **Ms. Fulton** if the department would pay for the cost and would it be part of the interim questionnaire that goes out. **Ms. Fulton** said she nor **REP. McCANN** had a joint resolution before and she spoke to **SEN. KEATING**. He suggested HJR 4 could come off the list because it was not prioritized legislative budget.

CHAIRMAN HARGROVE asked **David Niss** about the interim study process. **Mr. Niss** stated the joint resolution could be tied to the department to be funded. The Legislative Council accepted donations to conduct interim studies.

SEN. GAGE stated it was not proper to have HJR 4 on the list because the funds would be provided by the Department of Administration. **SEN. GAGE** asked **Ms. Fulton** if HJR 4 pertained to only real property. **Ms. Fulton** stated it was correct.

SEN. GAGE asked **Ms. Fulton** open adding the language "leasing as opposed to owning". **Ms. Fulton** stated she would welcome that language.

SEN. GAGE asked **Ms. Fulton** if she pays any in-lieu taxes on state property. **Ms. Fulton** was not clear what he meant by in-lieu, and stated they pay property taxes.

SEN. GAGE asked **Ms. Fulton** if state buildings were not exempt from property taxes. **Ms. Fulton** stated that state owned buildings were exempt from property taxes, but they pay property taxes on the buildings they lease.

SEN. GAGE asked **Ms. Fulton** to give the committee an example of a professional facility manager. **Ms. Fulton** replied the Capitol Complex and the Department of Transportation.

SEN. GAGE asked Ms. Fulton if the State Workers Compensation Building was managed by area manager. Ms. Fulton said that building was managed by a small professional organization.

SEN. BROOKE asked Ms. Fulton if the University of Montana in Missoula would be included. Ms. Fulton stated the universities would be exempted under the property statutes from executive control.

SEN. BROOKE asked Ms. Fulton which buildings would be studied and how it would work. Ms. Fulton said they would look at department-owned facilities and, if owned, all the departments would be represented on the committee. She further commented that they were looking at the process and what should agencies do when they have outdated facilities and, if outdated, if they should buy or build.

SEN. MESAROS asked Ms. Fulton if the study group would be represented by state agency personnel only. Ms. Fulton said there would representation from the House and Senate and it may even extend to county commissioners.

SEN. MESAROS asked Ms. Fulton if she had anticipated costs associated with the study. Ms. Fulton said they did not but the work needs to be done.

SEN. HARGROVE asked Ms. Fulton if she wanted to include the legislators. Ms. Fulton stated that was correct.

SEN. HARGROVE asked Ms. Fulton about a bill dealing with property disposal and procurement and what the status was. Ms. Fulton said she thought it was still alive but that it had been heavily amended.

Closing by Sponsor:

REP. McCANN closed.

{Tape:1; Side: B; Approximate Time: 11:21 a.m.; Comments: None}

HEARING ON HJR 25

Sponsor: REP. MATT BRAINARD, HD 62, MISSOULA

Proponents: REP. AUBYN CURTISS, HD 81, FORTINE

Opponents: Debbie Smith, Montana Chapter of the Sierra Club

Opening Statement by Sponsor:

REP. MATT BRAINARD, HD 62, Missoula, said HJR 25 was the result of the environmental battles in Montana with the land use decisions. He said environmental influences are coming from world-wide organizations that are influencing personal property

land use without going through the process. **REP. BRAINARD** referred to the two articles. See **EXHIBITS 4 & 5**. He said there was an agenda by the Federal Government to implement management regulations that have no basis in modern land use. He further stated there was no acknowledgment of property rights in the government's management regulations.

{Tape: 1; Side: B; Approximate Time: 11:26 a.m.; Comments: End of Tape 1, Side B.}

He said, by passing HJR 25, they would acknowledge the federal government has the right and responsibility to enter into an international agreement, calling upon our U.S. Congressmen to read and fully understand the implications of the treaties they involve us in.

Proponents' Testimony:

REP. AUBYN CURTISS, HD 81, FORTINE, was in support of HJR 25 and became interested in the issue when the UNESCO came to Yellowstone Park. She said UNESCO claimed Yellowstone Park as the world heritage area and they needed more protection for Yellowstone, and designated between 14 and 18 million acres they thought it would take to protect it. She mentioned the bio-diversity treaty before the U.S. Senate. **REP. CURTISS** read an article where **Congressman Orin Hatch** would be inducing legislation to curtail the President's power to create national monuments on federal lands. She said the Hatch's National Monument Fairness Act of 1997 would require notification of the affected governor, and congressional approval to create monuments larger than \$5,000 acres.

Opponents' Testimony:

Debbie Smith, Montana Chapter of the Sierra Club, said the bill had been improved since it was heard in the House. She said the bill was based on a lot of fear and unsubstantiated notions that a world government is taking rights away from the citizens of Montana and the United States.

Ms. Smith added that making Yellowstone Park a World Heritage Area would boost the economics of Montana. She said she thought it was fine to send Congress the message to read their bills before they pass them, but she was not in agreement with the language in the bill containing frightening notions that Montanans were losing control.

Questions From Committee Members and Responses:

SEN. BROOKE asked **REP. BRAINARD** about the handout that was not reference to a source and wanted the source to (**EXHIBIT 4**). **REP. BRAINARD** said it was by **Steve Gorton** of The Montanian. **REP. BRAINARD** asked **REP. CURTISS** if she was familiar with The Montanian. **REP. CURTISS** said it was from Libby, Montana. **SEN.**

BROOKE asked **REP. BRAINARD** who was Steve Gorton. **REP. BRAINARD** stated he assumed he was a reporter for The Montanian.

SEN. BROOKE asked **REP. BRAINARD** if he was aware of the agreement the United States signed out of the Cairo Conference on the U.N. on population and development. **REP. BRAINARD** said he vaguely remembered.

SEN. BROOKE stated she attended the conference. She said reproductive decisions are supposed to be made by individuals and families. **REP. BRAINARD** said he would not argue on behalf of the author. He said he used the example as an informational source to illustrate the feelings around the state. He said the article she was referring to had little to do with bio-diversity.

CHAIRMAN HARGROVE asked **REP. BRAINARD** to expand on the plan. **REP. BRAINARD** said the biological diversity treaty addressed how the United Nations deals with non-governmental organizations. The meeting would be held with non-governmental organizations at various submits to receive input and formulate policy at the international level with the UN. He said if the decisions were made by non-governmental organizations at the international level, and then brought back to the people via treaties, it would be extremely powerful. Treaties have the power to supersede our state and individual rights and therefore, the need to protect individual rights is more important than ever.

Closing by Sponsor:

REP. BRAINARD reminded the committee the rest of the world did not have the heritage of personal property rights that citizens have in the United States. He said, at the Resource Providers meeting, a speaker from the Western States Coalition talked about bio-diversity. He said there was no scientific agreement as to what bio-diversity was, but yet various groups are talking about managing bio-diversity.

{Tape: 2; Side: A; Tape Count: 11:47 a.m.; Comments: None}

EXECUTIVE ACTION ON HB 142

Amendments: HB014201.adn

Discussion:

CHAIRMAN HARGROVE asked the committee if they wanted to proceed with the amendments, noting that there are some concerns over this bill. In the interest of time, and it may or may not be the thing to do, but we need to make a decision as to how to proceed. There are some questions, and we do have some amendments, and my question to the Committee is do we want to proceed with the amendment, pr are they going to be productive. There is no sense in working on the amendments if there is enough feeling against the bill and, with that said, I will leave it open to whoever

wants to do anything. He asked **SEN. BROOKE** if she wished to move the amendments.

Motion: **SEN. BROOKE** moved that HB014201.adn be **ADOPTED**

Discussion:

SEN. GAGE stated that he agrees with **CHAIRMAN HARGROVE** that, if this bill is not going anywhere, anyway, and in light of the fact that HB 90 and HB 91 have passed, he would offer a substitute motion that HB 142 be tabled.

Motion: **SEN. GAGE** offered a **SUBSTITUTE MOTION** to **TABLE HB 142**.

Discussion:

CHAIRMAN HARGROVE said under our new rules, that was a non-debatable motion but I will allow a little bit of debate on that. He asked if there were points that the committee would like to make.


SEN. MESAROS stated he had mixed emotions about the bill. He talked about the petition and the verbiage used in the petition was misleading in the bill. He said the petition would be optional for new employees, that new employees would choose whether TIAA-CREF plan, or the PERS plan. He felt with SB 90 that passed, they did not need HB 142 and therefore would support the tabling motion.


CHAIRMAN HARGROVE said he had proxies from the other two who were not here. He would support the motion to table.


VOTE: The substitute motion to **TABLE HB 142** **CARRIED** with **SEN. GAGE, SEN. MESAROS, SEN. HARGROVE, SEN. WILSON** IN FAVOR and **SEN. THOMAS, SEN. BROOKE** OPPOSED

ADJOURNMENT

Adjournment: 11:58 a.m.


SEN. DON HARGROVE, Chairman


MARY MORRIS, Secretary


JAELENE RACICOT, Transcriber

DH/MM