

MINUTES OF THE MEETING OF THE HOUSE STATE ADMINISTRATION COMMITTEE
January 17, 1983

CHAIRMAN JOE BRAND called the meeting to order at 9 a.m. in Room 129 of the Capitol. All members were present except Representative Francis Bardanoue.

HOUSE BILL 117

Chairman Brand opened the hearing on HOUSE BILL 117 by calling on its chief sponsor, REPRESENTATIVE ANDREA HEMSTAD, who told the Committee the measure could be called the "wide-open primary bill". She asked the Committee members if they have ever been told by a constituent that the constituent had wanted to vote for them, but was unable to in the primary election. Representative Hemstad said the bill was modeled after open primaries in Washington and Alaska, chiefly after Washington. She said that under the present system, one ballot is given to voters, then the voters vote between parties once they are enclosed within the voting booth. Representative Hemstad called the system "a sneaky way to force people to vote parties." But today, she said, voters are independent. She said her measure would give parties an indication of probable turnout in the general election. Representative Hemstad said it would allow voters to switch party preference from office to office on the ballot and voters would not be restricted to one party for all the offices in which they choose to cast a vote. She said this measure was justified because "people want to vote for the best candidate in either party."

THERE BEING NO OTHER PROPONENTS, CHAIRMAN BRAND CALLED FOR OPPONENTS TO HOUSE BILL 117.

OPPONENTS

NANCY J. HARTE of Helena, representing the Montana Democratic party, stated the party's opposition to House Bill 117. She said the Montana Democrats believe the selection of the party candidate should be made in primary election by party members. She said Montana already has an open primary because voters can choose the party they wish to vote. She said if Democrats do not choose Democrats, Montana may lose its voice at national party conventions. She said that would make the election process meaningless and only a "beauty contest" as far as Democrats were concerned. (See attached statement.)

THERE BEING NO OTHER OPPONENTS TO THE MEASURE, CHAIRMAN BRAND CALLED FOR REPRESENTATIVE HEMSTAD TO MAKE A CLOSING STATEMENT.

Representative Hemstad said party leaders favor a stricter rule, but the only reason they do so is in order to reward party loyalty. She said that by using the primary election system as it exists at present, the state is not allowing voters to vote for the best candidate.

Chairman Brand called for question from committee members, and REPRESENTATIVE DRISCOLL asked Representative Hemstad if it was not true that in the case of one Democrat and two Republican candidates running in their respective primaries under the present system would not Democrats vote for the weakest GOP candidate in order to give their own party the best chance at the general election. Representative Hemstad answered by saying that voters would select the best candidate.

REPRESENTATIVE FRANCIS KOEHNKE asked if Legislative Council Bill 485 would not call for a closed primary. Hemstad said it would not. She said the Legislative Council number in the bill would be amended to reflect a House bill or Senate bill number.

Chairman Brand asked Representative Hemstad to confirm that the bill was on the Washington and Alaska systems. Representative Hemstad did so, and further stated that Louisiana has a system in which the party affiliation is noted on the primary ballot. She said her bill was modeled after Washington. Chairman Brand said that Washington and Alaska systems represent two states and are therefore, a minority of the states. He wanted to know what other systems were in use nationwide. Representative Hemstad said most other states used a closed primary system. Chairman Brand asked that with the wide-open system, will the voters choose the best candidate and who determines? Representative Hemstad said the people of Montana would make the choice. Brand asked why candidates who spend the most get nominated. Representative Hemstad said the best are chosen.

Representative Koehnke stated that now Montana's primary election is neither open nor closed, it's "half way".

REPRESENTATIVE HAND asked if our system was open with two ballots. Representative Hemstad said yes, she said that in a closed system a voter declares a party and gets only that ballot. She said in this bill the voters could switch from office to office.

Chairman Brand asked if under the proposed bill, would not some voters switch parties in order to influence the outcome of the races as far as the opposing party was concerned. Representative Hemstad said, "We have no indication," that such would occur. She said there are more independent voters than party voters.

Representative Driscoll asked about selection of GOP delegates. Representative Hemstad said her party, the GOP, uses the convention system to select presidential delegates.

Chairman Brand asked that when Republican delegates go to the national convention, does the party have split delegations. Representative Hemstad said no. Chairman Brand asked if therefore, does that mean the party pays no attention to the wishes of the voters. Representative Hemstad said that in 1980 Montana Republicans made a choice for Ronald Reagan over George Bush, and therefore, the Montana delegation was dedicated to Ronald Reagan. Chairman Brand suggested that meant the Republicans never gave the minority a break.

REPRESENTATIVE BRENT BLISS noted that the 1976 delegation to that year's national convention was split between Ford and Reagan. Representative Hemstad said the GOP delegates are split by states at the national convention.

REPRESENTATIVE CLYDE SMITH asked that under the proposed bill, wouldn't the party candidate that was the strongest be most likely to lose. Representative Hemstad said the people would make their choice.

Chairman Brand noted that "there are devious people." He stated that some problem with the bill was because of that fact, and that devious people may switch parties in order to influence the outcome of the races in the adverse party. Representative Hemstad said the overwhelming number of independent voters are not devious, they are intelligent voters.

REPRESENTATIVE PAUL PISTORIA asked that under the proposed system, did Representative Hemstad suggest that there would be a larger turnout. Representative Pistoria, after receiving an answer in the affirmative, asked why there was such a paucity of voters in local elections in school elections. Representative Hemstad said many voters stay home from those elections because of the issues involved.

THERE BEING NO FURTHER QUESTIONS FROM THE COMMITTEE, CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 117.

HOUSE BILL 154

Chairman Brand opened the hearing on HOUSE BILL 154 by calling on its sponsor, REPRESENTATIVE GARY SPAETH. Representative Spaeth said House Bill 154 would provide an amendment to the present arbitration system in the matters of state lands when the holder of a lease leaves and a new leasee comes in. Representative Spaeth said there may be problems in reaching a price in those cases and reaching an agreement on an amount the leasee should pay for improvements. Typically, Spaeth said, the seller of the lease rights believes the improvements are more valuable than does the buyer.

Representative Spaeth said the system that now exists requires the parties to go to arbitration to decide a fair price. The problem is, he said, that if one or more of the parties does not appoint an arbitrator, that amounts to a monkey wrench in the works that forces the matter into court. He said this was not in the interests of judicial economy, and the bill would allow the Commissioner of State Lands to appoint an arbitrator.

Representative Spaeth called on the Commissioner of State Lands, DENNIS HEMMER, who said the bill is an attempt to remedy a problem that has caused the loss of revenue to the Department and to the beneficiary schools when the situation has arisen. Commissioner Hemmer read into the record a prepared statement. (See attached statement.)

THERE BEING NO OTHER PROPONENTS AND NO OPPONENTS TO HOUSE BILL 154, AND NO CLOSING REMARKS BY REPRESENTATIVE SPAETH, CHAIRMAN BRAND CALLED FOR QUESTIONS FROM COMMITTEE MEMBERS.

COMMITTEE QUESTIONS

REPRESENTATIVE MCBRIDE asked if the valuation appointed by the three arbitrators now on the statute is appealable. Representative Spaeth said it was appealable to the Commissioner within ten days, and also that the Commissioner's decision is appealable to courts on limited grounds.

Representative Hand asked if the circumstances sought to be remedied by this measure were frequent. DAVE WOODGERD, who identified himself as chief legal council for the Department, said that as few as six and as many as 12 such situations arise every year.

Representative Koehnke asked if it is possible for the Department to lose a lease year because of disagreement between the parties. Commissioner Hemmer confirmed that it was possible.

THERE BEING NO FURTHER QUESTIONS FROM COMMITTEE MEMBERS, CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 154.

HOUSE BILL 155

Chairman Brand opened the hearing on House Bill 155 by calling on its chief sponsor, REPRESENTATIVE GARY SPAETH, who explained that House Bill 155 is similar to House Bill 154. He said often there is conflict between the parties as to damages when an easement on a leasehold is taken. He said, however, that this bill would go further than House Bill 154, in that it would add the arbitration provisions and remedies of House Bill 154 to such a factual situation

Representative Spaeth said that at present there is no arbitration procedure for this particular dispute and that House Bill 155 would establish an arbitration procedure. Representative Spaeth called on State Lands Commissioner DENNIS HEMMER who read from prepared testimony. (See attached testimony.)

THERE BEING NO OTHER SUPPORTERS, CHAIRMAN BRAND CALLED FOR OPPONENTS OF THE MEASURE TO TESTIFY.

GENE PHILLIPS, who identified himself as an attorney for Pacific Power and Light in Kalispell, stated that his group would favor the measure if an amendment is clarified. Phillips said his client never has had the problem of arriving at a fair payment for easements on leaseholds. Phillips said he wished that the word "final" in the bill would also be read to allow the parties to appeal the finality and the amount to the courts. Phillips said that was his clients only objection.

JOHN ALKE, who identified himself as an attorney for Montana-Dakota Utilities Company, stated that his client did not oppose the bill but felt that the bill is unnecessary. Alke said the voluntary procedure that his company uses is better because the parties agree that binding arbitration would be conducted after entry by means of the easement, when damages are known.

Representative Spaeth, in closing, responded to Alke's statement by saying that these are state lands in question and that the lease cannot be granted until valuation is determined under the law.

THERE BEING NO OTHER OPPONENTS, CHAIRMAN BRAND CALLED FOR QUESTIONS FROM THE COMMITTEE.

COMMITTEE QUESTIONS

Representative McBride asked if other state agencies could find themselves in similar situation. Commissioner of State Lands Dennis Hemmer said the Highway Department often seeks right-of-way from individuals. Hemmer said that what the Department is seeking is a process to get a settlement in such a case and move forward with the lease.

Representative Driscoll asked if parties refuse to go through with the arbitration system what would happen? Commissioner Hemmer said the only recourse in that case would be to seek court enforcement of the arbitration obligation.

Chairman Brand asked that in view of the possibility of parties refusing to go to arbitration, how is the problem lessened by this bill? Hemmer stated that the bill would establish a process for resolving dispute.

Representative Driscoll asked how the arbitrators would be selected and where the arbitrators would come from. Hemmer said he imagined that the parties would choose qualified appraisers. Representative Driscoll asked if the Federal Arbitration Association or the American Arbitration Association list of arbitrators would be used. Hemmer said that the parties would probably simply appoint qualified appraisers.

Chairman Brand asked if the bill would provide a remedy to the existing problem. Representative Spaeth said it would, and the remedy would substantially reduce the problem.

Responding to a question from Chairman Brand, Alke said the system used by his company was better because damages are assessed at the time the company comes through on the easement. Whether in summer fallow when damages would be the least or at harvest time when damages would be the most, the timing is critical. He said that under a process where entry is reserved until after damages are decided is much more difficult.

Chairman Brand asked Alke if it was not true that "the minute you start proceedings to get an easement, they (leaseholders) have a problem?" Alke said that factor is an element of damages but damages are easier to determine after the fact.

Representative Paul Pistoria asked witness PHILLIPS that if his suggested amendment was adopted, could Pacific Power and Light live with the measure? Phillips said the company could. Representative Pistoria propounded the same question to Alke, who said that he believed his company system was better.

THERE BEING NO FURTHER QUESTIONS FROM THE COMMITTEE, CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 155.

EXECUTIVE SESSION

CHAIRMAN BRAND called the Committee into EXECUTIVE SESSION and invited a motion on HOUSE BILL 117.

HOUSE BILL 117

Representative Driscoll MOVED, and Representative McBride seconded, that House Bill 117 DO NOT PASS.

Representative Smith said it was an excellent presentation but a poor cause.

A voice vote taken on the motion was not unanimous, and Chairman Brand called for a ROLL-CALL VOTE.

Voting AYE were REPRESENTATIVES BLISS, BRAND, DRISCOLL, HAMMOND, HAND, HOLLIDAY, KOEHNKE, McBRIDE, McCORMICK, O'CONNELL, PISTORIA, SALES, SMITH. Voting NAY were REPRESENTATIVES COMPTON, MUELLER, PHILLIPS, RYAN, SOLBERG. There were thirteen ayes, five nays, and the MOTION CARRIED. (Representatives Sales and Holliday voted by proxy given to Chairman Brand, which appears attached to these minutes.)

HOUSE BILL 154

Chairman Brand called for a motion on House Bill 154.

Representative Hand MOVED, Representative Lloyd McCormick seconded, that House Bill 154 DO PASS.

Representative McBride questioned Representative Spaeth about language in the bill, particularly page 2, lines 9 and 10. Representative Spaeth suggested possible amendments, and Chairman Brand suggested the bill be tabled for a few days for amendments. Representative Hand withdrew his motion and Representative McCormick withdrew his second.

Representative Mueller MOVED, Representative McCormick seconded, that House Bill 154 be TABLED. The question was called and was CARRIED on a unanimous voice vote.

HOUSE BILL 79

Chairman Brand asked Representative McBride about the subcommittee work on House Bill 79. Representative McBride said her committee was awaiting amendments and fiscal notes.

Chairman Brand noted that action on REPRESENTATIVE BOB PAVLOVICH'S House Bill 57 would be coming up soon. He also reminded committee members that beginning tomorrow (Tuesday, January 18) meetings would begin at 8 a.m.

The meeting was adjourned.



REPRESENTATIVE JOE BRAND, Chairman

STANDING COMMITTEE REPORT

JANUARY 17, 19 83

MR. **SPEAKER**

We, your committee on **STATE ADMINISTRATION**

having had under consideration **HOUSE** Bill No. **117**

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"AN ACT PROVIDING FOR AN OPEN PRIMARY ELECTION WITH A SINGLE BALLOT;
AMENDING SECTIONS 13-10-209, 13-10-301, 13-10-402, 13-12-203,
13-12-205, AND 13-17-103, MCA; REPEALING SECTIONS 13-10-302 AND
13-10-311, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **117**

DO ~~PASS~~ NOT PASS

1
2 INTRODUCED BY Horsa BILL NO. 154
3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE
6 COMMISSIONER OF STATE LANDS MAY APPOINT AN ARBITRATOR TO
7 ASCERTAIN THE VALUE OF IMPROVEMENTS ON STATE LAND WHEN ANY
8 PARTY REFUSES TO DO SO; AMENDING SECTION 77-6-306, MCA."
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 77-6-306, MCA, is amended to read:
12 "77-6-306. Arbitrators to fix value of improvements.

13 (1) If the owner of any improvements on state lands of the
14 type authorized by law at the time they were placed thereon
15 desires to sell these improvements to the new lessee and
16 they are unable to agree on the value thereof, the value
17 shall be ascertained and fixed by three arbitrators, one of
18 whom shall be appointed by the owner of the improvements,
19 one by the new lessee, and the third by the two arbitrators
20 so appointed. If any party refuses to appoint an arbitrator
21 within 15 days of being requested to do so by the
22 commissioner, the commissioner may appoint an arbitrator for
23 that party. An arbitrator appointed by the commissioner has
24 the same duties and powers as if appointed by one of the
25 parties. The value of the improvements shall be ascertained

1 and fixed as this part provides.

2 (2) The reasonable compensation that the arbitrators
3 may fix for their services shall be paid in equal shares by
4 the owner of the improvements and the new lessee.

5 (3) The value of the improvements so ascertained and
6 fixed is binding on both parties, however, if either party
7 is dissatisfied with the valuation so fixed, he may within
8 10 days appeal from their decision to the department which
9 shall examine the improvements, and its decision shall be
10 final. The department shall charge and collect the actual
11 cost of the reexamination to the owner and the new lessee in
12 such proportion as in its judgment justice may demand."

-End-

INTRODUCED BILL

-2-

HB 154

*prepared testimony
by Lands Comm. Henner*

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL 154

BEFORE THE HOUSE STATE ADMINISTRATION COMMITTEE

House Bill 154 is by the request of the Department of State Lands. The purpose of the bill is to provide a solution to a problem which has caused the loss of revenues to the state and its school trust income fund.

The problem arises when a lease of State school trust land for agricultural or grazing purposes is transferred to a new lessee. The former lessee has the right pursuant to section 77-6-203 MCA to be paid for the reasonable value of the improvements which exist on the lease. The statute also provides that if the former lessee and the new lessee cannot agree, the value of the improvements shall be ascertained and fixed as provided in section 77-6-306, MCA. This statute is the one which the department is requesting be amended.

Section 77-6-306 MCA as it currently exists provides for the appointment of persons to act as arbitrators, in order to ascertain the value of the improvements. The new lessee and the former lessee each are required to appoint an arbitrator and these two arbitrators then appoint a third arbitrator.

This system is fair and works well in most cases. The problem that occurs is when either the new lessee or former lessee fails to appoint an arbitrator in a timely manner. According to section 77-6-305 MCA, the department cannot issue a lease until the former lessee has been compensated. Thus, if one party fails to appoint an arbitrator, the state land must remain unleased. The new lessee cannot use the land and the state cannot collect rentals until the lease is issued.

The solution to the problem, as proposed by the department, is to amend section 77-6-306 MCA to allow the Commissioner of State Lands to appoint an arbitrator if any party refuses to do so. It is hoped that the Commissioner will never have to use this authority; however, without this authority there is no incentive for a recalcitrant lessee to appoint an arbitrator and settle the matter so that a lease can be issued.

The passage of this amendment will not prejudice the rights of former or new lessees but only encourage them to carry out the process of ascertaining the value of improvements in a timely manner. When the process is not carried out in a timely manner, the State may lose revenue and the rights of the parties may be prejudiced.

The Department of State Lands urges this committee to vote in favor of passage of this amendment.

1
2 INTRODUCED BY House BILL NO. 154
3 Spencer Dunderberg
4 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

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24 the same duties and powers as if appointed by one of the
25 parties. The value of the improvements shall be ascertained

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5 (3) The value of the improvements so ascertained and
6 fixed is binding on both parties, however, if either party
7 is dissatisfied with the valuation so fixed, he may within
8 10 days appeal from their decision to the department which
9 shall examine the improvements, and its decision shall be
10 final. The department shall charge and collect the actual
11 cost of the reexamination to the owner and the new lessee in
12 such proportion as in its judgment justice may demand."

-End-

INTRODUCED BILL

-2-

HB 154

*prepared testimony
by Lands Comm. Henner*

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Section 77-6-306 MCA as it currently exists provides for the appointment of persons to act as arbitrators, in order to ascertain the value of the improvements. The new lessee and the former lessee each are required to appoint an arbitrator and these two arbitrators then appoint a third arbitrator.

This system is fair and works well in most cases. The problem that occurs is when either the new lessee or former lessee fails to appoint an arbitrator in a timely manner. According to section 77-6-305 MCA, the department cannot issue a lease until the former lessee has been compensated. Thus, if one party fails to appoint an arbitrator, the state land must remain unleased. The new lessee cannot use the land and the state cannot collect rentals until the lease is issued.

The solution to the problem, as proposed by the department, is to amend section 77-6-306 MCA to allow the Commissioner of State Lands to appoint an arbitrator if any party refuses to do so. It is hoped that the Commissioner will never have to use this authority; however, without this authority there is no incentive for a recalcitrant lessee to appoint an arbitrator and settle the matter so that a lease can be issued.

The passage of this amendment will not prejudice the rights of former or new lessees but only encourage them to carry out the process of ascertaining the value of improvements in a timely manner. When the process is not carried out in a timely manner, the State may lose revenue and the rights of the parties may be prejudiced.

The Department of State Lands urges this committee to vote in favor of passage of this amendment.

WITNESS STATEMENT

NAME Cary Speth BILL No. 154-155

ADDRESS District 71 DATE _____

WHOM DO YOU REPRESENT _____

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

HOUSE

State Admin.

BILL

HB ~~154~~ 154

Date _____

1-17-83

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Dennis Hemmer BILL No. 154
ADDRESS capitol station, Helena, MT DATE 1-17-83
WHOM DO YOU REPRESENT Dept. of State Lands
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Proposed amendments for HB 154:

1. Title, line 8.

Following: " ; "

Insert: "TO PERMIT A DECISION BY THE DEPARTMENT OF STATE LANDS
ASCERTAINING THE VALUE OF IMPROVEMENTS TO BE APPEALED
TO DISTRICT COURT; "

2. Page 2, line 9.

Following: "and"

Insert: ", except as provided in subsection (4),"

3. Page 2, line 12.

Following: "demand"

Strike: " " "

Insert: "(4) If either party is dissatisfied with the valuation
fixed by the department, he may within 30 days after
receipt of the department's decision petition the district
court in the county in which the majority of the state land
is located or the district court in Lewis and Clark County
for judicial review of the decision.""

1 *House* BILL NO. *117*
 2 INTRODUCED BY *Senator Ted Heyer*
 3 *Steve Hagedorn*

4 A BILL FOR AN ACT ENTITLED: *AN ACT PROVIDING FOR AN OPEN*
 5 PRIMARY ELECTION WITH A SINGLE BALLOT; AMENDING SECTIONS
 6 13-10-209, 13-10-301, 13-10-402, 13-12-203, 13-12-205, AND
 7 13-17-103, MCA; REPEALING SECTIONS 13-10-302 AND 13-10-311,
 8 MCA."

9
 10 WHEREAS, Montana law requires no declaration of party
 11 affiliation and allows an elector to vote any one of several
 12 ballots in a primary election; and

13 WHEREAS, the purpose of a primary election is to select
 14 candidates for established political parties.

15 THEREFORE, the enactment of this bill or of its
 16 alternative, Bill No. [LC 485], is intended to
 17 clarify Montana law by providing either a completely open
 18 primary election or a true closed primary election.

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 Section 1. Section 13-10-209, MCA, is amended to read:
 22 "13-10-209. Arrangement of ballots. ~~††~~ Ballots for a
 23 primary election shall be arranged and printed in the same
 24 manner and number as provided in chapter 12 for general
 25 election ballots, ~~except there shall be separate ballots for~~

1 each political party entitled to participate and separate
 2 nonpartisan and ballot issue ballots if necessary the name
 3 of the political party shall be printed at the top of the
 4 separate ballot for that party and need not be printed
 5 opposite each candidate's name

6 ~~††~~ it is not necessary to print a primary ballot for
 7 a political party which does not have candidates for more
 8 than half of the offices on the ballot in even year
 9 elections if no more than one candidate files for nomination
 10 by that party for any of the offices on the ballot the
 11 secretary of state shall certify that no primary election is
 12 necessary for that party if such is the case and shall
 13 certify or instruct the election administrator to certify
 14 the names of the candidates for that party for the general
 15 election ballot only

16 ~~††~~ the separate ballots for each party shall be the
 17 same size and color the stubs of each set of party ballots
 18 shall bear the same number the nonpartisan ballot shall be
 19 a different size or color than the party ballots but the
 20 stubs shall be numbered in the same order as the party
 21 ballots

22 ~~††~~ if a ballot issue is to be voted on at a primary
 23 election, it may be placed on the nonpartisan ballot or a
 24 separate ballots a separate ballot may be a different size
 25 and color than the other ballots in the election but the

INTRODUCED BILL

1 stubs shall be numbered in the same order.

2 (5) Each elector shall receive a set of party ballots
3 and a nonpartisan and a ballot issue ballot if such ballots
4 are printed."

5 Section 2. Section 13-10-301, MCA, is amended to read:
6 "13-10-301. Casting of ballot. (1) Unless otherwise
7 provided by law, the conduct of the primary election, the
8 voting procedure, the counting, tallying, and return of
9 ballots and all election records and supplies, the canvass
10 of votes, the certification and notification of nominees,
11 recounts, procedures upon tie votes, and any other necessary
12 election procedures shall be at the same times and in the
13 same manner as provided for in the laws for the general
14 election.

15 (2) At a primary election, the elector shall mark only
16 one of the set of party ballots after marking any other
17 ballots received other than the party ballots; the elector
18 shall fold the marked and unmarked ballots separately in a
19 manner so that the marks cannot be seen; the official stamp
20 is visible on each ballot; and all stubs can be detached by
21 an election judge.

22 (3) The elector shall hand the marked and unmarked
23 ballots separately to the election judge; identifying them
24 as marked and unmarked; if the judge determines the ballots
25 may be voted, he shall, in the presence of the elector

(a) remove the stubs from all the ballots;

(b) deposit the unmarked ballot or ballots and all the
3 stubs in the stub and unmarked ballot box

(c) and deposit the marked ballots in the voted ballot
5 box."

6 Section 3. Section 13-10-402, MCA, is amended to read:
7 "13-10-402. Ballot. The regular party primary ballots
8 ballot shall be used for the presidential preference primary
9 election. The presidential section of the ballot shall be
10 placed before any other section, national, state, or local."

11 Section 4. Section 13-12-203, MCA, is amended to read:
12 "13-12-203. Printing of candidate's name and party
13 designation on ballot. (1) Except as provided in 13-10-209
14 and 13-10-303, in partisan elections, candidates' names
15 shall be printed under the title of the office sought, with
16 the name of the party, in not more than three words, or
17 "Independent" printed opposite the name.

18 (2) In nonpartisan elections, the candidates' names
19 shall be printed under the title of the office sought, with
20 no description or designation printed with the name unless
21 partisan and nonpartisan offices appear on the same ballot.
22 In such a case, the names of nonpartisan candidates shall
23 have printed with them the words "Nominated without party
24 designation."

25 Section 5. Section 13-12-205, MCA, is amended to read:

1 "13-12-205. Arrangement of names -- rotation on
2 ballot. (1) The candidates' names shall be arranged
3 alphabetically on the ballot according to surnames under the
4 title of the respective offices.

5 (2) If two or more individuals are candidates for
6 nomination or election to the same office, the election
7 administrator shall divide the ballot forms into sets equal
8 in number to the greatest number of candidates for any
9 office. ~~The candidates for nomination to an office by each~~
10 ~~political party shall be considered separately in~~
11 ~~determining the number of sets necessary for a primary~~
12 ~~election.~~

13 (3) The election administrator shall begin with a form
14 arranged alphabetically and rotate so that each candidate's
15 name will be at the top of the list for each office on
16 substantially an equal number of ballots. If it is not
17 numerically possible to place each candidate's name at the
18 top of the list, the names shall be rotated in groups so
19 that each candidate's name is as near the top of the list as
20 possible on substantially an equal number of ballots.

21 (4) If the county contains more than one legislative
22 district, the election administrator may rotate each
23 candidate's name so that it will be at or near the top of
24 the list for each office on substantially an equal number of
25 ballots in each house district.

1 (5) For purposes of rotation, the offices of president
2 and vice president and of governor and lieutenant governor
3 shall be considered as a group.

4 (6) No more than one of the sets may be used in
5 printing the ballot for use in any one precinct, and all
6 ballots furnished for use in any precinct must be
7 identical.*

8 Section 6. Section 13-17-103, MCA, is amended to read:
9 "13-17-103. Required specifications for equipment. A
10 voting machine or device may not be approved unless:

11 (1) an elector can vote in secrecy;

12 (2) an elector is prevented from voting for any
13 candidate or upon any ballot issue more than once and is
14 also prevented from voting on any office or ballot issue for
15 which he is not entitled to vote;

16 ~~(3) an elector can secretly select the party for which~~
17 ~~he wishes to vote in a primary election and the machine or~~
18 ~~device will count only votes for the candidates of that~~
19 ~~party by the elector in the primary election~~

20 ~~(4) (3) an elector can vote a split ticket in a general~~
21 ~~election if he desires;~~

22 ~~(5) (4) every valid vote cast is registered and~~
23 ~~recorded;~~

24 ~~(6) (5) the machine or device is constructed so that it~~
25 ~~cannot be tampered with for a fraudulent purpose and is also~~

1 constructed so that during the progress of the voting no
2 individual can see or know the number of votes registered
3 for any candidate or on any ballot issue;
4 (77161) it allows write-in voting; and
5 (8711) a guarantee to provide training and assistance
6 to election officials will be included in each contract for
7 purchase of the machine or device."

8 NEW SECTION, Section 7. Repealer. Sections 13-10-302
9 and 13-10-311, MCA, are repealed.

-End-

House State Administration Committee

Bill Summaries

Wednesday, January 12, 1983

HB 117 (Hemstad):

Under current law, a voter participating in a primary election receives separate ballots for each political party entitled to participate in the election. A voter may mark only one of the set of party ballots. HB 117 creates an open primary. It provides that a single primary ballot will be available upon which all candidates' names will be printed under the title of the office sought with the candidate's party designation printed opposite his name.

WITNESS STATEMENT

NAME Nancy J. Harte BILL No. 117
ADDRESS Box 802, Helena DATE 1-17-83
WHOM DO YOU REPRESENT Montana Democratic Party
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Statement attached



January 17, 1983

TESTIMONY PRESENTED TO THE HOUSE STATE ADMINISTRATION COMMITTEE
IN OPPOSITION TO HOUSE BILL 117, TO PROVIDE AN OPEN PRIMARY
ELECTION WITH A SINGLE BALLOT.

Mr. Chairman and members of the committee, for the record my
name is Nancy Harte, representing the Montana Democratic Party.

The Democratic Party opposes this bill because we believe
that election of partisan candidates should be accomplished by
party members.

The purpose of a primary election for every political party,
whether Democratic, Republican, Libertarian or whatever, is for
each party to choose its own candidates. The Democratic Party
supports a closed primary in which only Democrats vote for
Democrats, Republicans for Republicans and so on.

Montana already has an open primary because voters now may
vote on either the Democratic or Republican ticket, without
declaring party affiliation. The title of this bill, then, is a
misnomer because this bill would not open Montana's primary, it
would destroy it.

Montana Democratic Central Committee • Steamboat Block, Room 303 • P.O. Box 802 • Helena, MT 59624 • (406) 442-9520

Executive Board

| | | | | | | |
|--------------------------|----------------------------------|------------------------------|--------------------------|-----------------------------------|-----------------------------------|-----------------------------------------|
| Ron Richards Chairman | Sharon Peterson Vice Chairman | N. J. Dougherty Secretary | Ralph Dixon Treasurer | Joe Lamson Executive Secretary | James Pasma Nat'l Committeeman | Dorothy Bradley Nat'l Committeewoman |
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| Sen. Chet Blaylock | | Rep. Dan Kemmis | | Phillis Moore | | Sherri Stieg |

This is especially true in presidential primaries. For Democrats, at least, Montana's representatives at the national presidential convention are chosen according to the percentage of votes cast for each Democratic candidate in the June primary. Montana Democrats chose whom they wish as Democratic nominees, and the Montana Democratic Party sends delegates to the national convention based on those wishes.

If Democrats do not chose Democratic candidates, Montana Democrats will lose their voice at the national presidential convention. The Democratic National Committee has already ruled that Montana Democrats may not chose their presidential delegates based on Montana's primary. That ruling came about because Montana has an open primary in which people other than Democrats may vote in the Democratic primary.

In Montana, unless the law is changed so that we have a closed primary, Democrats will be seeing a change in how Democrats are elected: This bill will make Montana's primary merely a "beauty contest."

If anything, primary election laws must be tightened. The Democratic Party supports partisan elections, with party members allowed to chose their own candidates through a closed primary. This bill, while undoubtedly submitted in hopes of allowing greater freedom of choice, would only make the election process meaningless.

#

HOUSE

State Admin.

COMMITTEE

BILL

HB 117

Date _____

1-17-83

SPONSOR

Hemstad

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

H8117

Rep. Hemsted,

I talked to Joe and it's fine with him to rechedule your hearing that's now set for tomorrow (Wed). The earliest I can set it for, however, is Monday. Because of the 72-hour rule. If this meets with your approval, please initial this note and return it to me. If you prefer later next week, just indicate when and I'll reschedule.

Thanks,

Carrie

Handwritten signature

1
2 INTRODUCED BY House BILL NO. 155
3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR AN
6 ARBITRATION PROCESS WHENEVER A STATE LESSEE AND A PARTY
7 RECEIVING A RIGHT-OF-WAY EASEMENT ARE UNABLE TO AGREE ON THE
8 VALUE OF THE DAMAGES RESULTING FROM SUCH EASEMENT; AMENDING
9 SECTION 77-2-107, MCA."
10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 77-2-107, MCA, is amended to read:
13 "77-2-107. Involvement of lessee when land subject to
14 prior lease. (1) Whenever any kind of right-of-way easement
15 has been granted under this part and the state land in which
16 it is granted is under lease, the party receiving such grant
17 shall give due and timely notice to the lessee and shall
18 make just settlement with him for any damages resulting to
19 his improvements or crops or leasehold interests.

20 (2) Upon such settlement being made, the lessee shall
21 open or move any fences that may obstruct the right-of-way
22 over the lands under his lease and otherwise cooperate in
23 the opening of the right-of-way. Proof shall be filed with
24 the board that such settlement has been made before the deed
25 to the easement is issued.

1 (3) (a) If the lessee and the party receiving the
2 right-of-way easement are unable to agree on the value of
3 the damages resulting from the easement, the value of the
4 damages must be ascertained and fixed by three arbitrators,
5 one of whom must be appointed by the lessee, one by the
6 party receiving the easement, and the third by the two
7 appointed arbitrators.

8 (b) If any party refuses to appoint an arbitrator
9 within 15 days of being requested to do so by the
10 commissioner, the commissioner may appoint an arbitrator for
11 that party. An arbitrator appointed by the commissioner has
12 the same duties and powers as if appointed by one of the
13 parties.

14 (c) The arbitrators may fix reasonable compensation
15 for their services, which must be paid in equal shares by
16 the owner of the easement and the lessee.

17 (d) The value of the damages as ascertained and fixed
18 by the arbitrators is binding on both parties; however, if
19 either party is dissatisfied with the valuation, he may,
20 within 10 days, appeal from their decision to the
21 department. The department shall examine the easements, and
22 its decision on the appeal is final. The department shall
23 collect the actual cost of the reexamination from the owner
24 of the easement and the lessee in such proportion as, in its
25 judgment, justice may demand."

INTRODUCED BILL

-End-
-2-

HB 155

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL 155

BEFORE THE HOUSE STATE ADMINISTRATION COMMITTEE

House Bill 155 is at the request of the Department of State Lands. The purpose of the bill is to provide a process for ascertaining and fixing the damages caused to a state grazing or agricultural lessee by the granting of an easement on the state land. The statute currently requires that a lessee be compensated for damages before an easement is issued but does not provide a procedure for determining the amount of the damages.

The amendment provides an arbitration process to determine such damages in a fair and timely manner. This procedure will benefit all parties. The lessee will receive just compensation in a timely manner, the easement will be issued to the applicant in a timely manner and the state will have a procedure which will settle disputes with less problems.

The procedure requested by the department is identical to the procedure now used to settle the value of improvements on state leases with the addition of the amendment contained in House Bill 154. This procedure has worked in the past and guarantees the parties a fair and equitable system of determining the value of the damages.

The Department of State Lands urges the Committee to vote in favor of passage of this amendment.

Proposed amendments to HB 155:

1. Page 2.

Following: line 21

Insert: ", except as provided in subsection (e),"

2. Page 2, line 25.

Following: "demand"

Strike: " " "

Insert: "(e) If either party is dissatisfied with the valuation fixed by the department, he may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court in Lewis and Clark County for judicial review of the decision.""

EXCUSE

Date: Jan 14, 1983

Representative Lillis Day is excused from the
committee hearing to be conducted 1-17, 1983.

REP. JOE BRAND, Chairman

o-o-o

PROXY

In view of the above absence, I give my proxy to

Representative Brand for bill(s) ^{HB} 117
HB 154 - HB 155

to follow these instructions _____

HB 117 No an Do Pass
HB 154 Yes an Do Pass & even if amended
HB 155 Yes an Do Pass & even if amended

signature Rep. Day Lillis Day

EXCUSE

Date: 1/15, 1983

Representative SALES is excused from the
committee hearing to be conducted 1/17, 1983.

REP. JOE BRAND, Chairman

o-o-o

PROXY

In view of the above absence, I give my proxy to

Representative O'CONNELL for bill(s) HB 117
HB 154 HB 155

to follow these instructions _____

HB 117 - No

HB 154 - No

HB 155 - No - UNLESS 3 (b) IS DELETED,
THEN YES.

signature

HOUSE

State Admin.

BILL

HB 155

Date _____

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME GENE PHILLIPS BILL No. HB 155
ADDRESS KALIS PELL DATE 1/17
WHOM DO YOU REPRESENT PACIFIC POWER & LIGHT
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME John Alke BILL No. SB 155
ADDRESS 406 Fuller Helena DATE 1/17
WHOM DO YOU REPRESENT MDY
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Dennis Hemmer BILL No. 155
ADDRESS Capitol Station, Helena DATE 1-17-83
WHOM DO YOU REPRESENT Dept. of State Lands
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

*prepared testimony
by Hemmer, Comm.*

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL 155

BEFORE THE HOUSE STATE ADMINISTRATION COMMITTEE

House Bill 155 is at the request of the Department of State Lands. The purpose of the bill is to provide a process for ascertaining and fixing the damages caused to a state grazing or agricultural lessee by the granting of an easement on the state land. The statute currently requires that a lessee be compensated for damages before an easement is issued but does not provide a procedure for determining the amount of the damages.

The amendment provides an arbitration process to determine such damages in a fair and timely manner. This procedure will benefit all parties. The lessee will receive just compensation in a timely manner, the easement will be issued to the applicant in a timely manner and the state will have a procedure which will settle disputes with less problems.

The procedure requested by the department is identical to the procedure now used to settle the value of improvements on state leases with the addition of the amendment contained in House Bill 154. This procedure has worked in the past and guarantees the parties a fair and equitable system of determining the value of the damages.

The Department of State Lands urges the Committee to vote in favor of passage of this amendment.

House State Administration Committee

Bill Summaries

Wednesday, January 12, 1983

- HB 117 (Hemstad): Under current law, a voter participating in a primary election receives separate ballots for each political party entitled to participate in the election. A voter may mark only one of the set of party ballots. HB 117 creates an open primary. It provides that a single primary ballot will be available upon which all candidates' names will be printed under the title of the office sought with the candidate's party designation printed opposite his name.
- HB 154 (Spaeth): Under state law, when an owner of improvements on state lands and a lessee cannot agree on the value of these improvements, the value must be determined by three arbitrators, one appointed by the owner of the improvements, one by the lessee, and one by the appointed arbitrators. HB 154, requested by the department of State Lands, provides that if any party refuses to appoint an arbitrator within 15 days after requested to do so by the Commissioner of State Lands, the Commissioner may appoint an arbitrator for that party who will have the same duties and powers as if appointed by one of the parties.
- HB 155 (Spaeth): Requested by the Department of State lands, HB 155 provides that if a lessee of state lands and a party receiving a right-of way easement on this land cannot agree on the value of the damages caused by the easement, the value of the damages will be determined by three arbitrators, one appointed by the lessee, one by the party receiving the easement, and one by the two appointed arbitrators. The Commissioner of State Lands may appoint an arbitrator if any party refuses to do so. The cost of the arbitrators' compensation must be shared equally between the easement owner and the lessee. If either party is dissatisfied with the valuation made by the arbitrators, he may appeal to the Department for a final determination.

EXCUSE

Date: Jan. 17, 1983

Representative Paul S. Pistoria is excused from the
committee hearing to be conducted 18, 1983.

Joe Brand
REP. JOE BRAND, Chairman

o-o-o

PROXY

In view of the above absence, I give my proxy to

Representative Joe Brand for bill(s) H.B. 154 &
H.B. 155 (as amended)

to follow these instructions

Vote YES ON
Both Bills

Paul S. Pistoria
signature

House State Administration Committee

Bill Summaries

- HB 167 (Sands): Currently state law requires persons filing certain documents with the Secretary of State's office concerning business names, trademarks, incorporation, dissolution, liquidation, and other activities to file duplicate originals of each document. Requested by the Secretary of State, HB 167 requires an individual to file one original and one copy of these documents.
- HB 169 (Eudaily): This bill, requested by the Teachers' Retirement Division, revises the definition of "earned compensation" for the purpose of calculating a retired teacher's pension to include the value of any housing provided by the employer. However, this definition excludes any other amounts paid in kind or fringe benefits not actually paid to a member.
- HB 173 (Smith): Currently the Secretary of State must publish copies of the election laws and laws relating to elections for each election administrator who in turn furnishes each election precinct within the county with two copies. Requested by the Secretary of State, HB 173 requires the Secretary of State to furnish each administrator only with copies of Title 13 of the Montana Code Annotated for distribution to the precincts.

VISITOR'S REGISTER

HOUSE _____ COMMITTEE _____
 BILL HB 167 DATE _____
 SPONSOR _____

| NAME | RESIDENCE | REPRESENTING | SUP- PORT | OP- POSE |
|------------|------------------------|--------------|--------------|-------------|
| Jack Sands | 3115 Polk St, Billings | | ✓ | |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

House State Administration Committee

Bill Summaries

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VISITOR'S REGISTER

HOUSE

COMMITTEE

BILL

HB 173

DATE _____

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

House State Administration Committee

Bill Summaries

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WITNESS STATEMENT

NAME Robert Johnson BILL No. 169
ADDRESS 1500 Sixth Ave DATE Jan 18, 1983
WHOM DO YOU REPRESENT Teachers' Retirement Board
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Owen Nelson BILL No. 169
ADDRESS 1232 E. 6th Ave DATE 1-18-83
WHOM DO YOU REPRESENT Mont. Educ. Assoc.
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITOR'S REGISTER

HOUSE

COMMITTEE

BILL

HB 169

DATE _____

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

House State Administration Committee

Bill Summaries

Wednesday, January 12, 1983

- HB 117 (Hemstad): Under current law, a voter participating in a primary election receives separate ballots for each political party entitled to participate in the election. A voter may mark only one of the set of party ballots. HB 117 creates an open primary. It provides that a single primary ballot will be available upon which all candidates' names will be printed under the title of the office sought with the candidate's party designation printed opposite his name.
- HB 154 (Spaeth): Under state law, when an owner of improvements on state lands and a lessee cannot agree on the value of these improvements, the value must be determined by three arbitrators, one appointed by the owner of the improvements, one by the lessee, and one by the appointed arbitrators. HB 154, requested by the department of State Lands, provides that if any party refuses to appoint an arbitrator within 15 days after requested to do so by the Commissioner of State Lands, the Commissioner may appoint an arbitrator for that party who will have the same duties and powers as if appointed by one of the parties.
- HB 155 (Spaeth): Requested by the Department of State lands, HB 155 provides that if a lessee of state lands and a party receiving a right-of way easement on this land cannot agree on the value of the damages caused by the easement, the value of the damages will be determined by three arbitrators, one appointed by the lessee, one by the party receiving the easement, and one by the two appointed arbitrators. The Commissioner of State Lands may appoint an arbitrator if any party refuses to do so. The cost of the arbitrators' compensation must be shared equally between the easement owner and the lessee. If either party is dissatisfied with the valuation made by the arbitrators, he may appeal to the Department for a final determination.