

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN JOHN COBB**, on January 24, 2003 at 3:10 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. John Cobb, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Kelly Gebhardt (R)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Pat Murdo, Legislative Branch
Mona Spaulding, Committee Secretary

Please Note:

Audio-only Committees: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 195, 1/10/2003; SB 214,
1/20/2003; SB 178, 1/9/2003; HB 21,
1/17/2003; HB 37, 1/17/2003
Executive Action: SB 195; HB 21; SB 149; SB 142

HEARING ON SB 195

Sponsor: **SENATOR DUANE GRIMES, SD 20**

Proponents: **Clint Blackwood**, Lewis & Clark Bicentennial Commission; **John G. Lepley**, Fort Benton; **Doug Monger**, Fish, Wildlife & Parks (FWP); **Arnie Olsen**, Director, Montana Historical

Society (MHS); **Jeanette Rasmussen**, Lewis & Clark Bicentennial Committee--Choteau

Opponents: None.

Opening Statement by Sponsor: **SENATOR DUANE GRIMES, SD 20**, said SB 195 is a thoroughly enjoyable bill. He referred to Section 1, that the Montana Historical Society, in consultation with a Senate Advisory Group, and the Lewis & Clark Bicentennial Commission (LCBC), provided for in 2-15-150, shall commission a qualified artist to create a bronze relief sculpture. He said last session a painting for the front of the Senate chambers was suggested. It fell short because of funding, but intrigued everybody. In the meantime, the Bicentennial Commission was working on another project. The two have become one. **SEN. GRIMES** said the piece would be suitable for that location. SB 195 allows a commission for a bronze relief sculpture under the guidance of the Historical Society and the direction of the Lewis & Clark Bicentennial Committee. **SEN. GRIMES** said a Senate Advisory Group has been included; it will be made up of former Senators. He has received favorable response from them. He said the Bicentennial Committee will provide funding for the commission of the sculpture as its State-wide Board Legacy Project. The advisory group members and the former Senators, will serve without compensation: The bill does not impact the general fund. **SEN. GRIMES** noted that a Capitol Complex Advisory Council (CCAC) Bill is coming through the House. SB 195 has coordinating language to combine the two bills, with the unanimous approval of the CCAC.

SEN. GRIMES said the Commission has been active since 1997. He welcomed two Commission members: **John Lepley**, and **Jeanette Rasmussen**; and **Clint Blackwood**, who works for the Commission.

SEN. GRIMES noted that the bas relief was not for the Legislature's edification, but for the people of Montana. Televised gavel-to-gavel coverage would make the piece of artwork as identifiable to Montanans as the Russell artwork in the House chambers is now. It will be a lasting gift and fitting capstone to the restoration of the State Capitol. He said it was interesting how things converged: The Capitol restoration; the Bicentennial of the Lewis & Clark Expedition; and it has been almost 100 years since the time the Russell artwork was installed. This is our opportunity to contribute something with a lasting benefit.

SEN. GRIMES said he has contacted former Senators and has received supportive responses. He read a letter received of former **SEN. VIVIAN BROOK**; and referred to one from **Chief Justice** and former **SEN. JEAN TURNAGE**. **SEN. GRIMES** showed the Committee a notebook compiled by **Arnie Olson**, showing the original Senate Chambers, and the Chambers with an elongated shape depicting the proposed bas relief. **SEN. GRIMES** said the content of the relief

will relate to the Lewis & Clark Bicentennial, but also could have Native American representation. He said, in his opinion, the piece of art will become immediately priceless. He expected competition among artists to be strong. As examples of bas reliefs, **SEN. GRIMES** referred to the small plaque of Chief Justice Theodore Brantley in the back of the old Supreme Court Chambers, and famous national Shaw Memorial.

Proponents' Testimony: Arnie Olsen, Director, Montana Historical Society (MHS), said in addition to its primary function of providing a home for government, Montana's State capitol building serves a number of other purposes. Notable among these is the role it plays in illustrating Montanans' pride in the State and in its history. The 35 permanent murals that currently adorn the capitol, add to the building's beauty, but also illustrate the Treasure State's past, and the continuing importance the past holds for Montanans of today. According to Dr. Patricia Burnham, a leading authority on statehouse murals, the art in the Montana Capitol qualifies as one of the richest troves of statehouse art in the country. She says the significance of the paintings lies in their cumulative effect, the stories they tell, their aesthetic appeal, and their relationship to the building that houses them. The paintings that comprise this legacy have either just past the century mark, or will soon be approaching it. From the beginning, the builders of the Montana Statehouse recognized the import of the art work that would embellish the building's interior. They were aware that the adornment of the people's house held a significance that went beyond decoration. Consequently, they commissioned art that told Montana's story in a bold and colorful way--from the time of the first Native American peoples, to the coming of the transcontinental railroad. While the State's founding fathers wanted a traditional statehouse, on a par of those with older states back east, they also wanted to make a statement that was uniquely Montana. The builders of the capitol were able to accomplish both goals successfully. The building's neo-classic exterior places it squarely in the mainstream of American monumental architecture, while the interior art is like none other in the county. Rather than random, allegorical scenes and classical themes that typified the public art at the beginning of the 21th century, Montana forebearers insisted that paintings in the Capitol tell the Montana story. The result was an unequalled gallery of Montana art. When the wings were added to the Capitol a decade after the original structure was completed, three of Montana's leading artists at the time--Ralph E. DeCamp, E. S. Paxson, and Charlie Russell--were commissioned to paint murals for the new law library, House lobby, and House chamber, respectively. Acting on behalf of the citizenry, in 1913, the Legislature passed a joint resolution thanking the three men for their work, and declaring that the three notable artists of our State have adorned the

walls with masterpieces that will be enduring monuments to themselves, and a lasting source of pride for the people of the commonwealth. **Mr. Olson** said that now we want to continue this rich tradition by seeking to commission a bronze relief Lewis & Clark sculpture that will suit this historic, beautifully restored Capitol, compliment the existing artwork, and continue to tell the Montana story. It will serve as a lasting legacy in the Senate, documenting how we, Treasure State citizens at the dawn of a new century, continue to recognize and pay homage to the incredible accomplishments of all those who have gone before in making Montana what it is today. He said it will also provide a permanent legacy to remember the four-year Lewis & Clark Bicentennial commemoration. **Mr. Olson** urged support for SB 195. **EXHIBIT (sts15a01)**

John Lepley, Chair, Lewis & Clark State Bicentennial Commission (LCBC), said this project can easily be done without using State funds. The proposal is to sell a limited edition of the bas relief. **Mr. Lepley** has done four other projects in this manner in Fort Benton, including the Fort Benton State Memorial to Lewis & Clark and the Shep Memorial. A lot of money isn't needed up front because the limited edition of the small relief isn't produced until they are sold.

Clint Blackwood, Executive Director, Montana Lewis & Clark Bicentennial Commission, stood to support SB 195. He submitted letters for the record from **Hal Stearns**, Vice Chair, LCBC **EXHIBIT (sts15a02)** and **Darrell Kip**, member LCBC, Blackfoot Indian Reservation. **EXHIBIT (sts15a03)**

Doug Monger, Administrator, Park Division, Fish, Wildlife & Parks (FWP), said he was statutorily appointed to the LCBC, as well the Capitol Grounds Advisory Council (CGAC). He stood to support SB 195. **EXHIBIT (sts15a04)**

Opponents' Testimony: None.

Questions from Committee Members and Responses: **SEN. GEBHARDT** asked **SEN. GRIMES** why former Senators were chosen for advisory members and not seated Senators. **SEN. GRIMES** said for three reasons: 1) Many of those Senators served longer than current Senators, due to term limits. 2) They would be very interested in it. 3) If there are problems on the floor, former Senators will be able to provide pressure (tongue-in-cheek).

SEN. GEBHARDT asked **SEN. GRIMES** how much it would cost; he realizes the money is not coming from the general fund. **SEN. GRIMES** said he expected the cost to be reasonable because there will be so many people who will want this as a legacy. There will

be a process to go through to choose the piece of art work. In the case of the Mansfield statue, the piece chosen was not the most expensive. He re-referred the question to **Arnie Olson**. **Mr. Olson** said it was hard to know until the proposals are in. One of the points of discussion has been to have a limited number--50 to 75 roughly--of a limited edition to sell at about \$3,000 apiece. That would create a fund of from \$150,000 to \$200,000. **Mr. Lepley** added that the Lewis & Clark State Memorial cost \$150,000 when everything was paid.

Closing by Sponsor: **SEN. GRIMES** recognized the good work of the LCBC. We're proud of all you've been doing for the State.

EXECUTIVE ACTION SB 195

Motion/Vote: **SEN. SPRAGUE** moved that **SB 195 DO PASS**. Motion carried unanimously.

HEARING ON SB 214

Sponsor: **SENATOR EMILY STONINGTON, SD 15**

Proponents: None.

Opponents: None.

Opening Statement by Sponsor: **SEN. STONINGTON, SD 15**, said SB 214 was a proposed Constitutional change that would require a vote of the people and further legislative action. She reviewed current wording, as to how Legislative sessions are conducted and how it enacts business. SB 214 proposes annual Legislative sessions of not more than 90 days in a two-year period. It will go to a vote of the people in the fall of 2004. If passed, the subsequent Legislature would consider several possibilities: 45-day sessions each of two years; 60 days one year, 30 the next; a budget session one year, a policy session the next. The two annual sessions would be limited to a total of 90 days every two years. SB 214 provides greater versatility. In the complexity of 2003, considering the volatility of business and the revenue picture, successfully budgeting a multi-billion dollar budget every two years is too much. **SEN. STONINGTON** said the ballot language indicates annual sessions. The wording change in the Constitutional language would allow continuance of biennial Legislative sessions. SB 214 allows more choice. Current wording says the Legislature will meet every odd numbered year for 90 days. **SEN. STONINGTON** said, being citizen legislators, it would

be easier to come every year for a shorter period of time. Four months is a long time to be away from business and family.

CHAIRMAN COBB said there were two other related bills. They would all be considered before Executive Action is taken.

Proponents' Testimony: None.

Opponents' Testimony: None.

Questions from Committee Members and Responses: **SEN. GEBHARDT** noted that if the word "shall" was changed on line 12 to "may," the Legislature could determine when they wanted to meet. Annual sessions could be tried. If they didn't work, the Legislature could go back to biennial sessions. **SEN. STONINGTON** acknowledged the point. She said the Committee could mix-and-match the three related bills.

SEN. SPRAGUE said he made a point to be a proponent for **SEN. BOHLINGER's** bill. He will also be a proponent for SB 214. **SEN. SPRAGUE** asked if **SEN. STONINGTON** would be a proponent for the other bills. **SEN. STONINGTON** said she would.

SEN. SQUIRES asked if **SEN. STONINGTON** envisioned a chop-job on the session--stringing the 90 days out over months. **SEN. SQUIRES** said it was easier for her, personally, to come to the Legislature for four months. **SEN. STONINGTON** said she hadn't envisioned the next step. SB 214 makes it possible to have annual sessions if the Legislature feels it is desirable. If the ballot approves, the following legislature would decide how to implement the legislation.

Closing by Sponsor: **SEN. STONINGTON** closed. {Tape: 1; Side: B}

HEARING ON SB 178

Sponsor: **SENATOR BEA MCCARTHY, SD 29**

Proponents: Former **SENATOR CHRIS CHRISTIAENS**; **Ginny Dodge**, Citizen's Network; **Harris Himes**; **Julie Mellon**, Executive Director, Montana Family Coalition; **SEN. MIKE TAYLOR, SD 37**

Opponents: **Betsy Brandburg**, State Bar of Montana; **Scott Crichton**, Executive Director, American Civil Liberties Union-Montana (ACLU-MT); **Bob Campbell**; **Chris Manos**, State Bar of Montana; **Al Smith**, Montana Trial Lawyers Association (MTLA); **Susan C. Witte**, State Bar pro bono

Opening Statement by Sponsor: **SENATOR BEA MCCARTHY, SD 29**, said in 1992 when the voters voted a Constitutional amendment to put

term limits on elected officials, judges were not considered. The people who wrote the proposal had not considered judges of any type. She has come to the conclusion that if the Legislature, the Governor and other elected officials are covered by term limits, then the people sitting on the courts should also be covered by term limits. SB 178 very simply gives the qualified electors of Montana a chance to consider term limits for Supreme Court judges. The bill provides for two terms; because each term is for eight years, it provides for a total of sixteen years. Two terms is consistent with term limits for Senators and the Governor.

Proponents' Testimony: Former **SENATOR CHRIS CHRISTIAENS**, representing himself, rose to support SB 178. It will submit to the electorate of Montana an opportunity to either impose term limits, or leave the terms for members of the Supreme Court as they are. Polls taken last December, indicate that voters are somewhat split on the issue. The voters are looking at the same arguments as the Legislature and the Executive Branch. Term limits pertain equally to all. He believes the Judiciary should fall under the same concepts as the Legislature and the Executive Branch. **SEN. CHRISTIAENS** noted that Oregon has ruled term limits unconstitutional; and that Idaho has overturned the Governor's veto to repeal term limits.

Harris Himes, Pastor of Big Sky Christian Center, Hamilton rose to support SB 178. It is his opinion that SB 178 would also tend to limit the pro-activity of the Judiciary that has become prominent across the country.

Julie Mellon, Executive Director, Montana Family Coalition, the State's largest pro-family organization, stood in support of SB 178.

Ginny Dodge, Citizen's Network, a pro-family advocate, rose in support of SB 178.

SEN. MIKE TAYLOR, SD 37, said some states don't look at term limits as a solution, but look at age as a limiting formula. Florida, for instance, limits age to 72. There is a need for longevity to a point. It is almost impossible for an incumbent to unseat a Supreme Court judge. In Montana, he thinks, it has never happened. He said when two-thirds of the government falls under term limits--the Legislative and Executive branches--there is an imbalance without including the Judiciary. Polls show that people want term limits for Supreme Court judges. **SEN. TAYLOR** asked for the bill to pass Committee so that it could be debated on the floor of the Senate; and so that the public can hear the pros and cons of the debate.

Opponents' Testimony: **Susan Witte, probono lobbyist for Montana**, said she has been a member of the State Bar since 1986. There is a Board of Trustees with an Executive Committee that takes a position on bills that may impact the membership. She said the

Judiciary was regulated by the State Bar. The State Bar has consistently opposed term limits in the past, and is here today to oppose SB 178. She said the need for an independent, experienced Judiciary is basic to our democratic process. Independent oversight to protect the rule of law is a fundamental democratic principle, recognized by the Constitution with the separation of powers in the three branches of government. She quoted Article 3, Section 1. The value of precedent the court renders, its stability and reliability in interpretation, needs to be preserved. The more the Judiciary is politicized through the election process, the more that feature of independence is undermined. **Ms. Witte** distributed a white paper prepared by the State Bar. There are three parts: Short Talking Points, Quotes from the Federalist Papers, and a listing of terms of office actually served by Montana Supreme Court Justices.

EXHIBIT (sts15a05) **Ms. Witte** noted that not many Justices have served over 12 years. There may not be a need for this bill.

Al Smith, Montana Trial Lawyer's Association, said term limits were a bad idea for the Legislature, and a bad idea for the Judiciary. If the voters want term limits, they can put term limits on the ballot by the initiative process. He referred to EXHIBIT (4) relating to the terms of Supreme Court Justices, giving examples that **CHAIRMAN COBB** later refuted. The new Section 2, SB 178 does not apply to terms of service begun prior to January 1, 2005.

Bob Campbell, represents himself. He is a practicing attorney who was on the Bill of Rights Committee when this problem was reconsidered. He voted on it three times. He advised caution when starting to take away the rights of the people in Legislation and Referendums. A term limit takes away the right of people to decide. Polls show people are divided about SB 178; close to 50% oppose taking away their right to make a decision. If consistency is the issue, repeal the previous term limit laws. They are expensive to the Legislature and State. The right to decide has been taken away from people. At the Constitutional Convention, taking away the people's right to decide who should be their candidate was never considered.

Scott Crichton, Executive Director, American Civil Liberties Union of Montana (ACLU-MT) said the separation of powers issue should be examined: What separates the Judiciary from the Executive and Legislative branches. The independent, non-partisan Judiciary is our check against abuses of Constitutional power. Partisan political races result in people doing what is popular and is likely to get them reelected. Some candidates, he said, considered their principles and were beyond partisanship: To be their own minds and to represent the best thinking presented to them. At the end of the day, partisan votes often determine the law, determine the policies coming out of the Legislative and Executive branches. The independence of the Judiciary is

protection. Judges are trained with at least five years experience in the legal profession before they run for office. They are people who don't bend to pressures to erode fundamental rights because it's the popular thing. There are distinctions between the Legislature, that meets every two years for ninety days, and the Supreme Court, that deliberates nuances of law day-in and day-out. There is no demonstrated need for this bill. Most Supreme Court Justices do not serve in excess of sixteen years.

Questions from Committee Members and Responses: SEN. SPRAGUE asked SEN. CHRISTIAENS if he voted no on SEN. TAYLOR's bill last session. SEN. CHRISTIAENS said he didn't remember.

SEN. SPRAGUE asked SEN. MCCARTHY the same question. SEN. MCCARTHY didn't remember.

SEN. SPRAGUE to SEN. MCCARTHY said he thought SB 178 was a smart move. It really hasn't anything to do with the Judicial system, or term limits. It has to do with "kicking the bees nest" and see if the Judicial branch will finally look at her lawsuit that says term limits are illegal. SEN. MCCARTHY said he must have looked at the date she filed.

Closing by Sponsor: SEN. MCCARTHY said Mr. Smith was incorrect. The term limit count clock does not start until the election following their term. Anyone appointed in the interim, would not begin their term until such a time as they are elected. She referred to SB 1 and SB 178 as companion bills. She had hoped they could be drafted as one bill. They could not be one bill because term limits on current elected officials was current law. She agree Montana needed an independent and experienced Judiciary; but that Montana also needed an independent and experienced Legislature and Governor. She does not believe in term limits. She agrees Montana needs a separation of powers, and nonpartisan people on the court. She wants the people of Montana to again look at term limits. SEN. TAYLOR referred to a packet of editorials from State newspapers. They all agree with one thing: **{Tape: 2; Side: A}** The ballot box is there to make term limit decisions.

HEARING ON HB 21

Sponsor: REPRESENTATIVE FRANK SMITH, HD 98

Proponents: Laurie Evans; Gary Macdonald; Roosevelt County; Allison Whitmer, President, Wolf Point Historical Society; Boone Whitmer

Opponents: None.

Information: John Blacker, Montana Department of Transportation (MDT)

Opening Statement by Sponsor: REPRESENTATIVE FRANK SMITH, HD 98 introduced HB 21 designating Wolf Point as the site of the Montana Cowboy Hall of Fame. He reviewed the work done to this point, including an environmental study. This project has been on-going for four years. He distributed the City Directory & Visitor's Guide: Welcome to Wolf Point, Montana.

EXHIBIT (sts15a06)

Proponents' Testimony: Gary Macdonald, Roosevelt County Commissioner, representing the Wolf Point Chamber of Commerce, the city of Wolf Point and Roosevelt County, gave an update on HB 21. The Wolf Point Wild Horse Stampede Committee has just won the Montana Pro Rodeo of the Year Award, for an unprecedented 13 times in 14 years. He said the Bill, itself, explained why Wolf Point is the most qualified site. Wolf Point will take great pride in producing an exhibit that all of Montana can be proud of.

Boone Whitmer, Wolf Point, Montana, said he has worked for the last 15 years on Missouri River issues; for the last eight years on the Ft. Peck Dam Interpretive Center. It's interesting to note that Ft. Peck is now the fourth most visited place in Montana, behind Yellowstone, Glacier, and the Big Horn Battlefield. The national office in Washington, D. C. said the wildlife refuge at Ft. Peck Dam is the crown jewel in the lower 48--our best kept secret. The Wolf Point Wild Horse Stampede is the oldest and best rodeo in the State; it ranks with Calgary, Cheyenne and Pendleton. Wolf Point has a rich heritage. There is support from the community, the Indian tribes, the horse culture, the Indian culture, the city of Wolf Point and Roosevelt county.

Laurie Evans, Helena, originally from Wolf Point, said she worked at the museum for two summers while in college. The current museum is in the basement of the library. HB 21 is a wonderful idea.

Alice Whitmer, President of Wolf Point Historical Society and Museum, said the Society and Museum voted to support this project, and have lent their non-profit designation to the current Committee to allow the project to go forward. They have worked with Burlington Northern and been involved with the environmental work that's been done. She said the museum has one of the largest collections of rodeo photography in the State of Montana. It is not archived. There are thousands of photographs that were donated from a rodeo photographer in the early 1920s. As HB 21 has progressed, people have offered to fly in from Texas and Arizona who are members of the National Cowboy Hall of Fame. Other people have expressed interest in donating part of their archival collections to the Montana Hall of Fame: People who grew

up in Montana, rodeoed in Montana, or were famous Montana cowboys or cowgirls. Wolf Point is located on the Ft. Peck Indian Reservation. It is one of the poorer parts of Montana, but rich in history. The historical society has found people want to know more about the cattle culture, and how cowboys in Montana migrated, worked, and developed their operations. Wolf Point is located on the highline, which has nearly as many motor vehicle visitations as I-90; and is very close to Ft. Peck dam, with approximately 380,000 visitors a year. There has been an increase in the number of visitors coming to the Wild Horse Stampede, who want to stay longer and learn more. **Ms. Whitmer** said National Cowboy Hall of Fame standards will be observed in terms of admission and Board requirements, which is one of the reasons for asking for the State designation. The Stampede has the oldest PRCA rodeo cardholder in the nation: Marvin Brookman, a stock contractor, many of whose animals are in the National Rodeo of Fame.

Opponents' Testimony: None.

Questions from Committee Members and Responses: **CHAIRMAN COBB** asked **REP. SMITH** if he wanted HB 21 effective on passage and approval. Discussion followed concerning the effective date, and cost-effective ways to include information on Montana official maps.

Informational Testimony: **John Blacker**, MDT, said the information will be included in the next printing. The 2003-05 maps are now being prepared. HB 21 brings no additional cost to the general fund.

Closing by Sponsor: **REP. SMITH** said HB 21 is good for the Wolf Point area and for Montana. The grants will be written by the EC Program, which is run by the college.

EXECUTIVE ACTION HB 21

Motion: **CHAIRMAN COBB** moved **HB 21**.

Motion: **CHAIRMAN COBB** moved **MOVE TO AMEND HB 21**.

Discussion: **CHAIRMAN COBB** said he would move amendments to make the bill effective on passage and approval; on line 10, strike 12 and add 13 times; line 11, strike 13 and add 14 years.

SEN. SPRAGUE asked if the Committee was putting words in their mouths. The consensus was that amendments were not needed.

Motion: CHAIRMAN COBB moved to WITHDRAW HIS MOTION to AMEND HB 21.

Motion/Vote: CHAIRMAN COBB moved that HB 21 DO PASS. Motion carried unanimously. SEN. GEBHARDT will carry the bill to the floor.

HEARING ON HB 37

Sponsor: REPRESENTATIVE JOHN SINRUD, HD 31

Proponents: None.

Opponents: John Shontz, Montana Newspaper Association (MNA)

Information: Dulcey Hubbert, Commission of Political Practices (COPP); Jim Scheier; COPP; Linda Vaughey, Commissioner, COPP

Opening Statement by Sponsor: REP. JOHN SINRUD, HD 31, said HB 37 was needed in order to protect the integrity of files in the Department of Political Practices. In the past, files have been lost or damaged when, by law, the COPP is responsible for them. Charges are currently made for copies. The public has access to information, but only staff makes copies. The proper charge, now that staff is taken from other duties, has been determined to be a composite of the actual cost of materials and equipment, and staff time at grade 10. REP. SINRUD referred to examples and cost comparisons. **EXHIBIT(sts15a07)** He said the proposal seems fair to all people; but that the basic crux of the bill was security.

Proponents' Testimony: None.

Opponents' Testimony: John Shontz, representing the Montana Newspaper Association (MNA), said HB 37 had good and bad points. For members of the press, the cost to get copies of documents would be cheaper. One of the problems, going directly to the security issue, is that it violates a Constitutional provision. Section 9, Montana Constitution, says no person shall be deprived of the right to examine documents of all public bodies and agencies of the State government and its sub-divisions. Mr. Shontz said he didn't believe an agency of State government can say to any person, "if you want to look at our records, we're going to charge you an administrative oversight fee." He questioned if the concept behind the bill--to protect files, and keep people from them; which may be a cost of living in a democracy--meets the Constitutional test.

Informational Testimony: Linda Vaughey, Commissioner, COPP, referring to EXHIBIT (6), said the charges are for copies. No one is being charged for accessing files. Control of the files is being maintained. She says she cannot remember one complaint that has not required a staff member, or herself, to access a file. **{Tape: 2; Side: B}** It is critical to maintain control of the files. The contents are used in court cases, MAPA hearings--the formal complaint investigation process. No one has ever been prohibited from examining files.

Questions from Committee Members and Responses: SEN. SPRAGUE considered the interpretation of the technical point of "access" vs. "direct access." He asked **Com. Vaughey** to define the difference. She said she agreed with him that the Constitution meant access, not direct access. Access has to be supervised because the office is responsible for the integrity of the files. There are office policies that create a procedure to access files.

SEN. SPRAGUE asked the same question of **Mr. Shontz**. He said the answer was probably found in a Supreme Court opinion, out in November, 2002, having to do with a school district in Billings. The court was blunt: It essentially said "don't try to play with technicalities when dealing with this provision of the Constitution." **SEN. SPRAGUE** said in that court case, access was denied. **Mr. Shontz** said access was, in some cases, controlled. The point regarding wordsmithing in this area was "don't fool with it folks." Justice Rice and Justice Gray were on the opinion.

SEN. GEBHARDT asked **Mr. Shontz** if lines 12-13 give complete access to the files. **Mr. Shontz** said there were good parts to the bill; but that the primary issue is: If you start charging staff time to be involved with the public's right to access government documents, then you start to impede access as it was envisioned in the Constitution.

CHAIRMAN COBB said some kind of cost could be charged for copies. **Mr. Shontz** said the issue as to whether or not the State could charge for copies has never been addressed.

SEN. WHEAT said he understood the crux of the bill to be security, and asked what the security problem was. It seems as if necessary policies have been implemented. **Com. Vaughey** said there were two situations: 1) Current language says records are to be made available for public inspection and copying. COPP has interpreted that to mean, in the past, that the public could physically take the records to a copy machine on another floor, and do the work themselves. There was no staff supervision. As a result, there have been instances where a file disappeared and other files have been corrupted. It is necessary to be able to access records quickly, and to guarantee their integrity: it is also a legal duty. Until records are electronically available,

COPP manages a paper blizzard. 2) It seemed to **Com. Vaughey** that copy costs were not equitable. She explained the current vs. proposed method of charging the public for copies. The proposed method equalizes the costs, taking into account the staff time actually used. **SEN. WHEAT** asked her if that wasn't what her staff was already paid to do. Several scenarios were examined as to the procedure if records were requested by phone; when they would be faxed; when mailed; and when someone came to request copies in person. **Com. Vaughey** said the issue is that, contrary to procedures in the past, COPP is now having staff supervise public access to files. **SEN. WHEAT** asked if COPP was already doing what was outlined in HB 37. **Com. Vaughey** said the public was being supervised by staff, but that costs were not being calculated in the proposed manner.

SEN. SPRAGUE said it seemed logical, in the real world, that these things would just be done. He asked **Com. Vaughey** if the bill was introduced because, in government, she can't just administratively do things on her own. **Com. Vaughey** said that was concisely correct.

SEN. SQUIRES calculated costs in the example EXHIBIT(6). She said the employee is being paid by the State. The citizen-consumer is being charged \$2.85 for 15 minutes of staff time, when the staff is supposed to be working for the citizen-consumer. COPP is getting double pay for 15 minutes; and is getting more out of the employee without giving anything to the employee. He asked the commissioner to respond. **Com. Vaughey** said she didn't understand the analogy. **SEN. SQUIRES** said COPP was charging the citizen-consumer \$2.85. When that happened ten times, COPP would have collected \$28.50. She asked where the money was going. **Com. Vaughey** said to the general fund. She has been scrutinizing her budget, as have all managers in State government. Any revenues collected go to the general fund. **SEN. SQUIRES** asked what the policies were relative to providing copies to Legislators and non-profit organizations. **Com. Vaughey** said everyone was charged for copies.

CHAIRMAN COBB said no action would be taken on HB 37 now. It needs to be carefully considered in light of the precedent it would set for all State agencies. If any charges are made for copies, or for security, everyone should agree what is being done. HB 37, if it is passed, should be made uniform.

Closing by Sponsor: **REP. SINRUD** said he understood the point. The intent of HB 37 is to be fair. Obviously if free access to records results in having records walk out the door, something needs to change. Charges are now made for copies. He said HB 37 provides a more equitable method. Access to files has not been limited in any way. The changes reflected in the bill allow the integrity of the COPP office to be upheld. The way things now

stand, if people have vendettas against you, they can go in, take the original copies and you're in trouble because you are not in compliance with the law. **SEN. SINRUD** said if the newspapers truly had the best interests of COPP at heart, they would put things back exactly as they found them.

EXECUTIVE ACTION SB 149

Motion/Vote: **SEN. SQUIRES** moved to **TAKE SB 149 OFF THE TABLE.**

Motion/Vote: **SEN. SQUIRES** called for the question that **SB 149 BE TAKEN OFF THE TABLE.** Motion carried 3-2 with **SQUIRES** and **WHEAT** voting no.

Motion/Vote: **CHAIRMAN COBB** moved that **SB 149 DO PASS.** Motion carried 3-2 with **SQUIRES** and **WHEAT** voting no.

EXECUTIVE ACTION SB 142

Motion: **CHAIRMAN COBB** moved **SB 142 DO PASS.**

Motion: **CHAIRMAN COBB** moved **SENATOR WALTER MCNUTT'S AMENDMENT TO SB 142.**

Discussion on the Amendment: **CHAIRMAN COBB** explained the amendment.

Motion/Vote: **CHAIRMAN SQUIRES** called for the question that the **AMENDMENT TO SB 142 DO PASS.** Motion carried 3-2 with **SQUIRES** and **WHEAT** voting no.

Discussion on the Bill: **CHAIRMAN COBB** recognized **SEN. WHEAT**, who expressed concerns with the bill, even as amended. He stated his concerns, saying:

I'm not unpatriotic. I've served my country in the Vietnam War, in combat situations; I'm not trying to cause you any trouble. I understand there are situations where information needs to be held confidential. I have some concerns that SB 142 is too broad. The testimony that was heard was that there was information the Federal Bureau of Investigation has that they don't want to share with the State because they think it will get out. I am sensitive to that. I think a bill could be drafted to deal with that

information; so that type of information could be held confidential.

As this bill is structured, it applies to information—on page 3, line 11: "Information compiled by the State that, if released to the public, would create a threat to the privacy or physical safety of any person." That is anybody in the State of Montana. I think it is too broad, and it keeps getting broader and broader as it goes. I think that this bill needs some work.

When we heard testimony, I asked Chris Tweeten, who works at the Attorney General's office, if they had considered any kind of an internal procedure to sift through information at the State. If this were passed, how they would deal with the information. He gave me a 2-1/2 page document that he had drafted, which was not part of his testimony. There is no mechanism here on how people are going to get access to this information. I assume what you would have to do is bring a lawsuit. Then the court would make the determination.

From my point of view, it's a recipe for hiding all kinds of information under the guise of it being confidential; that it's going to protect national security, when it probably doesn't need to be held confidential. For those reasons, I can't support the bill. In concept, I support the idea that there is information that should be held confidential. It's related to security. If we had a bill that was more limited to security issues, limited to information that had been gathered by the federal government related to homeland security, then I think I would certainly support it. As the bill exists, I can't support it.

CHAIRMAN COBB asked the secretary to transcribe **SEN. WHEAT's** concerns verbatim for the record, with a copy to him, after **SEN. WHEAT** reviews it. He said the statement would be important if the issue becomes a court case. The minutes will be reviewed.

SEN. SPRAGUE told **CHAIRMAN COBB** it seemed he just contradicted his own opinion: If some of the information is held to be confidential, and later it is found not to be; therein lies the lawsuit. I think people will be on notice to be sure information is "sensitive."

CHAIRMAN COBB replied that the State doesn't have a right to privacy, but individuals do. He thought the bill expanded the rights of privacy.

SEN. GEBHARDT {Tape: 3; Side: A} said he mentioned in the hearing, that certain information has been available in the courthouse; but you had to go there to get it. Now, anyone can get on the Internet and access the information electronically. No one knows who is accessing that information. He said he didn't care if they know where he lives, or what color his house is; but that information concerning what is inside his house should be restricted. Information that allows someone to throw a bomb through the master bedroom window in the middle of the night should be restricted.

SEN. WHEAT responded saying part of the reason he felt SB 142 was broad goes back to the testimony from the hearing. What **SEN. GEBHARDT** said illustrates what worries **SEN. WHEAT**: "They" want this; or "they" want that, when "they" isn't identified. He is not convinced, in this war on terrorism, there are people infiltrating into our State that are trying to conduct terrorist, covert operations. He thinks that if there is sensitive information about national security--perhaps related to sites in the State: the dams, the power grids--then that information may be subject to confidentiality. SB 142 is too broad. We're imposing on a Constitutional right to know, and balancing that with individual rights to privacy. The bill tips too far. **SEN. WHEAT** said he thought the bill could be made tighter so that it would withstand Constitutional scrutiny. The way it is now, he's not certain it would. **SEN. GEBHARDT** corrected his ambiguity saying "they" reads "an individual or group of individuals."

Motion/Vote: **CHAIRMAN COBB** called for the question that **SB 142 DO PASS AS AMENDED. Motion carried 3-2 with SQUIRES and WHEAT voting no.**

Announcements: **CHAIRMAN COBB** asked for a Subcommittee update on SB 4 and SB 50, the Veterans' Bills.

ADJOURNMENT

Adjournment: 5:20 P.M.

SEN. JOHN COBB, Chairman

MONA SPAULDING, Secretary

JC/MS

EXHIBIT (sts15aad)