

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **VICE CHAIRMAN DEBBY BARRETT**, on January 30, 2001 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Debby Barrett, Vice Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Norma Bixby (D)
Rep. Dee Brown (R)
Rep. Donald L. Hedges (R)
Rep. Hal Jacobson (D)
Rep. Larry Jent (D)
Rep. Michelle Lee (D)
Rep. Larry Lehman (R)
Rep. Ralph Lenhart (D)
Rep. Gay Ann Masolo (R)
Rep. Douglas Mood (R)
Rep. Alan Olson (R)
Rep. Holly Raser (D)
Rep. Rick Ripley (R)
Rep. Clarice Schrupf (R)
Rep. Frank Smith (D)

Members Excused: Rep. Allan Walters, Chairman (R)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Ruthie Padilla, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 372, 1/24/2001; HB 376,
1/24/2001
Executive Action: None

HEARING ON HB 372

Sponsor: REPRESENTATIVE JOAN HURDLE, HD 13, BILLINGS

Proponents: Doug Giebel, Citizen of Big Sandy

Opponents: Leroy Schramm, Board of Regents University Systems
Dave Ohlen, Department of Corrections & Board of
Pardons & Parol
Nick Rotering, Department of Transportation

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 0}

REPRESENTATIVE JOAN HURDLE, HD 13, BILLINGS stated the bill is regarding MAPA (Montana Administrative Procedures Act) and is based on the federal model of MAPA. The legislatures who created MAPA created some exemptions. They exempted the University Systems and some parts of the Department of Corrections due to a study being done at that time. The legislative intent was to revisit those exemptions and bring everyone under the MAPA. This bill revisits this.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 5.4}

Doug Giebel, Citizen of Big Sandy submitted and discussed MAPA information. **EXHIBIT**(sth24a01)

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 18.1}

Leroy Schramm, Board of Regents University Systems, stated they rise in opposition to the bill. The Board of Regents has been exempt from MAPA for 30 years and there are good reasons for the exemption. It is not a costless exercise to bring the University Systems under the MAPA. They have 3,500 full-time employees, 6,500 total employees, and 32,000-40,000 full-time students. Due to their size, mission, and number of rules and regulations, they are an unique agency. He submitted and discussed information on Rulemaking and Administrative Procedure Act. **EXHIBIT**(sth24a02)

Dave Ohlen, Department of Corrections & Board of Pardons & Parol, stated on behalf of both the board and department, they urge a do not pass on this bill. The general purpose of the MAPA is to provide people who are affected by the rules, the opportunity to provide comments and influence the adoption of rules. Within the Department of Corrections, there are inmates incarcerated in prison, and they do not feel it is appropriate for that group of people to be involved in the rule making process in which rules govern their behavior in prison and in what happens to them in prison. The biggest concerns are contested case hearing in judicial review. Last year there were 270 litigation files, with the majority being inmate litigation. Under MAPA, instances in which inmates have a due process right, require a contested case hearing. Inmates have some liberty interest that are protected by the du process clause, such as, disciplinary proceeding in prison, probation and parol revocations. In prison, in an average month, there are 200 disciplinary write ups of inmates with two disciplinary hearings officers, who are not attorneys. They do 100-200 hearings a month. If the bill passes, many of those hearings would have to be contested cases, involving council on both sides, cross examination and rules of evidence. The two current disciplinary hearings officers would not be capable of conduction those hearings, therefore, they would have to hire an individual with a legal education.

Nick Rotering, Department of Transportation stated the department currently runs under MAPA and have been for may years in the area of advertising control, fuel tax, and GVW weights. The exemption to the department has to do with the construction of the road projects. The standard specifications for contractors and engineers on how to build roads are over 480 pages and this is why the construction of road projects are exempt. There is also a cost to the tax payers. Each agency has to pay the Secretary of State for the cost of filing new rules, amendment to rules and updating. If this bill passes, the department's administrative rules will be 60% over what is currently done.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 13.4}

REPRESENTATIVE DELL stated, he feels the Universities already have a process in place that is used religiously for contested grades, contested classes, and any other thing that may contested. The process is already in place, so wouldn't changing the process seem unnecessary and possibly be a tremendous expense. **REPRESENTATIVE HURDLE** said it is a very tough decision, however, the original uniform act stated, only the legislature

and the courts should be exempt. This is a decision the committee is going to need to make.

REPRESENTATIVE RIPLEY stated there have been several references to studies that have been done in regards to MAPA. He then asked if the results were available and where could they be found.

REPRESENTATIVE HURDLE replied, after MAPA was first enacted, studies were conducted by the university systems that would support their idea of why they needed to be exempted from MAPA. She does not think the studies have been completed, and has no data about those studies. She is unaware of any studies done specifically of MAPA. **REPRESENTATIVE RIPLEY** then asked, if she knew who was conducting the studies. **REPRESENTATIVE HURDLE** replied, no, the studies were discussed during the constitutional convention and there were some questions on the exemptions being revisited at some point.

REPRESENTATIVE MOOD asked **Doug Giebel** if he has had some history or experience with the university that has led him to believe there is a problem with the process. **Doug Giebel** stated, yes, he has a history with the university system and is the individual who brought the issue to **REPRESENTATIVE HURDLE'S** attention. He brought a case against the university system to the supreme court based on procedural malpractice. This is the decision of the supreme court. "Ordinarily, administrative decisions are subject to judicial review, pursuant to the Montana Administrative Procedure Act, however, both the Board of Regents and the Montana University Systems are exempt from MAPA's provisions, therefore, no independent right of judicial review of university administrative decision exists pursuant to MAPA, nor has that right been created by some other means. In Montana, only the legislature may validly provide for judicial review, as evidence from MAPA however, the legislature has chosen not to provide for general review of university system decisions." In this case, the court denied judicial review.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 28}

REPRESENTATIVE HURDLE stated, this bill is a very controversial bill, and she is very grateful for the consideration of the important matter.

HEARING ON HB 376

Sponsor: REPRESENTATIVE MONICA LINDEEN, HD 7, HUNTLEY

Proponents: None

Opponents: Joyce Scott, Academic and Student Affairs,
University System
Mark Sheehan, Montana State University
Ray Ford, University of Montana

Informational: Barbra Ranf, Department of Administration

Opening Statement by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 0}

REPRESENTATIVE MONICA LINDEEN, HD 7, HUNTLEY, stated the bill creates an Office of Information Technology in the Office of the Governor. She submitted and discussed a table that show the amount of money state government spends on information technology. **EXHIBIT (sth24a03)** To date, the legislature has not enacted guiding principals in the use of technology resources by the state. Establishing guiding principals in statute would enable the legislature to specify the direction and general guidelines on how information technology should be used and managed in state government.

Opponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 17.2}

Joyce Scott, Academic and Student Affairs, University System stated they stand in opposition to the bill. It could be problematic to the university system in several ways. One relates to flexibility in the role of information technology in the realization of the university's missions in instruction and research. The language in the bill would subordinate information technology directions of the university to control standardization. This proposal fails to appreciate adequately the differences in mission goals of higher education compared to those of state agencies and state government. Secondly, there are concerns about the language relating to data access. Last, they feel a significant loss of financial advantage, such as educational discounts on hardware and software. Those educational discounts range from 20-50%. There is the potential of this being very hard on the university system as well as bringing the creativity and productivity to a tremendous slow down.

Mark Sheehan, Montana State University stated the availability of educational discounts to the university's has been a very important part of how they have been able to take the resources available and maximize their utilization for the student and campus community. As discounts on the items go down, the cost of education increases. State governments are not eligible for educational discounts. If the bill requires the universities to make all of it's purchases through contracts established by the state, then the cost of doing business goes up. There are many good ideas in the bill, but the extent to which the bills applies to the universities, makes the bill fatally flawed.

Ray Ford, University of Montana stated, the university system is special in this specific case. First, is the role of students. They have 30,000 students who are users of their technology system. Second, is the role of research and research funding. The budget is between 2-4 million dollars per year. This year alone, they expect to bring in between 40-50 million dollars in research funding. 1/4-1/3 of that money is for technology infrastructure associated with research. Rules have come with the money, as negotiated with the external sponsors. They are free to select purchases to acquire to build as they see fit. It is nice to have this external investment in the universities, plus the flexibility it gives them to look at new ideas. The unique role of the university needs to be looked at as well as the details of the bill.

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 0}

REPRESENTATIVE MASOLO asked where the fiscal note was.

REPRESENTATIVE LINDEEN replied, there is no fiscal note. Section 43 states, the Budget Director shall direct the State Treasurer to transfer an amount necessary from the Department of Administration's information technology funds to support the operation of the Office of Information Technology.

REPRESENTATIVE MASOLO then asked, what the amount will be for the board. **REPRESENTATIVE LINDEEN** replied, currently, in the Department of Administration, there are FTE's currently taking care of policy making. Should the bill pass, the FTE's would be transferred to the Office of Technology.

REPRESENTATIVE MASOLO asked **Barbra Ranf, Director of Department of Administration** if she agreed there would be no extra fiscal responsibility to the department with this bill. **Barbra Ranf** replied, they have not taken a position yet on the bill. Looking at having positions and money transferred out of the Department

of Administration to the Governors Office, they need to look at what it does to their own operations.

REPRESENTATIVE RASER stated, the University has very valid concerns about being put into this umbrella. She then asked what the intent of line 24, continuing on to page 6, line 6-8 is.

REPRESENTATIVE LINDEEN replied, she feels there is an over reaction occurring from the individuals who testified from the university systems. The intent of this legislation is not to have control over their purchasing or policy control over how students use their telephones. This section allows for some flexibility to the university. She stated she is willing to discuss any real serious concerns the university systems may have and make more allowance if needed. The intent of the bill is to make sure when an agency or department is going to invest 20 million dollars into a new system, other agencies will be using it as well.

REPRESENTATIVE BROWN asked if we as tax payers of the State of Montana are funding the university systems, yet the university is replying back, they do not want to have to answer to any state entity in technology. **Joyce Scott**, replied no, what needs to be clear is in the matter in technology. Opportunities come to them very quickly. What the bill shows potential for is a bureaucracy of processes that would take a great deal of time and slow down the realization of some of the opportunities for the university system. It is apparently the kind of control that would dictate all the way down to the operations within the university's instructions and research and the choices and decisions to be made, that is their concern.

REPRESENTATIVE LEHMAN asked if this bill had been in place 4 years ago, would it have eliminated some of the problems associated with the computer system that's been in the process of being installed in the Corrections Department, but is still not complete. **REPRESENTATIVE LINDEEN** replied, she has no knowledge of the system in the Corrections Department, however, she feels if we had this solid policy making function in place several years ago, we could have avoided some costly mistakes.

REPRESENTATIVE RASER asked if they found difficulty in the past when they first came on line with the computer, in sharing information between the University of Montana and Montana State University or was it coordinated from the beginning. **Ray Ford** replied, yes, if you go back to the 1960's, there was some confusion at the beginning with proto calls. **REPRESENTATIVE RASER** then asked, if they currently have situations where they need to electronically communicate with the state. **Ray Ford** replied, there are many communication requirements with the

state. One case is the warehouse system. Communication takes place between Missoula, Bozeman, and Helena by computer interface. **REPRESENTATIVE RASER** stated in reading the bill, it seems to allow the university flexibility in research procurement, educational discount, everything except governing the state-wide Informational Technology Network. **Ray Ford**, replied, that is the intent, however, if it is read correctly, it is very broad. One of the primary concerns is the difference between "would" and "could".

REPRESENTATIVE BARRETT asked if there is a clearing house in state government, where we know of the researches currently going on at the universities. **Ray Ford** replied, there is a coordinated research report that comes from the Commissioners Office and is communicated through the Board of Regents to the state.

REPRESENTATIVE BARRETT then asked, if there is any research in the past or currently taking place that is unknown to state government. **Ray Ford** replied, the universities have in place a policy or law that universities are unable to except secret research. All researches are in the open, however, there is a restriction, in order to promote activities with the private sector, the universities are allowed to hold certain details private at the request of the sponsor for a limited time of 3-6 months.

Closing by Sponsor:

{Tape : 3; Side : A; Approx. Time Counter : 0}

REPRESENTATIVE LINDEEN stated there has been a lot of frustration with this legislative body over the information technology expense to the state and over a lack of coordinated planning and policy making. There was an interim committee and study group that looked at what other states were doing. She said, she is going to get some information on the other six states the study was done on and see how they handled their university systems. This is a good policy that makes sense.

ADJOURNMENT

Adjournment: 10:06 A.M.

REP. ALLAN WALTERS, Chairman

RUTHIE PADILLA, Secretary

AW/RP

EXHIBIT (sth24aad)