

MINUTES OF THE MEETING OF THE HOUSE STATE ADMINISTRATION COMMITTEE
January 20, 1983

VICE CHAIRMAN O'CONNELL called the meeting to order at 8 a.m. in Room 129 of the Capitol. All members were present.

HOUSE BILL 199

Vice Chairman O'Connell called for testimony on House Bill 199 by calling on its sponsor, REPRESENTATIVE KELLY ADDY, who said the measure would clarify and update laws relating to military affairs and disaster emergency services. He briefly went through sections of the proposed legislation:

Section 1 would place control of the Armed Forces of the state under the Adjutant General's Office.

Section 2 would allow warrant officers to issue oaths of office.

Section 3 would allow the deletion of provision of payments directly by the state for injured National Guard people. It would put their protection under the Worker's Compensation laws. At present, Rep. Addy said, legislators and the Adjutant General's Office act as insurance adjusters in the case of accident payments.

Section 4 would expand circumstances under which the Governor can declare a disaster. It would also allow money to come out of earmarked funds, not special appropriations.

Section 5 would delete the requirements for food and 1950s-style bomb shelters. Rep. Addy called them obsolete.

Section 6 would delete an existing provision he said hamstringing the department.

Section 7, specifically referring to line 22 on page 9, would make discretionary the matter of consulting the various agencies.

Section 8 would clarify what the emergency and disaster services should do in terms of standardizing what else is done in Section 4 of the bill.

Section 9 would clarify language.

Section 10 would make language consistent with Section 9.

Section 11 would expand the situations under which the capital could be moved from Helena.

Section 13 would be a simple repealer if the committee approves of the change in Section 3.

NO OTHER PROPONENTS BEING HEARD, AND NO OPPONENTS TO HOUSE BILL 199, VICE CHAIRMAN O'CONNELL CALLED FOR QUESTIONS FROM COMMITTEE MEMBERS.

COMMITTEE QUESTIONS

REPRESENTATIVE SMITH noted that he has a bill at present to fund the uninsured portion of the Workers' Compensation Fund. He asked how payment under this bill would be funded. GENERAL JAMES DUFFY answered, saying that when called to duty and individuals are injured, compensation is made under the emergency operating fund. REPRESENTATIVE DRISCOLL asked what the premium rates are charged for the military department. General Duffy said the same as any other job. He referred to KEN COSTLE, the administrator, who said that there has been an agreement between the Department of Military Affairs and the Workers' Compensation Division to pay a particular premium on a one time basis after the fact of injury.

THERE BEING NO FURTHER QUESTIONS BY THE COMMITTEE ON HOUSE BILL 199, VICE CHAIRMAN O'CONNELL CLOSED THE HEARING ON HOUSE BILL 199.

HOUSE BILL 216

Vice Chairman Helen O'Connell called for testimony on House Bill 216 by calling on its sponsor, REPRESENTATIVE RALPH EUDAILY, who said that House Bill 216 would provide for members of the Districting and Apportionment Commission to be paid at the same rate as members of the Legislature. He said the pay rate should be changed because in 1963 the legislative salary was \$20, but the commission members' salary has remained the same since then. Rep. Eudaily said the bill would strike a specific figure as an allowance for the members of the commission and simply point to the section for legislative pay. In the future, he said, this would mean that the Legislature need not pass a bill for the commission but merely keep the commission members paid on the same basis as the legislators. "These people are private citizens as we are who leave private work as we do, to do a thankless job," Rep. Eudaily said.

JOANNE WOODGERD, a member of the commission, told committee members this is not a retroactive bill and it would affect only the next commission, in 1990.

NO OTHER PROPONENTS BEING HEARD, AND NO OPPONENTS TO HOUSE BILL 216, VICE CHAIRMAN O'CONNELL CLOSED THE HEARING ON HOUSE BILL 216 AFTER REPRESENTATIVE EUDAILY DECLINED TO MAKE A CLOSING STATEMENT. COMMITTEE MEMBERS HAD NO QUESTIONS.

SENATE BILL 46

Vice Chairman O'Connell called for testimony on Senate Bill 46 by calling on its sponsor, SENATOR JOE MAZUREK, who explained that the legislation would require the Governor to transmit a copy of each veto message to the Legislative Council, as well as clarify which state and federal agencies are entitled to receive copies of the Montana Session Laws. It would also repeal the requirement of publication of name changes in the session laws.

Senator Mazurek said the bill would make discretionary with the Legislative Council the question of who gets copies of the session laws.

NO OTHER PROPONENTS BEING HEARD, AND NO OPPONENTS TO SENATE BILL 46, VICE CHAIRMAN HELEN O'CONNELL CALLED FOR QUESTIONS BY COMMITTEE MEMBERS.

REPRESENTATIVE McBRIDE asked if at present the Legislative Council is sending out more copies of laws than is in the bill. Legislative Council Director DIANA DOWLING said the bill would result in the Legislative Council sending out less than it does now. Rep. McBride said that it was only fair that the matter of which agencies be sent Session Laws be discretionary with the Legislative Council.

REPRESENTATIVE WALTER SALES observed that there was no Legislative Council in 1895, and he questioned whence the name-publication requirement came from in 1895. Senator Mazurek said he did not know.

REPRESENTATIVE FRANCIS KOEHNKE asked if the name publication requirement was useful in criminal investigations. Senator Mazurek said he did not know.

Legislative Council Director Dowling said that as far as her staff could determine, there was no useful purpose for the publication of name changes.

Vice Chairman O'Connell noted that should the measure pass, REPRESENTATIVE JACK RAMIREZ would carry the measure on the floor.

EXECUTIVE SESSION

Vice Chairman O'Connell called the committee into Executive Session and asked for a motion on House Bill 199.

HOUSE BILL 199

REPRESENTATIVE JOHN PHILLIPS MOVED House Bill 199 DO PASS, REPRESENTATIVE KOEHNKE SECONDED.

Representatives Sales and Smith asked if a fiscal note was required for the bill. REPRESENTATIVE GLENN MUELLER said the measure was strictly a "pay back" measure and a fiscal note would not be appropriate.

The question being called, the MOTION CARRIED by unanimous voice vote.

VICE CHAIRMAN O'CONNELL MOVED THE COMMITTEE FROM EXECUTIVE SESSION TO THE HEARINGS PROCESS AND CALLED FOR TESTIMONY ON HOUSE BILL 218.

HOUSE BILL 218

REPRESENTATIVE LES KITSELMAN said House Bill 218 would clarify a problem in the law and clear up gray areas that concern the matter of how engineers, surveyors, real estate appraisers and architects are affected by the laws regulating private consultants.

JIM WEATHERLY, a consulting engineer from Missoula, said he supported the bill. He said in its original passage in 1981 his colleagues supported the measure, but it later became apparent that the Department of State Lands and the Department of Natural Resources and Conservation were charged with doing much more work, and the requirements in the 1981 statute became difficult to work with and created a double standard. He said the bill would create a standard procedure. He said one of the problems was that low bid consultants depend on other consultants' work and if working can be deleted as the bill would do, consultants' work can go much smoother. (See statement by Weatherly, attached.)

JIM CUMMINGS, Great Falls, representing the Montana Construction Engineers' Council, spoke in support of the bill. He said the bill would be important for the study and design of state-owned facilities and buildings. He said the bill leaves open the ban on other kinds of work. He said it would provide more economic services for the State of Montana. (See statement by Cummings, attached.)

THERE BEING NO OTHER PROPONENTS, AND NO OPPONENTS TO HOUSE BILL 218, VICE CHAIRMAN O'CONNELL CALLED FOR QUESTIONS FROM COMMITTEE MEMBERS.

COMMITTEE QUESTIONS

Rep. McBride asked what the problem is at present. Weatherly said one type of project is bid while another is not. He said the bill would allow the department's discretion as whether to use the price-tag approach and choose a bid based from several possible firms and choose within that field. In this mode, invitation letters of interest would be written and the qualifications of bidders determined. He said the final project cost for a project would come from interaction between department officials and a prospective contractor. Rep. McBride questioned whether "former employees" would be exempt from the restrictions. Cummings said that provision would not change. Rep. McBride insisted that it would change. Cummings said that the organization's attorney advises him that it would continue to bind. Vice Chairman O'Connell suggested that Legislative Researcher Lois Menzies check into the matter.

REPRESENTATIVE JOE BRAND said Gareth Moon, Director of the Department of State Lands, was concerned about possible court challenges about this bill. He said he did not see anyone from the Lands Department at the hearing. He asked that if there are three professionals involved, what is to prevent sweetheart deals. Weatherly said that it was the Governor's policy to spread work to the most qualified individuals. Rep. Brand asked if this was state law. Weatherly said it was. But he said the state would still be sued if the work went to less qualified bidders. Rep. Brand asked if it was cheaper to go this route rather than to competitive bidding and how. Weatherly said the state can now turn to the low bid, but it is very difficult to do so. Also, use of the pure low bid system is practicable because the bid is based on very little information about the job.

VICE CHAIRMAN O'CONNELL RELINQUISHED CONTROL OF THE MEETING TO CHAIRMAN JOE BRAND.

Rep. Koehnke asked how to prevent favoritism. BRUSETT said there were several standards in the statute. He said the state keeps a list of architects, then has a screening committee screen the number of prospective bidders to seven and then asks for more information from them. After that, he said, the number is screened to three and still more information is asked, then the applicants are prioritized, and any fees negotiated.

Rep. McBride asked if it was amenable to the sponsor to amend the bill to keep the bar against former employees in the law. Rep. Kitselman said that was all right. Brusett said he believed another section would contain such a prohibition.

Rep. Jerry Driscoll asked what it was that the architects sought to be exempt from. Cummings said they were seeking uniform enforcement of laws from agency to agency by means of this bill.

Chairman Brand asked who would be covered after this bill is enacted into law. The sponsor, Rep. Kitselman, said he did not know. Weatherly said those persons covered would be those who are not registered professionals.

THERE BEING NO FURTHER QUESTIONS FROM COMMITTEE MEMBERS, CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 218.

HOUSE BILL 52

REPRESENTATIVE JOHN SHONTZ said House Bill 52 would require the election of an administrator to oversee the conduct of elections and further empower the campaign commissioner to investigate complaints made by candidates. If it is determined that the administrator has failed in his duty to conduct the election fairly, the administrator can be fined up to \$500 for violation; and if a candidate is found to be at fault the candidate could be fined an equal amount. Rep. Shontz said he had amendments to the measure that would recognize the Secretary of State as the chief elections officer. He said the amendments would allow the Secretary of State to conduct a finding-of-fact hearing if a complaint is filed. (See attached proposed amendments.) Rep. Shontz said the measure provides a low-cost method for a person who thinks there is a problem in the electoral process rather than go to court.

CLIFF CHRISTIANS, representing the Secretary of State's office, stated his support for the bill. He said the present definition under which the Secretary of State works is vague. He said he believed there is at present no power to investigate complaints. If House Bill 52 is passed it possibly could be a help.

ROSE SKOOG, of Helena, spoke about problems in Lewis and Clark County elections. She contended that there were "serious violations of election laws." She said she complained to the Secretary of State's office, but they indicated that officials were not sure whether they had the power to act on her complaints. She said she supported the amendments but cautioned the committee against letting the Secretary of State off the hook for not doing his duty because of financial problems.

BILL ROMINE, representing the Clerks and Recorders Association, stated his support for the measure. (See attached statement.)

NO OTHER PROPONENTS FOR HOUSE BILL 52 BEING HEARD, CHAIRMAN BRAND CALLED FOR TESTIMONY BY OPPONENTS TO THE MEASURE.

OPPONENTS

MARGARET DAVIS, representing the Montana League of Women Voters, said the League did not favor the measure because it had problems with some of its basic concepts. (See attached statement.) She said the group supported section 1, to have a Secretary of State oversee the elections. But she referred to page 2, line 23, saying this legislation would not be any help because only candidates could file complaints, and only those have lost, and the remedy would be available only to those who could prove that he or she lost because of the election defects. She called the measure "extremely restrictive." She said the remedies in the amendment were better than those in the original bill. She said that poor election practices demand a vigilance by voters. In the end, she said, it is the courts who must decide. She said access to courts should be open and quick.

JOANNE M. PERES, Chouteau County Clerk and Recorder, also spoke in opposition, saying its becoming harder and harder to find people willing to take guff while acting as a local election official. She said she has a problem putting the Secretary of State's office in an investigative role. She said she did not like to see that office in an adversarial situation with the clerks and recorders, because often the local officers must ask questions of the Secretary of State's office, and the local officers would then be afraid to consult the Secretary of State because "He would come down on us." She suggested allowing the Commissioner of Campaign Practices to be the investigative officer. (See attached statement.)

THERE BEING NO FURTHER STATEMENTS BY OPPONENTS, CHAIRMAN BRAND CALLED FOR CLOSING REMARKS BY REPRESENTATIVE SHONTZ.

Rep. Shontz said the measure provides a better way and a place for a judgement call. He said most problems with elections are solved at that local level. He said the bill would go far to take the pressure off clerks and recorders, and avoid court congestion. He said it was expensive to go to court and only the wealthy can afford to challenge elections in court.

Rep. Pistoria asked Rep. Shontz if he had sought comments about the measure from the Commissioner of Campaign Practices office. Rep. Shontz said no, but he had a constituent who had a similar problem, and everyone told that constituent "We're not really responsible." Rep. Shontz said this is a place to start.

Rep. Sales asked about the problem. Rep. Shontz said it involved an election in a small town where candidates were not notified of a filing date. He said election judges wrote down the names of candidates in voting booths as a means of informing voters who was running for office.

Chairman Brand asked why the Clerk and Recorder in that situation did not tell them what to do. Rep. Shontz said there is no place in the statutes that says where a disgruntled voter goes. Chairman Brand pressed the question, asking what advice the Clerk and Recorder gave in that situation. Rep. Shontz said the advice was, "I don't know what to do." In his words, "Everybody passed the buck." He said that lawyers finally said the only recourse was to mount a court challenge. Chairman Brand asked if some clerks and recorders are not able to interpret what is in the law. Romine said only a court can set aside an election. Rep. Shontz said the bill was like a point in arbitration in that it would provide a low-cost means of remedy for everybody.

Rep. Koehnke said that any individual should be able to go to court, but it was not in the bill. He endorsed the bill as a good idea.

Chairman Brand asked about the concern about placing the Secretary of State in an adversarial position. Rep. Shontz said this was not an adversarial role, but was a fact-finding setting.

Rep. McBride asked about potential conflict between the Secretary of State's control over a candidate's activities and his own name being on the ballot. She asked if the bill would confuse campaign practices with election-day practices.

REPRESENTATIVE JOHN RYAN asked Peres if she would be afraid to get information from the Secretary of State's office. She said she would be. Rep. Ryan asked why and she said she did not know why, and suggested that there may be a personality problem at present. Rep. Ryan suggested that the committee look into this situation.

THERE BEING NO FURTHER QUESTIONS BY COMMITTEE MEMBERS, CHAIRMAN JOE BRAND CLOSED THE HEARING ON HOUSE BILL 52.

EXECUTIVE SESSION

CHAIRMAN BRAND MOVED THE COMMITTEE INTO EXECUTIVE SESSION BY CALLING FOR ACTION ON SENATE BILL 46.

SENATE BILL 46

REP. SALES MOVED, REP. MUELLER SECONDED, that Senate Bill 46 DO PASS. The question being called, the MOTION CARRIED by unanimous voice vote. Senate Bill 46 was reported as DO PASS.

HOUSE BILL 52

Rep. McBride called for the committee to pass the bill or kill it as is, or try to work on amendments. Chairman Brand said that enforcement should be the responsibility of the Campaign Commissioner and anyone should be able to issue a complaint. Rep. Smith said he suspected that House Bill 52 would create as many problems as it would solve.

REP. SMITH MOVED the bill DO NOT PASS, REP. SALES SECONDED.

REPRESENTATIVE BRENT BLISS said that those who think that they have been wronged testified in favor of the measure. Rep. Solberg asked if the committee could send it back and see if a subcommittee could make the bill work.

REP. SMITH WITHDREW his motion, on the agreement with Rep. Sales.

REP. SOLBERG MOVED the bill be placed in subcommittee, REP. DRISCOLL SECONDED. The question being called, the MOTION CARRIED by unanimous voice vote. Chairman Brand appointed Rep. McBride chairman of the subcommittee with Representatives Driscoll and Solberg also on the subcommittee.

HOUSE BILL 216

REP. KOEHNKE MOVED, REP. HAMMOND SECONDED, that House Bill 216 DO PASS.

Rep. Bliss said he favored the bill.

The question being called, the MOTION CARRIED by unanimous voice vote. House Bill 216 was reported out as DO PASS.

HOUSE BILL 218

Rep. Driscoll said House Bill 218 needed work. Chairman Brand said that Legislative Researcher Lois Menzies would work on the measure and check who would be affected by the exemptions.

REPRESENTATIVE JOHN PHILLIPS said he was concerned about sweetheart deals. He said the original bill did not have any exemptions. "Now we're getting the whole intent," Phillips said. "You'll just nullify the legislation of two years ago" if this measure is passed.

Rep. Hammond asked why exempt anyone at all.

Rep. Driscoll said this section was an example of the question of who had the best lobbyists.

Rep. Phillips said the state used engineers to get the number of full time equivalents up.

REPRESENTATIVE HOLLIDAY said committee should look into the procedure used by Brusett and perhaps enact that into law.

Rep. Phillips said there were no department officials to testify about the bill. He suggested there was more to the bill than meets the eye. He noted that Brusett would not say how he felt about the bill.

REP. SALES MOVED House Bill 218 DO PASS, REP. McBRIDE SECONDED.

Rep. McBride suggested that the committee seek input from Brusett again.

Rep. Sales said, "Let's not fix something that doesn't need it." He said he hasn't heard complaints in the past two years from the legislation passed during the 1981 session.

Rep. McBride made a SUBSTITUTE MOTION of DO PASS AS AMENDED to fix up the questions of exemption of former employees. REP. SALES SECONDED.

Rep. Driscoll asked if the committee intended to put the affected individuals on bid. The answer from the committee was in the negative. Rep. McBride said, "I'm saying those people who are exempt must follow disclosure procedure."

The question being called, the SUBSTITUTE MOTION FAILED by roll call vote of 11 "NAYS" and 5 "YEAS".

Returning to the ORIGINAL SALES MOTION, the committee AGREED TO REVERSE THE ROLL CALL VOTE, and two members abstained. House Bill 218 was given a DO NOT PASS recommendation.

HOUSE BILL 79

Rep. McBride asked if the committee could wait until the following Monday for a committee recommendation on House Bill 79 because the subcommittee was waiting for a new fiscal note.

HOUSE BILL 169

REP. HAND MOVED the proposed amendment to House Bill 169 to place a \$150 cap on the use of housing allowance in the computation of retirement benefits. REP. KOEHNKE SECONDED.

Rep. Driscoll said a housing allowance is not considered income in small districts; as a result, he said, it would help only the highly paid administrators and university presidents. Rep. Hand said this was a cap of \$150 and will not help the higher-paid individuals such as university presidents. Rep. Driscoll said, however, the existence of the cap would serve as a flag to convince people to use the housing allowance.

The question being called, the MOTION CARRIED by voice vote. Representatives Sales, Smith and McBride voting "NO."

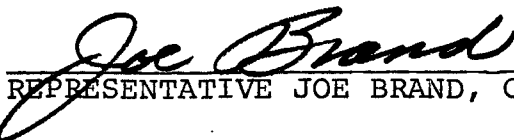
REP. HAND MOVED House Bill 169 DO PASS AS AMENDED, REP. KOEHNKE SECONDED.

Rep. Driscoll noted the committee was fixing a value for housing but was exempting other benefits. He said that amounted to treating people who get housing allowances in a special fashion. Chairman Brand said what the committee was doing was limiting use of the housing allowance by higher-paid officials. Rep. Smith said fringe benefits should not be counted at all.

Rep. Sales said the real problem is the three-year consecutive computation period. He said a period of 20 years should be used.

The question being called, the MOTION CARRIED by voice vote. Representatives Smith and Driscoll voting "NO." House Bill 169 was reported out as DO PASS AS AMENDED.

REPRESENTATIVE McBRIDE MOVED, REPRESENTATIVE HAMMOND SECONDED, ADJOURNMENT.



REPRESENTATIVE JOE BRAND, Chairman

STANDING COMMITTEE REPORT

JANUARY 20,

19 83

MR. SPEAKER

We, your committee on HOUSE STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 199

first white
Pending copy (Color)

"AN ACT TO GENERALLY REVISE THE LAWS RELATING TO MILITARY AFFAIRS
AND DISASTER AND EMERGENCY SERVICES; AMENDING SECTIONS 10-1-1-4,
10-1-302, 10-1-704, 10-3-103, 10-3-105, 10-3-107, 10-3-301,
10-3-311, 10-3-401, 10-3-404, 10-3-601, AND 10-3-607, MCA;
REPEALING SECTION 10-1-504, MCA."

Respectfully report as follows: That HOUSE Bill No. 199

DO PASS

STANDING COMMITTEE REPORT

JANUARY 10,

19 83

MR. SPEAKER

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 45

first reading copy (white)
Color

"AN ACT TO ELIMINATE THE REQUIREMENT THAT AGENCIES REPORT TO THE
ADMINISTRATIVE CODE COMMITTEE THEIR RECOMENDATIONS FOR LEGISLATION
CLARIFYING GRANTS OF RULEMAKING AUTHORITY; AMENDING SECTION
2-4-314, MCA."

Respectfully report as follows: That HOUSE Bill No. 46

DO PASS

STANDING COMMITTEE REPORT

JANUARY 20, 1983

MR. SPEAKER

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 216

first reading copy (white)
Color

"AN ACT TO COMPENSATE MEMBERS OF THE MONTANA DISTRICTING AND
APPORTIONMENT COMMISSION AT THE SAME RATE AS MEMBERS OF THE
LEGISLATURE; AMENDING SECTION 5-1-104, MCA."

Respectfully report as follows: That HOUSE Bill No. 216

DO PASS

STANDING COMMITTEE REPORT

JANUARY 20,

19 83

MR. SPEAKER

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 213

first reading copy (white)
color

" AN ACT TO AMEND SECTION 18-6-103, MCA, TO BROADEN THE EXEMPTION OF REGISTERED PROFESSIONAL ENGINEERS, SURVEYORS, REAL ESTATE APPRAISERS, OR REGISTERED ARCHITECTS FROM THE LAWS REGULATING PRIVATE CONSULTANTS EMPLOYED BY STATE AGENCIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. "

Respectfully report as follows: That HOUSE Bill No. 218

DO PASS

STANDING COMMITTEE REPORT

JANUARY 19X 20, 19 83

MR. SPEAKER

We, your committee on HOUSE STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 169

first reading white
color

"AN ACT CLARIFYING AND REVISING THE DEFINITION OF EARNED COMPENSATION
FOR THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTION 19-4-101, MCA;
AND PROVIDING AN EFFECTIVE DATE."

HOUSE

169

Respectfully report as follows: That..... Bill No.

1. Page 3, line 24.

Following: "employer"

Insert: "up to a maximum of \$150 a month"

AND AS AMENDED

DO-PASS—

ROLL CALL

HOUSE ADMINISTRATION

COMMITTEE

48th LEGISLATIVE SESSION, 1983

House Bill 218 Roll Call Vote Date 1/20 , 1983

Name	BARDANOUE	Absent																	
	BLISS	N																	
	BRAND	N																	
	COMPTON	N																	
	DRISCOLL	Pass																	
	HAMMOND	N																	
	HAND	Y																	
	HOLLIDAY	Y																	
	KOEHNKE	N																	
	McBRIDE	Y																	
	McCORMICK	N																	
	MUELLER	Y																	
	O'CONNELL	Pass																	
	PHILLIPS	N																	
	PISTORIA	N																	
	RYAN	N																	
	SALES	Y																	
	SMITH	N																	
	SOLBERG	N																	

CHAIRMAN IS CIRCLED

11 No votes
5 Yes votes
2 Pass votes
1 Absent

HOUSE State Admin

BILL HB 199

DATE 1-20-83

SPONSOR _____

1-83

VISITOR'S REGISTER

HOUSE State Admin.

COMMITTEE

BILL 48 218

DATE 1-20-83

SPONSOR

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Jim Weatherly BILL NO HB 218
ADDRESS Box 3418, Missoula, MT 59806 DATE 1-20-82
WHOM DO YOU REPRESENT Montana Technical Council
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The current law (18-8-103) requires two different selection procedures be utilized by the state Departments when contracting with engineers, surveyors, real estate appraisers or architects. The selection procedure varies depending on the type of project i.e. whether or not it involves a state owned facility or highway.

Many state Departments don't have a written selection procedure and of those that do the procedures vary greatly between Departments. This causes additional time & expense for the consultant and the Departments.

We have agreed upon a standard procedure with the Governor's office, however it cannot be fully adopted & implemented until this section of state law is clarified.

A study of current selection procedures by the Consulting Services Bureau of the Department of Administration in July 1982 states "The establishment of uniform guidelines for all state agencies to follow when selecting private professional consultants, including consulting engineers is considered to be advisable."

Passage of this bill will allow for uniform procedures when selecting consultants regardless of the type of project.

WITNESS STATEMENT

NAME JIM CUMMINGS BILL No. HB 218
ADDRESS 1200 25th SO., GR. FALLS, MT, 59405 DATE 1-20-83
WHOM DO YOU REPRESENT MONTANA CONSULTING ENGINEERS COUNCIL
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: HB 218 IS A MODIFICATION OF MCA 18-8-103
(HB 26-1981)

THIS MODIFICATION DELETES TWELVE WORDS AND CLARIFIES THE EXEMPTION OF REGISTERED ENGINEERS, SURVEYORS, ARCHITECTS AND REAL ESTATE APPRAISERS

THE ORIGINAL BILL ONLY INVOLVED EXEMPTIONS FOR STUDY, DESIGN, OR CONSTRUCTION OF STATE FACILITIES OR HIGHWAYS. THIS PROVISION LEFT GRAY AREAS IN PROCUREMENT PROCEDURES BY STATE AGENCIES FOR PROJECTS INVOLVING PRIVATE OR FEDERAL FUNDING. PROJECT EXAMPLES INCLUDE ENVIRONMENTAL AND CORRECTIVE STUDIES OF ABANDONED MINE WASTES AND MAJOR SITTING ACT IMPACT STUDIES. JIM WEATHERLY WILL FOLLOW MY DISCUSSION WITH PARTICULAR PROJECT EXAMPLES

THE MONTANA CONSULTING ENGINEER'S COUNCIL HAS BEEN WORKING FOR OVER A YEAR IN DEVELOPMENT OF A STANDARDIZED POLICY FOR ALL STATE AGENCIES REQUIRING CONSULTANT PROCUREMENT. WITH THIS POLICY AND THIS PROPOSED LAW CHANGE, BETTER UNDERSTANDING AND ECONOMICAL NEGOTIATIONS WILL BE PROVIDED TO BOTH STATE AGENCIES AND CONSULTANTS.

I ASK FOR YOUR SUPPORT AND APPROVAL
FOR HB 218

THANK YOU

HOUSE State Admin.

BILL HB 52

DATE 1-20-83

SPONSOR

1-83

Recommended changes

1. 13-1-201, MCA, states that the Secretary of State is the chief election officer for Montana. This section mandates that the Secretary of State "... maintain uniformity in the application, operation and interpretation of the election laws..."

Past legislatures have steadfastly maintained that, in fact, the role of the Secretary of State is that of chief elections officer for Montana. Also the history of the Montana legislature clearly demonstrates that the Secretary of State and the Campaign Commissioner, have specific - non-competing - roles on the administration of Title 13.

The Campaign Commissioner is charged with the administration of 13-25-301, 13-35-302 (code of fair campaign practices) as well as most of Chapter 37 of Title 13 (office of the Campaign Commissioner and campaign finance). The legislature has mandated that the Secretary of State administer all other portions of Title 13 from the standpoint of a chief elections officer for Montana.

H.B #52, as written, could significantly cloud the currently well defined separation of powers (under Title 13) between the Campaign Commissioner and the Secretary of State. Thus, we suggest that all new functions provided to the Commissioner of Political Practices found in H.B. 52 be transferred to the office of the Secretary of State.

2. We suggest that subsection (a) beginning on page one (1) line 21 be stricken in its entirety. Current law (45-7-401) already provides a fine of up to \$500.00 or imprisonment for up to 6 months when a public servant (election administrator) violates the law.
3. We suggest that subsection (b) beginning on page one (1) line 25 be stricken in its entirety. Subsection (b) calls for fining a candidate \$500.00 for each violation of Title 13. This Title, excepting Chapters 35, 36, and 37 (already exempt in this bill) deal almost exclusively with the election process (mechanics). Candidates do not actively function under Title 13, excepting 35, 36, and 37. Thus, violations by candidates would be minor and certainly not worth fining at the \$500.00 level.
4. We suggest a new sub (4) under Section 2, beginning on page 2 thru (3) line 5.
(4) Upon completion of any investigation the Secretary of State shall issue a report, including findings of fact, and forward a copy of the report to the election administrator and to the county attorney for any action he deems appropriate. All reports issued under this section shall be made available to the public.

5. Finally, there is a fiscal impact to H.B. 52 (see attached fiscal note.) The Secretary of State has already submitted his budget for the next biennium. Consequently, should our request to transfer the investigatory functions of H.B. 52 be approved, we would then need to amend our budget request to this session of the legislature. Also, knowing that any increase to the Secretary of State or Campaign Commissoenrs budget will be difficult in this session, we would ask for a statement of intent holding our office harmless for not activating H.B. 52, due to a lack of specific funding.

Chff Christensen
Chief - Governmental Affairs
Secretary of State.

NAME: William L. Romine DATE: 1-20-82

ADDRESS: Helena

PHONE: 442-2220

REPRESENTING WHOM? Clerks & Recorders

APPEARING ON WHICH PROPOSAL: HB 52

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: the clerks oppose section one, since creates certain
penalties & levies fines upon the election administrator, when
the violations generally referred would result from the actions
or inactions of the election judges. The election judges are
appointed by the county commissioners. In fact, once the materials
are turned over to the Chief Election Judge, he has complete
control of the election in his precinct. If the ballots themselves
were in error, or late, the printer might be at fault, and
again, the county commissioners select the printer.
Therefore, as a result of violations of the election laws by
persons beyond the control or selection of the election administrator
the latter could be subjected to a fine of \$500 for each
violation.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

NAME Margaret S. Davis BILL No. 52
ADDRESS League of Women Voters Helena DATE 20 Jan 83
WHOM DO YOU REPRESENT League of Women Voters
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

HB 52 is opposed because

1. Inappropriate delegation of investigatory powers over elections to the Comm. of Political Practices,
2. There is no remedy provided for. It calls for an intermediate step that might slow down resolution of the problem.
3. Only a losing candidate who can prove his/her election bid failed because of mishandled election can file a complaint. This is difficult to prove and very restrictive. Shouldn't dissatisfied voters have an equal chance to complain because their rights are certainly abrogated by a poorly run election.
4. Existing remedies are better than the fines proposed. See 13-35-103, 13-35-106, 13-35-107
5. Poor election practices demand redress. The voters must be aware, the elected officials must respond and if needed, the courts must be called upon to protect fundamental voting rights.

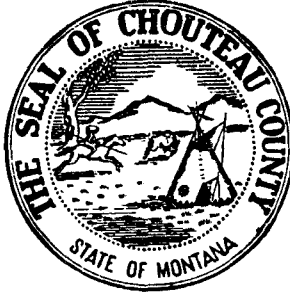
JOANNE M. PERES
COUNTY CLERK AND RECORDER

DEPUTY CLERKS

Dolores Y. Morrow

JoAnn L. Johnson

Josephine J. Peters



FORT BENTON, MONTANA

January 20, 1983

Mr. Chairman, members of this committee:

My name is Joanne Peres, I'm clerk and recorder of Chouteau County, an officer in the Montana Association of Clerks and Recorders, and a member of our legislative committee - election laws.

I am here to express opposition to House Bill 52 and request that it be left in committee for the reason that Section 1 is too all-encompassing and Section 2 is presently covered by statute.

Page two, line 23 and onward is redundant, in that provision is already made in 13-37-124 for the Commissioner of Campaign Practices to consult and cooperate with county attorneys in regard to Chapter 35 of Title 13 (which also covers official conduct of election officials and election judges). Chapter 35 further makes reference to Title 13, Chapter 35, Part 24, having to do with penalties for official misconduct, said penalties varying from \$500 up to \$50,000 in fines - and from six months up to 10 years imprisonment

Page one, New Section, lines 11 through 17 is so broad that it defies definition. Line 14, to oversee conduct of elections, to assure conformance with this Title and to afford each candidate full protection of the law, and each elector unrestrained opportunity of free choice sounds like a Statement of Intent - and is physically impossible to carry out in its narrowest sense. From the time the polls are opened and the last returns are in from the precincts, this election administrator remains in the office to be available to answer questions and to consult by telephone with the election judges for various questions that arise during the day. Those judges are sworn into their office and are legally and totally in charge of procedures at the polling place during that time period. Our county is 90 miles wide by 60 miles north and south with 17 precincts. We can train the judges to the best of our ability but then it is up to them, and we can't be in all the precincts to see that their duties are carried out.

Section 1 seems to be conferring enforcement powers, see line 14: "to assure conformance...and to afford full protection of law...and unrestrained opportunity..". These are requirements that I believe cannot be carried out by the election administrator. See the Annotations to the Montana Codes, 7-4-2611, where the case notes states that "the county clerk's duty is ministerial only, and he is not clothed with supervisory powers to either question or determine legality of claims." In these case notes the clerk is twice referred to as "a ministerial officer". (copy attached) See also M.C.A 7-4-2221: "Since the clerk and recorder of a county is not a law enforcement officer, and enforcement of a criminal statute is not within his prescribed duties...". (copy attached)

Again, I believe that this bill would confer responsibilities impossible to comply with. Clerks are not omnipresent, omniscient or omnipotent, and I hope that you will see that Section 2 is already covered by present law, and that Section 1 is beyond the scope of capability of a ministerial officer. Thank you.

Joanne Peres

Recovery of Illegal Fees: A civil suit to recover illegal fees that had been demanded and received under color of office can be brought against an officer who has not been convicted in a criminal action. *Ming v. Truett*, 1 M 322 (1871); overruled on other grounds, *Ming v. Foote*, 9 M 201, 23 P 515 (1890).

7-4-2520. Misconduct concerning official fees to result in vacancy of office.

Cross-References

Official misconduct, 45-7-401.

Part 26

Office of County Clerk

7-4-2601. Limitation on number of deputy county clerks.

Cross-References

Classification of counties, 7-1-2111.

Authorization to exceed limitation on number of deputies, 7-4-2402.

Mention of officer to include deputies, 7-4-2403.

7-4-2611. Role and duties of county clerk.

Cross-References

Restriction on practice of law, 7-4-2210.

Duties of County Clerk related to finance, 7-6-2202 through 7-6-2204.

Case Notes

Right to Question Legality of Claims against County: The duty of the County Clerk to issue warrants for claims passed upon by the Board of County Commissioners is ministerial only, and he is not clothed with supervisory power to either question or determine the legality of the claims, except where they are void upon their face as without the jurisdiction of the Board to pass upon. *State ex rel. Lockwood v. Tyler*, 64 M 124, 208 P 1081 (1922).

May Not Question Constitutionality of Statute: A ministerial officer, such as a County Clerk, to whom no injury can result and to whom no violation of duty can be imputed by reason of his compliance with a statute cannot refuse to perform a duty imposed by it on the ground of its unconstitutionality, since such an officer is not liable for his official acts when acting under process, warrants, or other instruments fair upon their face and issued from a superior tribunal or board. *State ex rel. Lockwood v. Tyler*, 64 M 124, 208 P 1081 (1922).

Collateral References

20 C.J.S. Counties § 133.

7-4-2613. Documents subject to recording.

Cross-References

Nonprobate interests in real estate, 72-16-502.

Case Notes

Recording Not Condition Precedent to Judgment Becoming a Lien: This section and 70-21-306 define the effect of recording a final judgment as far as imparting constructive notice is concerned, but they are not controlling as to when the judgment becomes a lien. Section 25-9-301 determines when the lien becomes effective—that the lien attaches when the judgment is docketed; recordation of the judgment is not made a condition precedent to its becoming a lien. *Gaines v. Van Demark*, 106 M 1, 74 P2d 454 (1937).

7-4-2211. County offices.**Cross-References**

Office hours, 7-4-102.

Case Notes

Application of Section: A county extension officer is not a county officer subject to this section. Neither the law relating to his office nor section 16-2403, R.C.M. 1947 (since repealed), enumerating county officers, designates him as county officer. *Turnbull v. Brown*, 128 M 254, 273 P2d 387 (1954).

7-4-2212. Official bonds of county officers.**Collateral References**

20 C.J.S. Counties § 104.

7-4-2213. Inspection of official bonds.**Cross-References**

Bonds of county officers and employees, Title 2, ch. 9, part 7.

Collateral References

20 C.J.S. Counties §§ 104, 156, et seq.

7-4-2221. Manner of keeping records and storing documents.**Attorney General's Opinions**

County Clerk and Recorder — No Refusal to Record a Valid Deed: Since the Clerk and Recorder of a county is not a law enforcement officer and enforcement of a criminal statute is not within his prescribed duties, he may not refuse to record a deed that has not met the prerequisite, set forth in the Montana Subdivision and Platting Act (Title 76, ch. 3), that an approved, certified plat be filed before the land is transferred. 35 A.G. Op. 25 (1973).

Part 23**Consolidation of County Offices****7-4-2301. Authorization to consolidate county offices.****Attorney General's Opinions**

Consolidated Offices — Ballot Listing: It is within the discretion of the Board of County Commissioners to designate how consolidated county offices may be listed on the primary and general election ballots. 37 A.G. Op. 141 (1978).

7-4-2302. Petition for consolidation of county offices.**Cross-References**

Date of general election, 13-1-104.

Attorney General's Opinions

Consolidation of Offices: Offices of County Treasurer and County Superintendent of Schools may be consolidated into one office provided the officeholder meets the minimum qualifications of both offices. 35 A.G. Op. 31 (1973).

7-4-2312. Salary and bond of officer following consolidation.**Cross-References**

Compensation of county officers, 7-4-2501.