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The meeting was called to order by Chairman Brand, all members were present.

Dick Hargesheimer submitted his summary, see attachment #1.

The Chairman turned the chair over to Vice Chairman Lien in order to speak as the sponsor of HB 375 and HB 376.

HB 375--This bill amends Section 78-202, R.C.M. 1947 - relative to the Veterans' & Pioneers' Memorial Building. The veterans should have had the third floor. Subsection (3) says that appropriate space should be provided in the third floor for the secretary, their library, etc.

TONY CUMMING, American Legion--At the time the building was built, it was financed with veterans' funds. All this bill does is specify that the third floor will be used for veterans and pioneers. We are afraid that the shortage of room that the Historical Society is facing will put us in jeopardy. We have introduced this as a precautionary measure for the years to come.

BOB DURKEE, VFW--We also have an office here. We are concerned that other organizations look fondly upon this space. People come up and measure our rooms and ask what we do there. We also received a letter from the DOCENTS, who conduct childrens' tours - they have a new process known as Touch & Feel, where they hand out artifacts and let the children handle them - they also use part of our office and are hoping to expand, and would like to put up a teepee in the office. We are fearful that they will usurp the entire meeting room.

OPPONENTS

KEN KORTE, Montana Historical Society--I don't really consider myself an opponent; but I would like to clarify something. I'd like to explain that DOCENTS means 'volunteer guide'. It is an organization of women who take children through museums. Touch & Feel tours are being used in every museum throughout the country.

The Society's occupation of the building has caused some problems lately. We feel they are misinterpreting our uses. We provide adequate office space for them; plus security, maintenance, lighting, etc. We let them use the third floor meeting room. Until we started using this for the childrens' tours, it was used by the Bicentennial Commission. Our use would not jeopardize their use of the room. This room is also used by many other organizations. We also provide room for their museum, which is not provided by statute; and give them a vault. I'm not saying that we don't want them to have the third floor, but I think it is a workable situation now. As long as they have the statutory authority to use the building we will let them have it.

BRAND--Did you say veterans' money built this? DURKEE--At one time there was a Veterans' Memorial Fund to collect 5% of the gross tax on athletic events in Montana. This put alot of money into the fund, along with some money from the Capitol Land Grant Fund. There is a bill down in the Senate regarding reestablishing a tax on boxing for this. The original law established use of the building, with furnishings, on a no-pay basis - along with custodial care, maintenance, and security. We are willing to assist with security now, since it concerns us more than before. We would consider using the building only when security allows it.

HB 376-Rep. Brand, sponsor--I had this drafted on the advice of a number of veterans' organizations. Some 100 veterans haven't received their money. This will cost no money. The funds are there, this just extends the time they can apply. If there have been no applications by the end of this period, the date won't be extended again.

BOB DURKEE, VFW--The office was closed on July 1, 1976; however, the Examiners allowed the retention of one secretary. It was proposed to close the office and move the remaining applicants to the Board of Examiners. The revision date in this bill is July 1, 1977; so the two dates will be in accord.

TONY CUMMING, American Legion--We support this. Mike Nick, the Director, appeared with us at another meeting, and said that the 100 applications on file were applied for after the deadline. He assured us that these could be dealt with by July 1, 1977.

BARDANOUE--What is the situation as far as employees? CUMMING--The director is done at the end of this month, and so is his secretary. Possibly Bill McNary could do it. Mike Nick intends to retire.

HB 289-Rep. Menahan speaking for Rep. Quilici--What this does is allow someone from the retirement system to be on the board. I think Quilici will have an amendment.

MARGARET BLAIR, Montana Retired Teachers' Association--We are connected with AARP. We would like very much to have some input on the board. One person on the board will be finished on July 1, 1977. We had wanted to ask for 5 members, but we want to keep it as close as possible; there's a bill in the Senate asking for 7 members. I am very anxious to have some input from retired teachers on the board.

LLOYD MARKEL--With the amendments mentioned, we would be in favor of the bill. I think the amendments are necessary.

BLAIR--We don't want the active teachers taken off - if we have one retired teacher, we will be happy. FEDA--What are the duties? BLAIR--They decide how our money is invested (Teachers' Retirement Fund). They don't make any laws or rules, only where the money goes. SMITH--How many teachers on the board? Is there any law that says that a retired teacher can't be on the board? BLAIR--The law now just specifies the Superintendent, two active teachers, and two public people. BRAND--Are you prevented from investments in housing, etc? Why is the fund depleted? BLAIR--Soldiers were given retirement for the time they were in the war, and teachers that worked prior to 1939 didn't give any money - these have created a double debt.

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HB 289--Menahan moved to amend page 1, line 17 - Strike: "1 person"; Insert: "2 persons appointed from the teaching professions who are". Line 22 - Strike: "2", Insert: "1 person appointed as a representative". Page 2, line 12 - Strike: "b", Insert: "d". This board is one of two boards who control the investment of their monies. You have to be a teacher who is a member of the system; so, retired teachers cannot be considered here because they no longer belong to the system. The motion to amend carried unanimously.

O'Connell moved HB 289 DO PASS, motion carried unanimously.

HB 375--Fedra moved DO PASS, motion carried unanimously.

HB 376--O'Connell moved DO PASS, motion carried with Fedra and Meyer voting no.

HB 302-Rep. Meloy, sponsor--The new Constitution was adopted with an open meetings provision, and the last few sessions have agreed. We have had experiences which have shown loopholes in the law as well as problems with the statute itself. Page 1 gives the definition of agencies already in the statute. The reason for the stricken material on page 1 - right now, meeting holders can avoid the law by not taking any action at the meeting. So, if you don't take any action it negates the whole thing. The Bozeman City Council closed their meeting simply because they weren't taking any action. The next change is on Page 2 - subsections (1) - (4) have been stricken--this pertains to specific instances for which a meeting can be closed, but they are not all encompassing. There are occasions when an agency is dealing with things of individual privacy which are only included in the existing points, such as the Human Rights Commission - of all of the complaints they receive, only 5% are meritorious. They are closing their meeting to dismiss these cases due to the personal embarrassment. So, specifically speaking, this meeting should be open. (he reviewed the same portion that was previously covered in Rep. South's HB 249) It has been found that this puts state and local government at a disadvantage when they have to have strategy sessions open. This would permit the strategy sessions to be closed, but the negotiations would be open. I have some mixed feelings, but the problems justify this exception. The next change is the addition of a new Section 2 - the definition of meeting - mentions quorum, and defines meeting as including the use of electronic devices (i.e. conference calls). This is consistent with the definition in the open meeting laws in Florida and Washington. We found that some constituent boards would have conference calls, and by using this, they have been able to have closed meetings. Section 3 provides for notice of meetings. I am not really hot for this, but we have to have a notice provision. Sometimes meetings have been closed simply by not giving notice. There has to be a notice provision. This can be a bad loophole. R.C.M. Section 82-3403 requires minutes of the meeting - this helps because some minutes taken have been disgusting. This requires a record of any votes taken. Section 5 permits the tape recording of a public meeting. Section 6 adds some substance to the law. Right now there is no strong reason for meeting holders to recognize the law. This section permits the voiding of a procedure by the courts when a meeting is illegal - if the action is taken within 90 days after the meeting. They might have this remedy now, but this gives a definite statute. We are taking out the provision for individuals to request open meetings. Anyone can do this through the waiver of individual privacy. On page 3, line 4 I would suggest adding the word "hear" before "discuss".

SAM GILLULY, Montana Press Association--(Please see attachment #2 for Mr. Gilluly's written statement) There is no more important matter from the standpoint of the press. I have cited some specific problems on my statement. These are privileges of the people, and this is addressed to the people, not just the press.

RONALD SEMPLE, Publisher-Independent Record, Montana Press Association--The public's business should be conducted in public. I see no reason why any governmental agency should be allowed to conduct business in private.

DUNCAN CAMPBELL, Montana Standard--(he submitted written testimony, see attachment #4)

NATALIE CANNON, Common Cause--(she submitted written testimony, see attachment #3)

TOM SCHNEIDER, MPEA--We support this, and strongly support the amendments, particularly the right of an employee to ask for an open meeting in disciplinary action. Your only method of fighting this situation is by having open meetings with the press and the public there. We say we are clarifying, but every time management gets together,

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it has a detrimental effect. Management has the right to do their strategy in private. We will support the bill with the amendments.

DON JUDGE, AFSCME & AFL-CIO--We support this. In an effort not to be redundant, you can refer to my testimony of yesterday on HB 249.

DUANE JOHNSON, Personnel Division, Department of Administration--One area of some concern that probably could be clarified - the new language on page 2 - as far as caucusses of governmental agencies being closed for strategy--I am uncertain as to the net effect. The language says they can be closed for strategy when an open meeting would be detrimental. In my judgement, from the history of collective bargaining, open meetings have an inherently detrimental effect, particularly where governmental agencies are required to have open meetings, and unions aren't. I think Meloy's language moves to correct this. I am not sure who will decide what is detrimental.

OPPONENTS

ROBERT LOHN, Governor's Attorney--We see these problems - the act was not worded well to begin with, but this would not include local councils. In order to insure total voidability of secret meetings, the definition must be clearer. There seems to be no provision for emergency meetings. The 72 hour notice provision cannot always be given. I remind you that we are well under the Right to Know. The legislature has executive sessions that are closed.

WAYNE BUCHANON, Montana School Board Association--I feel strange rising to oppose this, as several sections were added at our request, but there are a number of things that cause concern. Section 3, page 3, line 7 - the 72 hour rule would be very difficult for school boards in the case of emergency situations - we don't always have 72 hour notice ourselves. Some requirement of reasonable notice would be sufficient. We wouldn't object to having regular agendas published. Line 22 - mailing of notice to anyone who requests it. The Billings School Board might have 5,000 - 10,000 people on it's mailing list, and they meet at least once a week - so this would cause a huge mailing. This committee would be required to give 72 hour notice, and would have to mail notices and agendas to anyone who wanted them. The rest of the bill we support. We don't want to go on record as opposing the public's right to know. We wouldn't want the meetings law done away with, but we think some work on Section 3 is in order.

CHAD SMITH, Montana School Board Association--We compliment Rep. Meloy, but we have some mixed emotions. As far as strategy sessions being closed, this is very important in the collective bargaining process. I do feel this particular provision is important. We do have some problems about the sections deleted on page 2, lines 10 - 17. We have numerous instances regarding employees' complaints, dismissal, resignation, disciplinary actions, etc. As the law reads now, the employees can have open meetings if they feel the action the board is taking should be exposed to the public. But when disclosure of these things could injure the individual, he should have the right to a closed meeting. We request that these provision should be retained. As far as HB 249, we would like the provisions allowing school board meetings to be closed for discussions of land acquisition. 72 hour provision - there are provisions in the school law where a student can be suspended until the trustees can take action. With this provision, the student would have to wait 3 days to get back into school. We feel this section would cause an undue hardship.

MELOY-The opponents seem all to like the idea, but have specific problems. I hope the committee can take care of some of these problems. I didn't realize that the individual option to ask for an open meeting had been taken out, and amendments have been given. With respect to the detrimental effects, again the statute provides the meeting holder with the ability to make these determinations. I don't think the the word "agency" intends to exclude local governments. I should also say that the notice requirement does have an emergency clause in it. I might also point out to Mr. Lohn that Executive Sessions in legislative committees have been open since the new constitution took effect. You can't even close them for individual privacy, and I think we follow this to the letter. The 72 hour rule just clarifies the notice provision. If this committee feels that this is too great a burden, I don't have any possessory feelings about it. The agenda is not engraved in stone. If something comes up when the meeting is convened, they can still discuss it. I know most local government officials will not be trying to avoid this. As far as mailing, this is done in some ways already. I wasn't sure about Rep. Smith's comments about the public officers requesting open meetings. This is presently in the statute, and with the amendments, it would stay. Under the constitution, individual privacy is the only reason you can close a meeting. The difference between this and HB 249 is the closing of a school board for land acquisition discussions. We discussed this on the floor two years ago, and I still believe that this is not just cause for closing a meeting. Without striking the sections on page 2, you can't close any meeting for individual privacy.

O'CONNELL-What about a public employee being discussed, and not being notified of the meeting? MELOY-That is what we are addressing in the notice provision. MULAR-In your opening statements you compared lines 9 and 5 with the constitution - what section of the constitution? MELOY-Section 9 of Article 3--No person shall be deprived of the right to observe the deliberations of boards except in the case of individual privacy. MULAR-What is your opinion of the strategy sessions? MELOY-That statute could be subject to a court challenge; however, I don't think that anyone is going to challenge that section. The people who might are sitting behind you, and I have discussed this with them, and I think they see the problem and disadvantage the person is put to by having to discuss this in public. MULAR-Do you consider land acquisition strategic? MELOY-No. BARDANOUE-In as much as you are an ivory tower graduate and you have said there is a possibility of a constitutional question, it seems you ought to have a severability clause on this bill. MELOY-I have never been fond of severability clauses. I have no opposition to adding one. BARDANOUE-What is the reference about conference calls? MELOY-The statute says that all meetings shall be open; this section includes conference calls with a quorum of the body when they are discussing something about a meeting. All you do is find a meeting phone, because two members are usually in one space. Conference call meetings are held for convenience. BARDANOUE-So this is legal if it is open to the press? MELOY-Yes. BARDANOUE-What is section 19-201? MELOY-Advertising on radio or TV constitutes sufficient notice. BARDANOUE-Haven't whole laws been stricken by not having a severability clause? MELOY-Yes, you're right, and I propose amendments to add such a clause. LIEN-We have mandated many boards, bureaus, and agencies to have meetings on a regular basis; how can we get around this 72 hour thing - this could be used for harrassment in small districts. MELOY-You will always have problems where many of the decisions are made in meetings prior to the actual meeting. I had the feeling that this section would be the most difficult. But if we don't have this, it will be taken advantage of. TOWER-I feel that again we are trying to legislate morals, and this describes regular meetings, locations, room sizes, etc. We have the same situation that Lien does. MELOY-If you adopt the avoidability, and it was taken to court - then this could protect us from these informal local government meetings. Most local governments try to observe this, and I don't think this will

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be such a problem. ROBBINS-What about where regular meetings are required by law, would they be required to give notice? MELOY-I think the statute is the notice. ROBBINS-What about cemetery boards, airport boards, boards who meet when they feel like it for management, with they have to give notice? MELOY-They are spending the public's money; and therefore, should be done with the proper notice. This doesn't require any newspaper publication.

EXECUTIVE SESSION

HB 249 & HB 302--Ryan moved HB 302 DO NOT PASS, with Meyer seconding. Bardanouve made a substitute motion of DO PASS, seconded by Kanduch. Robbins moved that both bills be put in a subcommittee, seconded by Bardanouve.

RYAN-I think the constitution covers this sufficiently, and that this is a poor piece of legislation that doesn't cover it. ROBBINS-Perhaps we will be in an interim committee, but I think these should be considered for their merits. BARDANOUE-I believe HB 302 is trying to clarify and further the effects of the law as written in the constitution. LIEN-I have sympathy with this question, and I have many problems with the new language inserted. It is not just cleaning up the language, we are changing this quite drastically. KROPP-This will create a real problem in my area. SMITH-That would also be true in my area.

The motion to put both bills in a subcommittee passed with Ryan, Fedas, Kropp, Meyer, Smith, and Tower voting no. The subcommittee appointed included Lien as chairman, with Kanduch and Fedas. Helen O'Connell asked if she might participate, and the chairman agreed.

MEETING ADJOURNED - 12:15 a.m.


Joe Brand, Chairman


Anita C. Sierke, Secretary