

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th Legislature - REGULAR SESSION

COMMITTEE ON State ADMINISTRATION

Call to Order: By **CHAIRMAN LARRY JENT**, on January 14, 2005 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Rep. Larry Jent, Chairman (D)
Rep. Dee L. Brown, Vice Chairman (R)
Rep. Veronica Small-Eastman, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Mary Caferro (D)
Rep. Sue Dickenson (D)
Rep. Emelie Eaton (D)
Rep. Robin Hamilton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. William J. Jones (R)
Rep. Gary MacLaren (R)
Rep. Bruce Malcolm (R)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)

Members Excused: Rep. Hal Jacobson (D)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Marion Mood, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 139, 1/5/2005; HB 128, 1/5/2005;
HB 107, 1/5/2005; HB 112, 1/5/2005

Executive Action: HB 17; HB 128; HB 139; HB 166;
HB 107

HEARING ON HB 139**Opening Statement by Sponsor:**

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 139**, Adopt most recent version of federal military laws. **REP. GALLIK** explained that this bill is necessary because of the Montana Supreme Court's holding that the Legislature may only adopt *existing* federal laws and regulations as State law; and it specifically deletes the sentence, "These rules must conform to any applicable federal laws and regulations."

Proponents' Testimony:

Major General Randall D. Mosley, Director, Department of Military Affairs, explained that Montana's National Guard is governed by two sets of laws: as the federal reserve of the U.S. Army, it is governed under Title 10 and Title 32 of the federal code and under Title 10 of State code, as a State organization. Since 2001, 82% of the Air National Guard and 70% of the Army National Guard have been mobilized and deployed for duty worldwide. This deployment falls under federal rules while mobilization for State duty is under the Governor's control and State laws apply. HB 139 is a housekeeping measure brought forth every session in order to change the dates, thus ensuring that the National Guard complies with both the federal and State laws.

EXHIBIT(sth10a01)

Roger Hagan, Officer and Enlisted Associations of the Montana National Guard, provided written testimony.

EXHIBIT(sth10a02)

Opponents' Testimony: None

Questions from Committee Members and Responses:

VICE CHAIR DEE BROWN, HD 3, HUNGRY HORSE, inquired if this change in statute extended rule making powers not otherwise granted in law. **Maj. Gen. Mosley** replied that it did not; 10-1-104 and 10-1-105 in Section (2) of the bill are existing statutes, and HB 139 merely adjusts language as a housekeeping measure. **VICE CHAIR BROWN** asked why language on Page 1, Lines 23 through 25, was added. **Maj. Gen. Mosley** explained the bill sought to clarify that the National Guard's conduct is governed by federal law except when the operation is a State mission and State laws may not be consistent with federal law. **VICE CHAIR BROWN** questioned the need to codify this. **Maj. Gen. Mosley** advised it was deemed

necessary to make it plain that federal law governs except when it is inconsistent with Montana's constitutional laws.

CHAIRMAN LARRY JENT, HD 64, BOZEMAN, asked Lt. Col. Moran to comment. **Lt. Col. Jim Moran, Staff Attorney, Montana National Guard**, explained that the law allows adoption of federal rules and regulations to ensure continuity for the Guard's airmen and soldiers when switching between federal and State active duty. In addition, HB 139 updates those federal rules which can be adopted since by law, they have to be current; this is why the bill is updated every two years. He added that Lines 23 through 25 were included to make it clear that federal law does not always have to be followed if it is better to conduct business under State laws.

Closing by Sponsor:

REP. GALLIK closed.

HEARING ON HB 128

VICE CHAIR BROWN chaired this portion of the hearing.

Opening Statement by Sponsor:

CHAIRMAN LARRY JENT (D), HD 64, opened the hearing on **HB 128**, Revise vacating an officer's commission for a felony. **CHAIRMAN JENT** explained that a person convicted of a felony is no longer eligible to be a commissioned officer; HB 128 clarifies that if this conviction occurred in a civilian court, it ensured that the person had been afforded every possible due process protection required under the law and therefore, no second military trial was necessary.

Proponents' Testimony:

Major General Randall D. Mosley, Director, Department of Military Affairs, provided written testimony.
[EXHIBIT\(sth10a03\)](#)

Roger Hagan, Officer and Enlisted Associations of the Montana National Guard, also rose in support of HB 128 and submitted a Witness Statement.
[EXHIBIT\(sth10a04\)](#)

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. BERNIE OLSON, HD 10, LAKESIDE, asked for an explanation of the terms "commissioned" versus "warrant" officer. **Maj. Gen. Mosley** advised that a "commissioned officer" was in charge of command control and served in administrative and managerial functions whereas the term "warrant officer" was used for a highly qualified technical expert; in the past, when highly technical and specialized training was required, a "warrant" had been provided. In the last several years though, warrants have been received in commissions and even though both terms are still being used, the distinction between them has narrowed considerably.

REP. ROBIN HAMILTON, HD 92, MISSOULA, wanted to know how many times within the last four years this bill would have been necessary. **Maj. Gen. Mosley** deferred the question to **Lt. Col. Moran** who advised that he had contemplated requesting this change in current law when one of his commissioned officers was convicted of negligent vehicular homicide (second DUI offense) and was incarcerated in Deer Lodge. Before this bill, it would have required a military trial in absentia to vacate this person's commission; a potentially lengthy process was averted because the officer in question agreed to resign his/her commission.

Closing by Sponsor:

CHAIRMAN JENT stressed that it is both cumbersome and wasteful of resources to have to go through a separate judicial proceeding in order to vacate a commission and remove an officer from duty who has already been convicted in a civilian court.

HEARING ON HB 107

Opening Statement by Sponsor:

CHAIRMAN LARRY JENT (D), HD 64, opened the hearing on **HB 107**, Revise laws governing placement of art and antiquities in and on capitol complex. He explained that the Capitol Complex Advisory Committee is charged with adopting a plan for the placement of art and memorials in the Capitol complex and its grounds as well as the approval of temporary displays and photographs. **CHAIRMAN JENT** provided Amendment HB010701.ash which corrects the fact that Sections (d) and (e) had been left out of the bill inadvertently. **EXHIBIT**(sth10a05)

{Tape: 1; Side: B}

CHAIRMAN JENT pointed out that the Legislature has final approval with regard to the placement or removal of any art or memorial item. He elaborated that the committee had decided to retain the monument featuring the Ten Commandments because they are part of the moral code which goes into the making of laws. He added that the Montana State Capitol has been added to the National Register of Historic Places and along with it, the Capitol grounds which feature the above monument.

Proponents' Testimony:

Arnie Olsen, Director, Montana Historical Society, submitted written testimony.

EXHIBIT(sth10a06)

Sheryl Olson, Department of Administration, advised that she was the staff person for the Capitol Complex Advisory Council and apologized for the drafting oversight; the Ten Commandments monument and the Montana Centennial Square which had to be amended into the bill had been on the original list supplied to the Council.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. TERESA HENRY, HD 96, MISSOULA, asked the sponsor what an "arrastra" was (Page 4, Line 14). **CHAIRMAN JENT** Stated it was a device used to crush ore. **REP. HENRY** inquired why Line 17 on Page 3 was stricken. **CHAIRMAN JENT** deferred to **Mr. Olsen** who explained that the portraits are part of the Historical Society's collection and had been in the Governor's office but were somehow missed.

REP. HENRY wondered if adding a plaque recognizing former President Bush would set a precedent in that all other presidents would be recognized in this manner. **Ms. Olson** contended that it would not; it was placed on the grounds because the former President Bush had paid a visit to the State Capitol. She added that the bill makes reference to this plaque and the Mansfield statue because the law says a person or event can only be honored or recognized until ten years after their death or the event's closing; HB 107 aims to change that provision as well.

REP. JOAN ANDERSEN, HD 59, FROMBERG, recalled the fund raising for the purchase of a piano in 2001, adding that it now displayed a plaque listing the names of donors; she wondered if this plaque fell under the provisions in HB 107. **CHAIRMAN JENT** advised that

the plaque did not commemorate an event but recognized the generosity of the donors; the provisions of HB 107 do not apply.

REP. MARY CAFERRO, HD 80, HELENA, asked what effect a vote for or against the Capitol complex bill would have. **CHAIRMAN JENT** explained that it was a vote to retain artwork and statues listed in the bill, including the Ten Commandments.

VICE CHAIR BROWN informed **REP. CAFERRO** that the intent of the bill was to codify the history of the Capitol complex, not the acceptance of each individual piece.

REP. CAFERRO asked the sponsor to follow up on **VICE CHAIR BROWN'S** Statement. **CHAIRMAN JENT** explained that the Council determined what was appropriate for display at the Capitol, and the interim committee had decided that the Ten Commandments monument was part of the historical display and had been on the Capitol grounds for some time.

Closing by Sponsor:

{Tape: 2; Side: A}

CHAIRMAN JENT stated that he was honored to be one of two House members on the Council charged with the selection of pieces that provided insight into the State's history.

EXECUTIVE ACTION ON HB 17

Motion/Vote: **REP. BROWN** moved that **HB 17 DO PASS**. Motion carried unanimously by voice vote; **REPS. EATON** and **JACOBSON** voted aye by proxy.

Motion/Vote: **REP. BROWN** moved that **HB 17 BE PLACED ON THE CONSENT CALENDAR**. Motion carried unanimously by voice vote; **REPS. EATON** and **JACOBSON** voted aye by proxy.

CHAIRMAN JENT announced a 15-minute break to give the next sponsor time to appear before the committee. The Hearing reconvened at 9:15 A.M.

HEARING ON HB 112

Opening Statement by Sponsor:

REP. JOHN MUSGROVE (D), HD 34, opened the hearing on **HB 112**, Encourage teleworking. He emphasized that the directive "documenting" in Section 1 of the bill served as a useful tool,

allowing an agency to watch implementation and progress of teleworking.

(REP. EMELIE EATON entered the room at 9:20 A.M.)

Proponents' Testimony:

Geoff Feiss, Montana Telecommunications Association, rose in support of HB 112, adding that his organization plays a big part in making teleworking possible by providing high-speed internet access to more than 250 towns in the State. He stated that should this bill pass, the telecommunications industry was eager to provide the technology to encourage telework, distance learning, telemedicine, and other uses of telecommunications.

Opponents' Testimony: None

Informational Testimony:

Jim Pellegrini, Deputy Legislative Auditor, Legislative Audit Division, offered to answer any questions regarding the performance audit which recommended an increase in teleworking.

Questions from Committee Members and Responses:

VICE CHAIR BROWN wondered how the State supervises a person teleworking out of Belgrade. **Mr. Pellegrini** advised that during the audit, the complexities of telework was scrutinized and it was found that the type of supervision necessary for this was very different from that of supervising an employee in the office. Agencies which were successful with telework were able to increase productivity of the staff member by the following means: instead of insisting on an 8-hour day, emphasis was placed on getting a particular project or service done in a timely manner. If the work did not get done, the employee was no longer considered a candidate for telework.

VICE CHAIR BROWN asked if certain agencies were a better fit for this than others. **Mr. Pellegrini** affirmed this and explained that in most cases, if people have to attend meetings in the office, have contact with the public or interact with staff, telework was not an ideal solution. It would work for agencies with people in the field as well as for some DPHHS employees. The audit report suggested that each agency has to decide if this is a feasible working arrangement for their employees.

VICE CHAIR BROWN voiced concern that passage of HB 112 could trigger a major exodus of State employees from the offices in the Capitol complex to workstations at home. **Mr. Pellegrini**

contended that the State allowed telework prior to HB 112 and there was no mass exit; it would be an individual decision between supervisor and employee, and no one anticipated a big exodus but he allowed that there would be an increase in telework. **VICE CHAIR** asked if an up-coming audit would revisit this issue and uncover, by percentage of workers per agency, whether this bill had, indeed, created an exodus. **Mr. Pellegrini** advised that follow-ups were part of an audit, and this bill, if passed, required documentation of the benefits. He declared that a follow-up report with regard to any increase of telework and benefits provided will be made to the Legislative Audit Committee.

REP. B. OLSON wanted to know who paid for a teleworker's equipment hook-up. **Mr. Pellegrini** replied that those agencies currently using teleworkers are budgeting and paying for the hook-up.

REP. ANDERSEN asked whether the computers and other needed equipment were furnished by the agency which **Mr. Pellegrini** confirmed. **REP. ANDERSEN** wondered whether this increased the quantity of equipment and thus, the cost. **Mr. Pellegrini** advised that in some cases, getting the proper equipment did increase cost; in others, the original office equipment was used. **REP. ANDERSEN** inquired whether he knew what the additional cost was. **Mr. Pellegrini** replied the cost to set up a new employee in an agency was roughly \$1,000, and he estimated this would hold true for a teleworker. **REP. ANDERSEN** asked how many people did telework. **Mr. Pellegrini** Stated that the audit identified 450 to 500. He felt the number was low since many are working informally.

REP. HENRY inquired whether allowing employees the flexibility of setting their own schedules and working from their homes could lead to increased productivity and cost savings. **Mr. Pellegrini** advised that an in-depth study done in North Carolina estimated an annual productivity benefit of over \$21 million; the option of teleworking also had a positive effect on retention and recruiting. **REP. HENRY** wondered whether teleworkers would have to have exceptional computer skills. **Mr. Pellegrini** claimed the majority of teleworkers would do reports or analyze data which merely required a basic knowledge of word processing and spreadsheet programs.

REP. GORDON HENDRICK, HD 14, SUPERIOR, expressed concern about burglaries and identity theft and asked what, if any, security measures were in place to prevent these. **Mr. Pellegrini** Stated that the question about the State's liability had come up in the

audit but dealt mainly with potential injuries; there was no information on identity theft. **REP. HENDRICK** surmised that back-up copies should be made, especially for confidential work. **Mr. Pellegrini** replied that confidential work would not be eligible for teleworking.

REP. GARY MACLAREN, HD 89, VICTOR, asked how many agencies were involved in the study. **Mr. Pellegrini** Stated surveys had been sent to all agencies but only five to six major agencies had responded.

CHAIRMAN JENT inquired how the efficacy of teleworking versus working in an office would be established. **Mr. Pellegrini** advised that the Department of Administration has established rules for the successful implementation of telework programs; forms had to be signed and agreements made between the employee and the employer. The employer was granted the right to remove any employee from this work status who did not meet certain requirements.

VICE CHAIR BROWN sought clarification on whether the rules allowed for anyone other than the teleworker to use the equipment. **Mr. Pellegrini** believed the rules indicated that a separate office, approved by the supervisor, had to be established. **VICE CHAIR BROWN** maintained that this was a critical part of the issue.

REP. WILLIAM JONES, HD 9, BIGFORK, wanted to know if there were any safety or workers' compensation issues. **Mr. Pellegrini** advised those issues had been addressed by the Department of Administration and there were processes in place. **REP. JONES** was curious whether there were allowances for workplace inspections. **Mr. Pellegrini** advised that during the audit, they had not observed any inspections but had found agreements between the parties involved which indicated there would be inspections.

Closing by Sponsor:

REP. MUSGROVE closed, saying that telework exists but is not codified, and this bill gives oversight to an option already in place.

EXECUTIVE ACTION ON HB 128

{Tape: 2; Side: B}

Motion: **REP. BROWN** moved that HB 128 DO PASS.

Discussion:

VICE CHAIR BROWN commented that the bill made sense.

REP. BRUCE MALCOLM, HD 61, EMIGRANT, wondered how the bill's provisions dovetailed with federal regulations. **CHAIRMAN JENT** contended that if a person on federal active duty lost their commission, it would be by court martial; if there was a civilian conviction, he was certain they would lose their commission as well. **REP. MALCOLM** wondered if the Montana National Guard could rescind a commission if the guardsman was on federal active duty which **CHAIRMAN JENT** confirmed.

Vote: Motion carried unanimously by voice vote; **REP. JACOBSON** voted aye by proxy.

EXECUTIVE ACTION ON HB 139

Motion: **REP. HENDRICK** moved that HB 139 DO PASS.

Discussion:

VICE CHAIR BROWN commented that she had been concerned with language on Lines 21 through 23 in the bill but **Sheri Heffelfinger, LSD**, had alleviated this concern by pointing out that current law included this redundant language and wanted to match it with regard to the State's regulations; she Stated that she would vote in favor of HB 139.

Vote: Motion carried unanimously by voice vote; **REP. JACOBSON** voted aye by proxy.

Motion/Vote: **REP. BROWN** moved that HB 139 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously by voice vote; **REP. JACOBSON** voted aye by proxy.

(**CHAIRMAN JENT** offered to delay voting on HB 112 as **REP. ANDERSEN** had requested more information).

EXECUTIVE ACTION ON HB 165

Motion: **REP. BROWN** moved that HB 165 DO PASS.

EXHIBIT(sth10a07)

Motion: **REP. OLSON** moved that **AMENDMENT HB016501.ASH** BE ADOPTED.

Discussion:

Upon **CHAIRMAN JENT's** request, **Ms. Heffelfinger** explained that the title was amended to read:"...limiting the term of a student regent to one year"; the amendment also struck "reappointed" and inserted "appointed to succeeding terms."

Vote: Motion carried unanimously by voice vote; **REP. JACOBSON** voted aye by proxy.

Motion: **REP. BROWN** moved that HB 165 DO PASS AS AMENDED.

Discussion:

REP. B. OLSON voiced his opposition to HB 165. It had become obvious in discussions with the current student regent and members of MAS that the two were in disagreement on the issue; it was his opinion that HB 165 was born out of the reaction to the decision of one governor concerning one previous student regent. Current statute had not presented any problems prior to this incident and he saw no need for HB 165.

REP. A. OLSON Stated that the one-year term limit made it impossible for the Senate, who meets every other year, to confirm the appointee as required by law.

CHAIRMAN JENT asked whether the student regent had to be confirmed by the Senate. **Ms. Heffelfinger** recalled that this was brought up in testimony but she had been able to verify it.

REP. OLSON commented that he remembered the heated confirmation discussion on the floor of the Senate during the 2001 Session.

REP. JONES remarked that he opposed the bill because it put unnecessary restrictions on the Governor.

REP. HENRY Stated she would vote in favor of the bill because a one-year term offered a chance for the position to students of two-year colleges and it would give those in four-year programs a chance to get through their freshman year without having to take on this responsibility.

VICE CHAIR BROWN shared Rep. Henry's thoughts on the two-year students; she was adamant though, that the learning curve is too steep to be accomplished in a one-year term.

REP. A. OLSON agreed with **REP. HENRY** in as much as two-year students should be encouraged to get involved; current law,

though, authorizes the Governor to appoint the student regent to a terms of one to four years.

REP. HAMILTON commented that he would vote for the bill, mainly because a large part of his constituents are students at the University of Montana. He contended that the turnover in the student body was huge because students did not think that far ahead in terms of commitment; if the election of a student regent was held every three or four years, most students would not be aware that this opportunity even existed. An election process every year would greatly heighten their awareness and might provide the impetus for them to get involved.

REP. HENRY agreed with **REP. A. OLSON** that the Governor can make the appointment for a shorter term but compared the college freshman year to the first couple of weeks for freshmen legislators where the sheer volume of demands and paper could keep them from taking on another responsibility.

REP. DICKENSON wondered whether the Senate had some sort of "absentee responsibility" since by her calculations, it was conceivable that two student regents could be appointed to a one-year term each without ever being confirmed by the Senate.

CHAIRMAN JENT commended her for an excellent question; he attested that District Judges were appointed by the Governor and confirmed by the Senate and speculated there had to be some mechanism in place to accomplish this since District Judge openings did not happen during legislative sessions.

Sheri Heffelfinger was unable to find the paragraph dealing with the confirmation issue, and **CHAIRMAN JENT** proposed postponement of Executive Action on HB 165. Without objections, **VICE CHAIR BROWN** withdrew her motion.

EXECUTIVE ACTION ON HB 166

Motion: **REP. HENDRICK** moved that HB 166 DO PASS.

Discussion:

REP. A. OLSON contended that he could declare a different party affiliation without changing his ideology and speculated that HB 166 would not accomplish what **REP. FUREY** had intended as the choice was the Governor's prerogative. He, therefore, would vote against this bill.

REP. B. OLSON recounted that the students he polled had Stated these elections were mostly non-partisan; he asked not to put a

partisan label on the candidates and declared that he would vote against the measure as well.

REP. ANDERSEN voiced concerns about the fairness of the process, saying it could exclude worthy students simply by limiting members to no more than four of any one party.

REP. MALCOLM stated the restriction limited the flexibility of the Board of Regents since the party affiliation of the student regent as the seventh member could not be foreseen. He proclaimed he would vote against HB 166.

REP. DICKENSON commented that the last four years have caused an alienation and a disconnect between some student bodies and the Board of Regents, particularly the student regent who served on the Board at the time. She felt a solution had to be found to avert this kind of turmoil but HB 166 was not the vehicle to accomplish this. She opined that it merely raised more issues and said she would vote against the bill.

CHAIRMAN JENT elaborated that the Montana Constitution gives the Governor a wide discretion in the appointments he makes as well as in the appointment process, and while it is constitutional to limit the Governor's authority, it should be done with great discretion. He conceded that the bill served a useful purpose in highlighting the fact that there had been great tension between the student regent who was appointed and the students he was purported to serve; he intended to vote against the bill as well.

Vote: Motion failed 3-13 by roll call vote with **REPS. CAFERRO, HAMILTON AND HENRY** voting aye; **REP. JACOBSON** voted no by proxy.

Motion/Vote: **REP. OLSON** moved that HB 166 BE TABLED AND THE VOTE REVERSED. Motion carried 13-3 by voice vote; **REP. JACOBSON** voted aye by proxy.

EXECUTIVE ACTION ON HB 107

Motion: **REP. BROWN** moved that HB 107 DO PASS.

Motion/Vote: **REP. DICKENSON** moved that AMENDMENT HB0110701.ASH BE ADOPTED. Motion carried unanimously by voice vote; **REP. JACOBSON** voted aye by proxy.

Motion/Vote: **REP. BROWN** moved that HB 107 DO PASS AS AMENDED. Motion carried unanimously by voice vote; **REP. JACOBSON** voted aye by proxy.

ADJOURNMENT

Adjournment: 10:20 A.M.

REP. LARRY JENT, Chairman

MARION MOOD, Secretary

LJ/mm

Additional Exhibits:

EXHIBIT ([sth10aad0.PDF](#))