

HOUSE JOINT RESOLUTION NO. 53

4/09 Introduced
4/09 Referred to Judiciary
4/11 Hearing
4/18 Special Action
 On Motion Placed on 2nd Reading 85th Day
4/20 2nd Reading Pass As Amended
4/23 3rd Reading Pass

Transmitted to Senate

Died in Committee

1 HOUSE JOINT RESOLUTION NO. 53
 2 INTRODUCED BY Manuel Harms HARP Code
 3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
 5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN
 6 INTERIM COMMITTEE TO STUDY THE HUMAN RIGHTS COMMISSION AND
 7 TO INVESTIGATE ITS ACTIVITIES AS A QUASI-JUDICIAL BOARD; AND
 8 REQUIRING A REPORT OF THE COMMITTEE'S FINDINGS AND
 9 RECOMMENDATIONS TO THE 50TH LEGISLATURE.

10
 11 WHEREAS, section 2-15-1706, MCA, provides for the
 12 creation of a Commission for Human Rights, which is commonly
 13 known as the Human Rights Commission; and

14 WHEREAS, the Human Rights Commission is established as
 15 an independent quasi-judicial board; and

16 WHEREAS, Title 49, chapters 2 and 3, vest in the Human
 17 Rights Commission a combination of powers to enforce
 18 compliance with state statutes prohibiting unlawful
 19 discrimination; and

20 WHEREAS, this combination of powers in the Human Rights
 21 Commission consists of authority to receive and file
 22 complaints alleging unlawful discrimination, to investigate
 23 complaints of alleged discrimination, to prepare and present
 24 such complaints, and to adjudicate complaints of
 25 discrimination; and

1 WHEREAS, this combination of powers in the Human Rights
 2 Commission gives the Commission the power to act as accuser,
 3 advocate, or prosecutor, as well as judge in the same case;
 4 and

5 WHEREAS, the danger of unfairness is particularly great
 6 when there is a high degree of concentration of both
 7 prosecuting and judicial authority in a single agency,
 8 especially when such authority is vested in the same
 9 persons; and

10 WHEREAS, the fusion of different powers in a single
 11 agency has been subjected to considerable criticism by the
 12 courts; and

13 WHEREAS, the Human Rights Commission possesses broad
 14 powers to enforce the state laws prohibiting unlawful
 15 discrimination; and

16 WHEREAS, these broad powers allow the Human Rights
 17 Commission to exercise uncontrolled discretion concerning
 18 the initiation of proceedings and the discretion to pick and
 19 choose respondents; and

20 WHEREAS, the Human Rights Commission may make
 21 determinations on matters of law and fact; and

22 WHEREAS, it is a fundamental principle of our system of
 23 government that the rights of individuals are to be
 24 determined by the law itself and not by the let or leave of
 25 an administrative agency, and this principle should not be



1 surrendered for convenience or in effect be nullified for
2 the sake of expediency; and

3 WHEREAS, the rule of law is opposed to the rule of
4 arbitrary power, and government founded on the rule of law
5 demands proper legal limits on the exercise of power by an
6 agency; and

7 WHEREAS, in order to avoid an improper delegation of
8 power, a violation of due process, or a denial of equal
9 protection of the laws, the Legislature, in conferring
10 powers on an agency, generally should not leave with the
11 agency uncontrolled discretion to exercise its authority,
12 but should declare a policy and fix a primary standard to
13 limit or control the discretion of the agency; and

14 WHEREAS, it is complained by local governments and
15 school boards that the Human Rights Commission has been and
16 is currently engaged in actions that are arbitrary and
17 capricious in nature or characterized by the abuse of
18 discretion or by a clearly unwarranted exercise of
19 discretion; and

20 WHEREAS, it is complained that the decisions of the
21 Human Rights Commission are tainted by a discernible bias
22 that has substantially prejudiced the rights of individuals
23 and has denied them a right to a fair and impartial
24 proceeding as entitled them under the law; and

25 WHEREAS, it is further complained that the Human Rights

1 Commission has exercised unrestrained and unsupervised power
2 in excess of its statutory authority; and

3 WHEREAS, the Human Rights Commission may investigate a
4 complaint of alleged discrimination without first verifying
5 or determining a reasonable or probable cause for such
6 investigation, and thus a mere allegation, however
7 unfounded, may suffice to initiate a proceeding against a
8 person or employer; and

9 WHEREAS, under its own administrative rules, the Human
10 Rights Commission may conduct a general, roving
11 investigation without a clear allegation and without
12 revealing the identity of a person aggrieved by an alleged
13 discriminatory practice or action; and

14 WHEREAS, in conducting an investigation, the Human
15 Rights Commission may subpoena witnesses and require the
16 production of works, papers, and other tangible evidence
17 relating to the matter under investigation, even if only to
18 satisfy official curiosity; and

19 WHEREAS, in FTC v. American Tobacco Company, 264 US
20 298, 306, the U.S. Supreme Court unanimously condemned, as a
21 violation of the fourth amendment, administrative agency
22 "fishing expeditions" into private papers on the possibility
23 that such intrusions might disclose evidence useful in an
24 investigation; and

25 WHEREAS, the Human Rights Commission generally has

1 failed to follow statutory law stated in section 49-2-504,
 2 MCA, that requires an informal investigation into a matter
 3 before proceeding with formal, trial-type procedures; and

4 WHEREAS, section 49-2-504, MCA, also requires that not
 5 only must there be an informal inquiry into the substance of
 6 a complaint, but there must be an informal attempt to
 7 rectify a discriminatory practice by conference,
 8 conciliation, and persuasion; and

9 WHEREAS, the initial action of the Human Rights
 10 Commission following receipt of a complaint has tended to
 11 consist solely of the sending of formal extensive
 12 interrogatories; and

13 WHEREAS, individual respondents must answer any
 14 interrogatories submitted by the Human Rights Commission and
 15 may be compelled by the Commission to supply answers to its
 16 interrogatories; and

17 WHEREAS, section 49-2-601, MCA, provides a criminal
 18 offense for a person or entity that willfully engages in
 19 unlawful discrimination; and

20 WHEREAS, the U.S. Supreme Court in Lefkowitz v. Turley,
 21 414 US 70, 38 L.Ed. 274 (1977), stated that the fifth
 22 amendment not only protects the individual against being
 23 involuntarily called as a witness against himself in a
 24 criminal proceeding, but also privileges him not to answer
 25 official questions put to him in any other proceeding, civil

1 or criminal, formal or informal, if the answers might
 2 incriminate him in any future proceedings; and

3 WHEREAS, then, by submitting interrogatories and
 4 compelling answers to its interrogatories, the Human Rights
 5 Commission may be acting in violation of the constitutional
 6 rights of individuals; and

7 WHEREAS, under section 2-4-704, MCA, the decisions of
 8 the Human Rights Commission are subject only to a limited
 9 review by a court of law; and

10 WHEREAS, a legal presumption of regularity supports any
 11 decision of the Human Rights Commission, and, in the absence
 12 of clear evidence to the contrary, the courts must presume
 13 that the Commission has acted properly in deciding a case;
 14 and

15 WHEREAS, limited judicial review and the presumption of
 16 regularity act to insulate the decisions of the Human Rights
 17 Commission against substantial challenges on questions of
 18 fact and law, as well as fundamental issues of fairness; and

19 WHEREAS, section 2-4-704, MCA, thus gives the Human
 20 Rights Commission an unwarranted delegation of power to
 21 decide, in effect, the law in the state and does not allow
 22 the courts the proper role to declare and interpret the law;
 23 and

24 WHEREAS, sections 49-2-506 and 49-3-309, MCA, grant the
 25 Human Rights Commission overly broad powers to require "any

1 reasonable measure" to correct a discriminatory practice and
 2 to "rectify any harm, pecuniary or otherwise, to the person
 3 discriminated against"; and

4 WHEREAS, the Human Rights Commission has held a local
 5 government responsible for the alleged discrimination of a
 6 third party and has ordered the local government unit to pay
 7 monetary damages without first articulating a clearly
 8 reasoned basis for its decision and without citing legal
 9 authority upon which its decision was founded; and

10 WHEREAS, the Human Rights Commission is not
 11 sufficiently accountable for its actions to either the
 12 Governor or to the Legislature, because of its independence
 13 and its remoteness in practice from these constitutional
 14 branches of government.

15

16 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
 17 OF REPRESENTATIVES OF THE STATE OF MONTANA:

18 That an appropriate interim committee be assigned to
 19 study the Human Rights Commission and investigate the
 20 conduct of its activities as a quasi-judicial board.

21 BE IT FURTHER RESOLVED, that, as part of its study, the
 22 committee should:

23 (1) study the structure and organization of the Human
 24 Rights Commission and the Human Rights Division;

25 (2) review the existing statutory authority of the

1 Human Rights Commission, in particular, authority granted
 2 under sections 49-2-203, 49-2-204, 49-2-501, 49-2-504
 3 through 49-2-506, 49-3-301, and 49-3-307 through 49-3-309,
 4 MCA;

5 (3) examine the substantive and procedural rules
 6 adopted by the Human Rights Commission and contained in
 7 A.R.M. 24.9.201 through 24.9.1412;

8 (4) determine the nature and extent of uncontrolled
 9 discretion exercised by the Human Rights Commission;

10 (5) consider development of an appropriate policy and
 11 purpose to guide the Human Rights Commission in implementing
 12 the provisions of Title 49, chapters 2 and 3;

13 (6) develop recommendations to confine, structure, and
 14 check unnecessary, discretionary power of the Human Rights
 15 Commission;

16 (7) evaluate the possibilities of providing for de
 17 novo review of decisions made by the Human Rights
 18 Commission;

19 (8) devise standards to limit discretion in the award
 20 of damages by the Human Rights Commission;

21 (9) scrutinize the decisions of the Human Rights
 22 Commission to ensure that state policy is being properly
 23 administered; and

24 (10) hear and investigate allegations of bias in the
 25 conduct of proceedings by the Human Rights Commission and

1 its staff.

2 BE IT FURTHER RESOLVED, that the committee report its
3 findings and recommendations to the 50th Legislature and, as
4 appropriate, draft legislation to implement its
5 recommendations.

-End-

On motion taken from Judiciary
as amended and placed on 2nd
reading

HOUSE JOINT RESOLUTION NO. 53

INTRODUCED BY MANUEL, HANNAH, HARP, CODY

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM COMMITTEE TO STUDY THE HUMAN RIGHTS COMMISSION AND TO INVESTIGATE ITS ACTIVITIES AS A QUASI-JUDICIAL BOARD; AND REQUIRING A REPORT OF THE COMMITTEE'S FINDINGS AND RECOMMENDATIONS TO THE 50TH LEGISLATURE.

WHEREAS, ARTICLE II, SECTION 4 OF THE MONTANA CONSTITUTION PROHIBITS "DISCRIMINATION AGAINST ANY PERSON IN THE EXERCISE OF HIS CIVIL OR POLITICAL RIGHTS ON ACCOUNT OF RACE, COLOR, SEX, CULTURE, SOCIAL ORIGIN OR CONDITION, OR POLITICAL OR RELIGIOUS IDEAS"; AND

WHEREAS, THE MONTANA LEGISLATURE ENACTED THE HUMAN RIGHTS ACT IN 1974 AND THE GOVERNMENTAL CODE OF FAIR PRACTICES IN 1975; AND

WHEREAS, section 2-15-1706, MCA, provides for the creation of a Commission for Human Rights, which is commonly known as the Human Rights Commission; and

WHEREAS, the Human Rights Commission is established as an independent quasi-judicial board; and

WHEREAS, Title 49, chapters 2 and 3, vest in the Human Rights Commission a combination of powers to enforce

compliance with state statutes prohibiting unlawful discrimination; and

WHEREAS, this combination of powers in the Human Rights Commission consists of authority to receive and file complaints alleging unlawful discrimination, to investigate complaints of alleged discrimination, to prepare and present such complaints, and to adjudicate complaints of discrimination; and

~~WHEREAS, this combination of powers in the Human Rights Commission gives the Commission the power to act as accuser, advocate, or prosecutor, as well as judge in the same case; and~~

~~WHEREAS, the danger of unfairness is particularly great when there is a high degree of concentration of both prosecuting and judicial authority in a single agency, especially when such authority is vested in the same persons; and~~

~~WHEREAS, the fusion of different powers in a single agency has been subjected to considerable criticism by the courts; and~~

~~WHEREAS, the Human Rights Commission possesses broad powers to enforce the state laws prohibiting unlawful discrimination; and~~

~~WHEREAS, these broad powers allow the Human Rights Commission to exercise uncontrolled discretion concerning~~

SECOND READING



1 the initiation of proceedings and the discretion to pick and
2 choose respondents; and

3 WHEREAS, the Human Rights Commission may make
4 determinations on matters of law and fact; and

5 WHEREAS, it is a fundamental principle of our system of
6 government that the rights of individuals are to be
7 determined by the law itself and not by the let or leave of
8 an administrative agency; and this principle should not be
9 surrendered for convenience or in effect be nullified for
10 the sake of expediency; and

11 WHEREAS, the rule of law is opposed to the rule of
12 arbitrary power; and government founded on the rule of law
13 demands proper legal limits on the exercise of power by an
14 agency; and

15 WHEREAS, in order to avoid an improper delegation of
16 power, a violation of due process, or a denial of equal
17 protection of the laws; the Legislature, in conferring
18 powers on an agency, generally should not leave with the
19 agency uncontrolled discretion to exercise its authority,
20 but should declare a policy and fix a primary standard to
21 limit or control the discretion of the agency; and

22 WHEREAS, it is complained by local governments and
23 school boards that the Human Rights Commission has been and
24 is currently engaged in actions that are arbitrary and
25 capricious in nature or characterized by the abuse of

1 discretion or by a clearly unwarranted exercise of
2 discretion; and

3 WHEREAS, it is complained that the decisions of the
4 Human Rights Commission are tainted by a discernible bias
5 that has substantially prejudiced the rights of individuals
6 and has denied them a right to a fair and impartial
7 proceeding as entitled them under the law; and

8 WHEREAS, it is further complained that the Human Rights
9 Commission has exercised unrestrained and unsupervised power
10 in excess of its statutory authority; and

11 WHEREAS, the Human Rights Commission may investigate a
12 complaint of alleged discrimination without first verifying
13 or determining a reasonable or probable cause for such
14 investigation; and thus a mere allegation, however
15 unfounded, may suffice to initiate a proceeding against a
16 person or employer; and

17 WHEREAS, under its own administrative rules, the Human
18 Rights Commission may conduct a general roving
19 investigation without a clear allegation and without
20 revealing the identity of a person aggrieved by an alleged
21 discriminatory practice or action; and

22 WHEREAS, in conducting an investigation, the Human
23 Rights Commission may subpoena witnesses and require the
24 production of works, papers, and other tangible evidence
25 relating to the matter under investigation, even if only to

1 satisfy official curiosity, and

2 WHEREAS, in FPC v. American Tobacco Company, 264 US
3 298, 306, the U.S. Supreme Court unanimously condemned, as a
4 violation of the fourth amendment, administrative agency
5 "fishing expeditions" into private papers on the possibility
6 that such intrusions might disclose evidence useful in an
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8 WHEREAS, the Human Rights Commission generally has
9 failed to follow statutory law stated in section 49-2-504,
10 MCA, that requires an informal investigation into a matter
11 before proceeding with formal, trial-type procedures, and

12 WHEREAS, section 49-2-504, MCA, also requires that not
13 only must there be an informal inquiry into the substance of
14 a complaint, but there must be an informal attempt to
15 rectify a discriminatory practice by conference,
16 conciliation, and persuasion, and

17 WHEREAS, the initial action of the Human Rights
18 Commission following receipt of a complaint has tended to
19 consist solely of the sending of formal, extensive
20 interrogatories, and

21 WHEREAS, individual respondents must answer any
22 interrogatories submitted by the Human Rights Commission and
23 may be compelled by the Commission to supply answers to its
24 interrogatories, and

25 WHEREAS, section 49-2-601, MCA, provides a criminal

1 offense for a person or entity that willfully engages in
2 unlawful discrimination, and

3 WHEREAS, the U.S. Supreme Court in Beckwith v. Turkey,
4 414 US 707, 38 L. Ed. 274 (1977), stated that the fifth
5 amendment not only protects the individual against being
6 involuntarily called as a witness against himself in a
7 criminal proceeding, but also privileges him not to answer
8 official questions put to him in any other proceeding, civil
9 or criminal, formal or informal, if the answers might
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11 WHEREAS, then, by submitting interrogatories and
12 compelling answers to its interrogatories, the Human Rights
13 Commission may be acting in violation of the constitutional
14 rights of individuals, and

15 WHEREAS, under section 2-4-704, MCA, the decisions of
16 the Human Rights Commission are subject only to a limited
17 review by a court of law, and

18 WHEREAS, a legal presumption of regularity supports any
19 decision of the Human Rights Commission, and, in the absence
20 of clear evidence to the contrary, the courts must presume
21 that the Commission has acted properly in deciding a case,
22 and

23 WHEREAS, limited judicial review and the presumption of
24 regularity act to insulate the decisions of the Human Rights
25 Commission against substantial challenges on questions of

1 ~~fact-and-law-as-well-as-fundamental-issues-of-fairness;-and~~
 2 ~~WHEREAS;-section-2-4-704;-MCA;-thus-gives-the-Human~~
 3 ~~Rights-Commission-an-unwarranted-delegation-of-power-to~~
 4 ~~decide-in-effect;-the-law-in-the-state-and-does-not-allow~~
 5 ~~the-courts-the-proper-role-to-declare-and-interpret-the-law;~~
 6 ~~and~~

7 ~~WHEREAS;-sections-49-2-506-and-49-3-309;-MCA;-grant-the~~
 8 ~~Human-Rights-Commission-overly-broad-powers-to-require-"any~~
 9 ~~reasonable-measure"-to-correct-a-discriminatory-practice-and~~
 10 ~~to-"rectify-any-harm-pecuniary-or-otherwise;-to-the-person~~
 11 ~~discriminated-against";-and~~

12 ~~WHEREAS;-the-Human-Rights-Commission-has-held-a-local~~
 13 ~~government-responsible-for-the-alleged-discrimination-of-a~~
 14 ~~third-party-and-has-ordered-the-local-government-unit-to-pay~~
 15 ~~monetary-damages-without-first-articulating-a-clearly~~
 16 ~~reasoned-basis-for-its-decision-and-without-citing-legal~~
 17 ~~authority-upon-which-its-decision-was-founded;-and~~

18 ~~WHEREAS;-the-Human-Rights-Commission-is-not~~
 19 ~~sufficiently-accountable-for-its-actions-to-either-the~~
 20 ~~Governor-or-to-the-Legislature;-because-of-its-independence~~
 21 ~~and-its-remoteness-in-practice-from-these-constitutional~~
 22 ~~branches-of-government;~~

23 WHEREAS, SINCE ITS INCEPTION IN 1974, THERE HAS NOT
 24 BEEN A COMPREHENSIVE LEGISLATIVE STUDY OF THE GOALS AND
 25 EFFECTIVENESS OF THE HUMAN RIGHTS COMMISSION AND THE LAW IT

1 ENFORCES; AND

2 WHEREAS, THE HUMAN RIGHTS COMMISSION HAS BEEN
 3 DESIGNATED AS THE LOCAL AGENCY AUTHORIZED TO ENFORCE
 4 COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF
 5 1973, THE FEDERAL LAW PROVIDING FOR RIGHTS OF HANDICAPPED
 6 PERSONS; AND

7 WHEREAS, IF THERE IS NO LOCAL AGENCY DESIGNATED TO
 8 ENFORCE SECTION 504 OF THE REHABILITATION ACT OF 1973, THE
 9 LAW WILL BE ENFORCED BY THE U.S. OFFICE OF CIVIL RIGHTS'
 10 REGIONAL OFFICE LOCATED IN DENVER, COLORADO.

12 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
 13 OF REPRESENTATIVES OF THE STATE OF MONTANA:

14 That an appropriate interim committee be assigned to
 15 study the Human Rights Commission and investigate the
 16 conduct of its activities as a quasi-judicial board.

17 BE IT FURTHER RESOLVED, that, as part of its study, the
 18 committee should:

19 (1) study the structure and organization of the Human
 20 Rights Commission and the Human Rights Division;

21 (2) review the existing statutory authority of the
 22 Human Rights Commission, in particular, authority granted
 23 under sections 49-2-203, 49-2-204, 49-2-501, 49-2-504
 24 through 49-2-506, 49-3-301, and 49-3-307 through 49-3-309,
 25 MCA;

1 (3) examine the substantive and procedural rules
2 adopted by the Human Rights Commission and contained in
3 A.R.M. 24.9.201 through 24.9.1412;

4 ~~(4) determine the nature and extent of uncontrolled
5 discretion exercised by the Human Rights Commission;~~

6 (5)(4) consider development of an appropriate policy
7 and purpose to guide the Human Rights Commission in
8 implementing the provisions of Title 49, chapters 2 and 3;

9 ~~(6) develop recommendations to confine, structure, and
10 check unnecessary, discretionary power of the Human Rights
11 Commission;~~

12 (7)(5) evaluate the possibilities of providing for de
13 novo review of decisions made by the Human Rights
14 Commission;

15 ~~(8) devise standards to limit discretion in the award
16 of damages by the Human Rights Commission;~~

17 ~~(9) scrutinize the decisions of the Human Rights
18 Commission to ensure that state policy is being properly
19 administered; and~~

20 ~~(10) hear and investigate allegations of bias in the
21 conduct of proceedings by the Human Rights Commission and
22 its staff;~~

23 (6) COMPILE AND EVALUATE THE RANGE OF LEGAL REMEDIES
24 FOR DISCRIMINATION THAT ARE AVAILABLE IN OTHER JURISDICTIONS
25 AND ANALYZE THEIR SUITABILITY FOR USE IN MONTANA;

1 (7) CONSIDER THE ADVISABILITY OF REQUIRING SUBMISSION
2 OF COMPLAINTS TO MEDIATION PROCEDURES PRIOR TO THE
3 INSTITUTION OF FORMAL PROCEEDINGS;

4 (8) DEVELOP A COMPARISON OF THE COSTS ASSOCIATED WITH
5 VARIOUS MEANS OF RESOLUTION OF CASES FILED WITH THE HUMAN
6 RIGHTS COMMISSION; AND

7 (9) EVALUATE THE ENFORCEMENT OF SECTION 504 OF THE
8 REHABILITATION ACT OF 1973 BY THE HUMAN RIGHTS COMMISSION
9 AND THE EFFECT, IF ANY, ON THAT ENFORCEMENT IF THE U.S.
10 OFFICE OF CIVIL RIGHTS ASSUMED ENFORCEMENT OF THE LAW.

11 BE IT FURTHER RESOLVED, that the committee report its
12 findings and recommendations to the 50th Legislature and, as
13 appropriate, draft legislation to implement its
14 recommendations.

-End-

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~~WHEREAS, the danger of unfairness is particularly great when there is a high degree of concentration of both prosecuting and judicial authority in a single agency, especially when such authority is vested in the same persons; and~~

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6 government that the rights of individuals are to be
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11 WHEREAS, the rule of law is opposed to the rule of
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17 protection of the laws, the legislature, in conferring
18 powers on an agency, generally should not leave with the
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22 WHEREAS, it is complained by local governments and
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9 Commission has exercised unrestrained and unsupervised power
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24 production of works, papers, and other tangible evidence
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2 WHEREAS, in PTE v. American Tobacco Company, 264 US
3 298, 386, the U.S. Supreme Court unanimously condemned, as a
4 violation of the fourth amendment, administrative agency
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12 WHEREAS, section 49-2-504, MCA, also requires that not
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2 unlawful discrimination, and

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 10 to "rectify any harm, pecuniary or otherwise, to the person
 11 discriminated against", and

12 WHEREAS, the Human Rights Commission has held a local
 13 government responsible for the alleged discrimination of a
 14 third party and has ordered the local government unit to pay
 15 monetary damages without first articulating a clearly
 16 reasoned basis for its decision and without citing legal
 17 authority upon which its decision was founded, and

18 WHEREAS, the Human Rights Commission is not
 19 sufficiently accountable for its actions to either the
 20 Governor or to the Legislature, because of its independence
 21 and its remoteness in practice from these constitutional
 22 branches of government;

23 WHEREAS, SINCE ITS INCEPTION IN 1974, THERE HAS NOT
 24 BEEN A COMPREHENSIVE LEGISLATIVE STUDY OF THE GOALS AND
 25 EFFECTIVENESS OF THE HUMAN RIGHTS COMMISSION AND THE LAW IT

1 ENFORCES; AND

2 WHEREAS, THE HUMAN RIGHTS COMMISSION HAS BEEN
 3 DESIGNATED AS THE LOCAL AGENCY AUTHORIZED TO ENFORCE
 4 COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF
 5 1973, THE FEDERAL LAW PROVIDING FOR RIGHTS OF HANDICAPPED
 6 PERSONS; AND

7 WHEREAS, IF THERE IS NO LOCAL AGENCY DESIGNATED TO
 8 ENFORCE SECTION 504 OF THE REHABILITATION ACT OF 1973, THE
 9 LAW WILL BE ENFORCED BY THE U.S. OFFICE OF CIVIL RIGHTS
 10 REGIONAL OFFICE LOCATED IN DENVER, COLORADO;

11 WHEREAS, APART FROM TITLE IX OF THE EDUCATIONAL
 12 AMENDMENTS OF 1972 (PUBLIC LAW 92-318) AND SECTIONS 503 AND
 13 504 OF THE REHABILITATION ACT OF 1973 (PUBLIC LAW 93-112),
 14 THERE ARE NO BROAD-BASED FEDERAL LAWS PROHIBITING
 15 DISCRIMINATION AGAINST HANDICAPPED PERSONS; AND

16 WHEREAS, THE MONTANA HUMAN RIGHTS ACT PROHIBITS
 17 DISCRIMINATION, EXCEPT WHEN BASED ON REASONABLE GROUNDS,
 18 AGAINST HANDICAPPED PERSONS IN EMPLOYMENT, EDUCATION, PUBLIC
 19 ACCOMMODATIONS, INSURANCE AND RETIREMENT PLANS, GOVERNMENTAL
 20 SERVICES, AND FINANCING AND CREDIT TRANSACTIONS.

21
 22 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
 23 OF REPRESENTATIVES OF THE STATE OF MONTANA:

24 That an appropriate interim committee be assigned to
 25 study the Human Rights Commission and investigate the

1 conduct of its activities as a quasi-judicial board.

2 BE IT FURTHER RESOLVED, that, as part of its study, the
3 committee should:

4 (1) study the structure and organization of the Human
5 Rights Commission and the Human Rights Division, INCLUDING
6 AN ASSESSMENT TO DETERMINE WHETHER THERE IS INADEQUATE
7 STAFFING AND FUNDING;

8 (2) review the existing statutory authority of the
9 Human Rights Commission, in particular, authority granted
10 under sections 49-2-203, 49-2-204, 49-2-501, 49-2-504
11 through 49-2-506, 49-3-301, and 49-3-307 through 49-3-309,
12 MCA;

13 (3) examine the substantive and procedural rules
14 adopted by the Human Rights Commission and contained in
15 A.R.M. 24.9.201 through 24.9.1412;

16 ~~(4) determine the nature and extent of uncontrolled~~
17 ~~discretion exercised by the Human Rights Commission;~~

18 (5)(4) consider development of an appropriate policy
19 and purpose to guide the Human Rights Commission in
20 implementing the provisions of Title 49, chapters 2 and 3;

21 ~~(6) develop recommendations to confine, structure, and~~
22 ~~check unnecessary, discretionary power of the Human Rights~~
23 ~~Commission;~~

24 (7)(5) evaluate the possibilities of providing for de
25 novo review of decisions made by the Human Rights

1 Commission;

2 ~~(8) devise standards to limit discretion in the award~~
3 ~~of damages by the Human Rights Commission;~~

4 ~~(9) scrutinize the decisions of the Human Rights~~
5 ~~Commission to ensure that state policy is being properly~~
6 ~~administered; and~~

7 ~~(10) hear and investigate allegations of bias in the~~
8 ~~conduct of proceedings by the Human Rights Commission and~~
9 ~~its staff.~~

10 (6) COMPILE AND EVALUATE THE RANGE OF LEGAL REMEDIES
11 FOR DISCRIMINATION THAT ARE AVAILABLE IN OTHER JURISDICTIONS
12 AND ANALYZE THEIR SUITABILITY FOR USE IN MONTANA;

13 (7) CONSIDER THE ADVISABILITY OF REQUIRING SUBMISSION
14 OF COMPLAINTS TO MEDIATION PROCEDURES PRIOR TO THE
15 INSTITUTION OF FORMAL PROCEEDINGS;

16 (8) DEVELOP A COMPARISON OF THE COSTS ASSOCIATED WITH
17 VARIOUS MEANS OF RESOLUTION OF CASES FILED WITH THE HUMAN
18 RIGHTS COMMISSION; AND

19 (9) EVALUATE THE ENFORCEMENT OF SECTION 504 OF THE
20 REHABILITATION ACT OF 1973 BY THE HUMAN RIGHTS COMMISSION
21 AND THE EFFECT, IF ANY, ON THAT ENFORCEMENT IF THE U.S.
22 OFFICE OF CIVIL RIGHTS ASSUMED ENFORCEMENT OF THE LAW; AND

23 (10) EVALUATE THE ENFORCEMENT BY THE HUMAN RIGHTS
24 COMMISSION OF THE STATUTORY PROHIBITIONS AGAINST
25 DISCRIMINATION AGAINST THE HANDICAPPED.

HJR 0053/03

1 BE IT FURTHER RESOLVED, that the committee report its
2 findings and recommendations to the 50th Legislature and, as
3 appropriate, draft legislation to implement its
4 recommendations.

-End-