

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN CAROLYN SQUIRES**, on March 18, 2005 at 3:00 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Carolyn Squires, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Vicki Cocchiarella (D)
Sen. Mike Cooney (D)
Sen. Jon Ellingson (D)
Sen. Jeff Essmann (R)
Sen. Steven Gallus (D)
Sen. Rick Laible (R)
Sen. Dave Lewis (R)
Sen. Jim Shockley (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: Confirmation Hearings for Governor Schweitzer's appointments for Directors for the state of Montana Departments.
SR 13, 3/4/2005
Executive Action: SR 4; SR 5; SR 6; SR 7; SR 8; SR 9; SR 10; SR 11; SR 12; SR 13; SR 14

HEARING ON SR 13

Opening Statement by Sponsor:

SEN. CAROLYN SQUIRES (D), SD 48, opened the hearing on SR 13--the confirmation of Gov. Schweitzer's department directors and Pacific Northwest Electric Power and Conservation Planning Council nominees.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 3.4 - 5.8}

Bruce Nelson, Chief of Staff, Office of the Honorable Governor Brian Schweitzer, urged the Committee's support of the following Governor's nominations:

Bruce Measure, Kalispell; and Rhonda Whiting, Ronan, as Montana members of the Pacific Northwest Electric Power and Conservation Planning Council;

Dr. Robert Wynia, Great Falls, as Director of the Department of Public Health and Human Services;

Dan Bucks, Missoula, as Director of the Department of Revenue; and

Jim Lynch, Kalispell, as Director of the Department of Transportation.

Mr. Nelson said that as required by law, Governor Schweitzer submitted all interim appointments of former Governor Judy Martz. He also submitted a letter from Governor Schweitzer to Senate President Jon Tester urging the Senate's approval of **Mike Foster** to the Board of Regents and the Senate's rejection of the 3-year term for **Kala French** to the Board of Regents. He added that Governor Schweitzer recommends a one-year term for **Ms. French**.

EXHIBIT(sts60a01)

{Tape: 1; Side: A; Approx. Time Counter: 5.9 - 13.1}

Discussion:

SEN. SQUIRES understood that **Ms. French's** appointment to the Board of Regents runs until July 1, 2007. **Mr. Nelson** said that former **Governor Martz's** recommendation was for a term beginning July 1, 2004, and ending June 30, 2007. Governor Schweitzer's recommendation is to reject Governor Martz's proposed 3-year term. If that is done, the Governor's Office would nominate **Ms. French** for a one-year term beginning July 1, 2004, and ending

June 30, 2005. If confirmed for the one-year term, the Governor will consider her for reappointment provided that she was recommended by the student leaders of the Montana University System.

SEN. JOE BALLYEAT, SD 34, asked about the possible constitutional issue arising in the event that the Senate rejected the 3-year appointment of **Ms. French**. **SEN. SQUIRES** understood that it was perfectly legal to appoint for three years. However, the Senate is confirming Governor Martz's appointments and does not have to accept the confirmation if it chooses not to.

{Tape: 1; Side: A; Approx. Time Counter: 13.1 - 13.6}

**CONFIRMATION HEARINGS ON MEMBERS OF THE PACIFIC NORTHWEST
ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL**

Proponents Testimony -- Bruce Measure: None.

Opponents Testimony -- Bruce Measure: None.

Informational Testimony -- Bruce Measure: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: Closed by **SEN. SQUIRES**.

{Tape: 1; Side: A; Approx. Time Counter: 13.6 - 14.4}

Proponents Testimony -- Rhonda Whiting: None.

Opponents Testimony -- Rhonda Whiting: None.

Informational Testimony -- Rhonda Whiting: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: Closed by **SEN. SQUIRES**.

**CONFIRMATION HEARING -- DAN BUCKS
DIRECTOR, DEPARTMENT OF REVENUE**

{Tape: 1; Side: A; Approx. Time Counter: 14.4 - 14.9}

Proponents Testimony: None.

Opponents Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: Closed by SEN. SQUIRES.

CONFIRMATION HEARING -- JIM LYNCH
DIRECTOR, DEPARTMENT OF TRANSPORTATION

{Tape: 1; Side: A; Approx. Time Counter: 14.9 - 15.6}

Proponents Testimony: None.

Opponents Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: Closed by SEN. SQUIRES.

CONFIRMATION HEARING -- DR. ROBERT WYNIA
DIRECTOR, DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (DPHHS)

{Tape: 1; Side: A; Approx. Time Counter: 15.6 - 28.5}

Proponents Testimony:

John Board, Helena; Everett Bosch, Great Falls; and Jim Duncan, Citizen, provided written comments in support of Dr. Wynia as Director, DPHHS.

[EXHIBIT](#)(sts60a02)

[EXHIBIT](#)(sts60a03)

[EXHIBIT](#)(sts60a04)

Jim Smith, MT. Pharmacy Association, spoke in support of Dr. Wynia on behalf of the Association.

Opponents Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 4.1 - 17.7}

Sharon Howard, MT Nurses Association, provided written comments in opposition to Dr. Wynia as Director, DPHHS.

EXHIBIT(sts60a05)

Mary Munger, Retired Nurse, Helena, opposed the nomination of Dr. Wynia as Director of DPHHS on the grounds that his resume did not support his ability to run a complex department such as DPHHS. She provided written comments from **Judy Smith, homeWORD** in opposition to Dr. Wynia's nomination.

EXHIBIT(sts60a06)

Jim Fitzgerald, Executive Director, Intermountain Childrens Home, and Kim Abbott, Self, provided written comments in opposition to the nomination of Dr. Wynia. **Ms. Abbott** also provided a letter from the **National Association of Social Workers** in opposition to the nomination of Dr. Wynia.

EXHIBIT(sts60a07)**EXHIBIT**(sts60a08)**EXHIBIT**(sts60a09)

{Tape: 1; Side: B; Approx. Time Counter: 17.7 - 24.6}

Jessica Rhoades, NARAL and Pro-Choice MT; Sami Butler, Self; and Jeri Duran, Planned Parenthood of MT, spoke in opposition to the confirmation of Dr. Wynia as Director of DPHHS on the grounds that his skills did not qualify him for the critical position.

Sharon Howard, on behalf of the MT Public Health Association (MTPHA), provided written comments from **Lora Wier, President, MTPHA**, in opposition to the appointment of Dr. Wynia.

EXHIBIT(sts60a10)

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 24.6 - 24.7}

SEN. BALYEAT asked if there was anything in Dr. Wynia's background that would indicate that he lacked awareness and empathy for the Montana citizens covered under DPHHS. **Mr. Board** said, no, that Dr. Wynia called him to discuss a number of issues following his nomination. One issue discussed was his concern about low-income services and how they would be delivered in an orderly and efficient manner to all citizens of the state.

SEN. RICK LAIBLE, SD 44, asked if Dr. Wynia's qualifications would not be as important as his position on pro-life or pro-choice. **Ms. Duran** said that her testimony was an attempt to address the family planning portion of DPHHS services. With Dr. Wynia's stance on being anti-choice and in charge of public health programs, it could be detrimental to the programs under his direction in terms of his view on choice. **SEN. LAIBLE** asked if a person was highly qualified but pro-life, would **Ms. Duran** still oppose him or her. **Ms. Duran** said that she is using the term "anti-choice" in a much broader scope than just the abortion part of it. Because of the federal government's and Dr. Wynia's anti-choice stances, many policies have gone forward that have been very detrimental to Planned Parenthood.

SEN. VICKI COCCHIARELLA, SD 47, asked what qualifications and experience Dr. Wynia had to be responsible for managing a multi-million dollar budget. **Mr. Board** felt that any person's nomination could be killed if issues became too specific. The questions should be, does the person have the abilities and characteristics to perform certain functions and does the person have the ability to demonstrate leadership? Dr. Wynia was President of the Montana Medical Association and has had various business experiences in his background. As a doctor, he found it hard to believe that the position Dr. Wynia is seeking, regardless of the speciality, would not be aware of public health and its impacts. **Mr. Board** believed that Dr. Wynia demonstrated all of the basic, fundamental qualities necessary for the position.

{Tape: 2; Side: A; Approx. Time Counter: 7.1 - 9.4}

SEN. COCCHIARELLA asked if there was the possibility of any retaliation directed toward those in opposition to Dr. Wynia's appointment. **Mr. Fitzgerald** said that although he opposed Dr. Wynia's appointment, he did not share that concern. **SEN. COCCHIARELLA** asked if **Mr. Fitzgerald** felt that someone in charge of a very large operation needed to have experience in financial matters. **Mr. Fitzgerald** said, on one hand, if a person can balance a checkbook, the person could run a \$1 million department. On the other hand, DPHHS has an incredibly complex funding system and it is very volatile, unlike any other in the entire state-government system.

{Tape: 2; Side: A; Approx. Time Counter: 9.4 - 16.3}

SEN. MIKE COONEY, SD 40, said that opponents have indicated concerns over **Dr. Wynia's** lack of involvement during the legislative session. **Dr. Robert Wynia, Nominee**, said that coming into a large organization such as DPHHS, it takes time to study.

He did not want to make many comments or changes before he became acquainted with the system and its budget. The DPHHS budget is very large and contains many federal implications. He was cautious to not make any commentary that could jeopardize the Department. However, his goals are to improve the eligibility of the DPHHS clients and develop a county-wide, medical records system to improve the background on and past medical history of patients.

{Tape: 2; Side: A; Approx. Time Counter: 16.3 - 26.8}

SEN. COCCHIARELLA asked what **Dr. Wynia's** qualifications were to run the largest budget in the state. **Dr. Wynia** replied that he has worked with many budgets, but not to the extent of the DPHHS budget. He has talked with DPHHS staff to bring himself up to date, and he is committed and dedicated to running the Department.

SEN. SQUIRES commented that her concern is that low-income citizens be provided necessary services and that providers are not adequately reimbursed for their services. **Dr. Wynia** said that he was aware that providers have not had adequate reimbursement for services, and he wanted to reduce those problems by decreasing the hassle factors of service requirements and increasing provider payments.

Closing by Sponsor: Closed by **SEN. SQUIRES**.

EXECUTIVE ACTION ON SR 4

{Tape: 2; Side: B; Approx. Time Counter: 6.6 - 8.7}

Motion/Vote: **SEN. LEWIS** moved that SR 4 DO PASS--Board member nominations by former Governor Judy Martz. Motion passed unanimously by voice vote. **SEN. BALYEAT** voted aye by proxy.

EXECUTIVE ACTION ON SR 5

{Tape: 2; Side: B; Approx. Time Counter: 8.7 - 10.6}

Motion: **SEN. LEWIS** moved that SR 5 DO PASS--Board member nominations by former Governor Judy Martz.

Motion: **SEN. LEWIS** moved the approval of #SR000501.abd. Motion passed unanimously by voice vote.

EXHIBIT(sts60a11)

Motion/Vote: SEN. COONEY moved that SR 5 DO PASS AS AMENDED.
Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SR 6

{Tape: 2; Side: B; Approx. Time Counter: 10.6 - 11.8}

Motion/Vote: SEN. COONEY moved that SR 6 DO PASS--Board member nominations by former Governor Judy Martz. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SR 7

{Tape: 2; Side: B; Approx. Time Counter: 11.7 - 12.7}

Motion/Vote: SEN. LEWIS moved that SR 7 DO PASS--Board member nominations by former Governor Judy Martz. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SR 8

{Tape: 2; Side: B; Approx. Time Counter: 12.9 - 13.6}

Motion/Vote: SEN. COONEY moved that SR 8, including the appointment of Gordon Higgins, Commissioner of Political Practices, DO PASS. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SR 9

{Tape: 2; Side: B; Approx. Time Counter: 13.6 - 24.3}

Motion: SEN. LEWIS moved that SR 9 DO PASS--Nomination of Kala French as Student Board of Regent for a 3-year term.

Discussion: SEN. SQUIRES reiterated Governor Schweitzer's recommendation to limit **Ms. French's** term to one year rather than the 3-year term as indicated in SR 9.

SEN. ELLINGSON said that his opposition was not an adverse opinion of Regent French. It was based solely on his belief in

the long-standing tradition that the Student Regent position be limited to one year.

SEN. LIABLE supported SR 9. He said that according to his research, there is no instance where an incoming Governor has not endorsed and confirmed the applications of the out-going Governor's recommendations. He felt that the precedence of the institution was being changed and challenged.

SEN. BALLYEAT said that Governor Schweitzer has indicated his support for a one-year term. **Ms. French's** term would end in July 1, 2005, and he did not feel that was much of a compromise. He said that Governor Schweitzer's concern is that **Ms. French's** term would extend into his term of office. However, the Governor will have that same prerogative when he leaves office. He felt that **Ms. French** was being used as a political football which he felt to be very regrettable. He requested that SR 9 be passed so that it could be discussed on the Senate floor.

{Tape: 2; Side: B; Approx. Time Counter: 24.3 - 28.6}

SEN. COCCHIARELLA said that former Governor Martz set a precedents when she appointed two student regents to longer terms than those appointments have ever been. In the past, those appointments have been for one year, and they have been one year for a reason. Students are students for a very brief period of time, and university students who testified before the Committee stated that it was not fair to other students who may want to apply for appointments. Although she feels that what happened to **Ms. French** was very unfair, she would not support SR 9.

{Tape: 3; Side: A; Approx. Time Counter: 0.3 - 17.4}

SEN. JIM SHOCKLEY, SD 45, felt that one year was not long enough for a student regent appointment, while three years is too long. According to testimony from **Ms. French**, she would be willing to resign after two years. He believed that to be the best compromise.

SEN. SQUIRES discussed her proposed legislation limiting the student regent term to one year. She knew the bill was in trouble when the Committee continued to discuss two years. Her concern was for those students in 2-year, community colleges who would not have a chance to apply for the position of student regent.

SEN. COONEY said that the issue, at hand, is the process. He discussed past student regent appointments, and he felt that former Governor Martz knew that appointing **Ms. French** would become an issue because of her previous appointment of a student

regent to a 3-year term and her knowledge of the fact that some Senators disagreed with her decision. Because the process was handled improperly in the first place, he could not support SR 9.

SEN. JEFF ESSMANN, SD 28, stated that current statute allows for a one- to four-year appointment of a student regent. He felt that voting no on SR 9 was paramount to removing **Ms. French** from office.

Vote: SEN. LEWIS'S motion that SR 9 DO PASS carried on a 6 to 5 roll call vote. SENATORS COONEY, COCCHIARELLA, ELLINGSON, GALLUS, and SQUIRES voted nay.

EXECUTIVE ACTION ON SR 10

{Tape: 3; Side: A; Approx. Time Counter: 17.5 - 18.9}

Motion/Vote: SEN. COONEY moved that SR 10 DO PASS--Nomination of Mike Foster to the Board of Regents. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SR 11

{Tape: 3; Side: A; Approx. Time Counter: 18.9 - 27.8}

Discussion: SEN. SQUIRES reiterated her concern about the meeting attendance of **Roberta Threet, Nominee, Board of Nursing (BON)**. SEN. SQUIRES provided information from the Department of Labor and Industry regarding BON meeting schedules and their attendance.

EXHIBIT(sts60a12)

Committee members discussed **Ms. Threet's** attendance of BON meetings and felt that they did not have an issue with her missing two meetings.

Motion/Vote: SEN. COONEY moved that SR 11 DO PASS. Motion carried on an 11 to 1 voice vote with SEN. SQUIRES voting no.

EXECUTIVE ACTION ON SR 12

{Tape: 3; Side: B; Approx. Time Counter: 4.6 - 16.6}

Motion: SEN. LEWIS moved that SR 12 DO NOT PASS.

Discussion: Information was provided by the Department of Labor and Industry on **Burl French, Nominee, State Electrical Board.**

EXHIBIT(sts60a13)

SEN. BALYEAT supported **Mr. French's** nomination to the State Electrical Board. He said that although **Mr. French** has become controversial, the meeting referred to in testimony may not have occurred because other Board members have no recollection of it occurring. What is left is something that happened 23 years ago. Whether or not he had an electrician's license is irrelevant. The fact is that once it was brought to his attention, **Mr. French** immediately complied.

SEN. LEWIS said that for whatever reason, **Mr. French** has become controversial. He said that **Mr. French** has two allegations of rule violations. **SEN. LEWIS** felt that anyone appointed to state boards, particularly those appointed to a critical board such as the Electrical Board, needs to be straight-up with no rules violations on file.

SEN. JOSEPH TROPILA, SD 13, referred to correspondence in opposition to **Mr. French's** nomination and opposed SR 14.

EXHIBIT(sts60a14)

EXHIBIT(sts60a15)

SEN. ESSMANN said that the information on this matter is hazy at best. However, he opposed the motion because much of the controversy was based on policy decisions made.

Vote: **SEN. LEWIS'S** motion that SR 12 DO NOT PASS carried on a 9 to 2 roll call vote. **SENATORS ESSMANN and BALYEAT** voted nay.

EXECUTIVE ACTION ON SR 13

{Tape: 3; Side: B; Approx. Time Counter: 16.6 - 23.3}

Motion: **SEN. COONEY** moved that SR 13 DO PASS.

Motion: **SEN. ELLINGSON** moved the approval of amendment #SR001301.abd to segregate the nomination of Dr. Robert Wynia as Director of DPHHS.

EXHIBIT(sts60a16)

Discussion: Dave Bohyer, Director of Research, Legislative Services Division (LSD), said that the motion strikes Dr. Wynia's name from SR 13 as Director of DPHHS. According to Senate Rules, a nominee can be separated from a resolution and the person separated will automatically be put in a separate resolution. The request for a resolution was made, drafted, introduced, read across the Rostrum, and referred to the Senate State Administration Committee as SR 14.

Vote: SEN. ELLINGSON'S motion carried on a 7 to 4 voice vote. SENATORS BALYEAT, LEWIS, ESSMANN, and SHOCKLEY voted nay.

Motion/Vote: SEN. ELLINGSON moved that SR 13 DO PASS AS AMENDED. Motion carried 11-1 by voice vote with SEN. BALYEAT voting no.

EXECUTIVE ACTION ON SR 14

{Tape: 3; Side: B; Approx. Time Counter: 23.3 - 28.9}

Discussion: Mr. Bohyer said that SR 14 is a resolution that solely nominates Dr. Robert Wynia as Director of DPHHS.

SEN. BALYEAT asked if SR 14 required a separate hearing even though public comment has already been given on Dr. Wynia's nomination. Mr. Bohyer said, under Senate Rules, no. SEN. BALYEAT said that even though the Senate had rules, he felt it grossly unfair to someone to wait until this late in the game and questioned why it was not brought up much sooner.

SEN. SQUIRES said that Dr. Wynia had a hearing, there was much public comment given, and he had many opportunities to speak since the process began.

{Tape: 4; Side: A; Approx. Time Counter: 0.7 - 0.8}

SEN. STEVE GALLUS, SD 37, felt that the process had been completely above board and followed every procedure.

Motion: SEN. SQUIRES' moved that SR 14 DO NOT PASS.

Discussion: SEN. ELLINGSON said that although Dr. Wynia is a first-rate doctor, he agreed with the motion. He was uncomfortable that the controversy was brought to light at such a late time, and he did not want Dr. Wynia to think that his no vote was disrespectful.

SEN. LEWIS asked if the majority party had spoken with Governor Schweitzer about the issue in order to give some indication to the minority party on how it should vote. **Mr. Nelson** said that Governor Schweitzer does not presume to tell the Senators how to vote because it is a legislative process. However, the Governor stands behind his nomination of **Dr. Wynia**.

Vote: SEN. SQUIRES motion that SR 14 DO NOT PASS failed on a 5 to 6 roll call vote. SENATORS COCCHIARELLA, ELLINGSON, LEWIS, COONEY and SQUIRES voted aye.

Motion/Vote: SEN. SQUIRES moved that SR 14 DO PASS on a REVERSE roll call vote. SENATORS COCCHIARELLA, ELLINGSON, LEWIS, COONEY, and SQUIRES voted nay.

ADJOURNMENT

Adjournment: 6:00 P.M.

SEN. CAROLYN SQUIRES, Chairman

CLAUDIA JOHNSON, Secretary

LOIS O'CONNOR, Transcriber

CS/cj

Additional Exhibits:

EXHIBIT ([sts60aad0.PDF](#))