

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 8, 1985

The meeting of the State Administration Committee was called to order by Chairman Walter Sales on February 8, 1985, at 9:07 a.m. in room 317 of the State Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL NO. 401: Representative Rex Manuel, District 11, Fairfield, appeared before the committee as sponsor of House Bill No. 401 at the request of the Milk Control Bureau, stated that this was a very short bill and he suggested changing line 16, the word "shall" to "may."

PROPOSERS: William Ross stated that on behalf of the Department of Commerce he asked that House Bill No. 401 be introduced. He said that as the law currently reads, the program is mandatory, but there has been no money appropriated for milk testing since 1983. It was suggested by the legislative auditors that the Department either test raw milk as required by law or evaluate the need for legislation to change the law regarding the raw milk testing. He said that for the Bureau to be in compliance with the law, and to protect the dairy farmers, they feel that the amendment as proposed, is in the best interest.

George Schulze, Executive Vice President of the Montana Dairymans Association, stated that his association supports this bill totally.

Ken Kelly, representing the Dairy Industry Processors, said that he would like to support the testimony of Mr. Ross, and point out that they support the change in the statutes.

There were no further proponents and no opponents to House Bill No. 401.

DISCUSSION OF HOUSE BILL NO. 401: Representative Cody asked Mr. Ross why his Department didn't levy an assessment on the producers if they didn't have the

funding from the legislature in 1983. Mr. Ross said that testing is still being done, but it is not being done by the Milk Control Bureau.

Representative Manuel closed his presentation on House Bill No. 401.

CONSIDERATION OF HOUSE BILL NO. 423: Representative Bob Gilbert, District 22, Sidney, appeared before the committee as sponsor of House Bill No. 423. He stated that right now the State of Montana does not have a law concerning aircraft take offs and landings on public roads or waters, and this bill would put it into a law.

PROPOSERS: Mike Ferguson, of the Aeronautics Division of the Department of Commerce, said that they support this bill and he said he felt that Representative Gilbert adequately addressed this problem. He said there are some farmers and ranchers who already use the roadways to some extent. He said that some counties will permit it and others will not.

John Semple, representing the Montana Aviation Trade Association, said that they are very supportive of House Bill No. 423. He said that they use roads for landing when they are spraying farmers fields, looking for cattle, looking for pipeline leaks, and checking powerlines for malfunctions, because air landing strips are so far apart in some Montana areas.

Mike Biggerstaff, Vice President of the Montana Aviation Trade Association, said that they support what Mr. Semple stated and they support House Bill No. 423. He said that he is also in the aerial application business, and they need to have access to the roads so that they can keep the costs of their services to farmers and ranchers down.

OPPOSERS: Bob Scott of Seeley Lake, Montana, said that he opposed House Bill No. 423. He gave written testimony to the secretary. (See Exhibit No. 1)

There were no further proponents or opponents to House Bill No. 423.

DISCUSSION OF HOUSE BILL NO. 423: Representative O'Connell asked Representative Gilbert if this law goes along with what they are trying to avoid at Seeley Lake. Representative Gilbert said that right now, federal law mandates.

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Federal law says that airplanes can land on public waters. He said that these waters are for everyone's use. He also stated that this bill would allow the state to license water airports, and it would control where the planes land on water.

Representative Phillips wanted to know if a person could land on any waters, anywhere in the state of Montana, if there is not a licensing of water airports. Representative Gilbert said that the wilderness and the national parks are already under control and are protected.

Representative Cody asked Representative Gilbert if it was currently illegal for spray planes to land on county roads. Representative Gilbert said that some pilots have been arrested for landing on county roads in eastern Montana. He said that it has been up to a county whether they want to allow landing on roads or not.

Representative Harbin asked Mr. Scott how many seaplanes landed on Seeley Lake last year. Mr. Scott said that he did not know the exact amount, but he would say approximately 20-25 landed there last year.

Representative Nelson asked if public roads included the interstate highway. Mr. Ferguson said that it could be any public road, but it would be left up to the jurisdiction of the Highway Patrol or County Commissioners. He said that local jurisdiction would still have control for what they consider the safety of the public.

Representative Peterson stated that she feels pretty confident with governing jurisdiction remaining with the county, but she wanted to know how any of this deals with water takeoff and landing. Mr. Ferguson said that right now the state laws do not distinguish between water and land, but the same safety precautions apply. He said that whoever has the water jurisdiction would have the authority, and it would either be state or federal.

Representative Smith asked Mr. Scott what the difference was between speed, noise and wake of a seaplane versus a speed boat. Mr. Schott said that he was not familiar with the decibel levels, but he said that the decibel level of a seaplane on takeoff is much higher than that of a speed boat. He said that the main concern of the

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people at Seeley Lake, is for the safety of the people in or on the water when the planes are taking off and landing.

Representative Jenkins asked Representative Gilbert what he thought about dropping the public waterways from this legislation. Representative Gilbert said that if they remove the waterways from this bill, then it will leave the issue open again, and he feels that they need the controls for waterways set in place.

Representative Moore asked Mr. Scott a question in reference to his testimony about laws that have been made by other states concerning the landing of planes on lakes. She wanted to know if any planning such as this, had been done for the lakes in Montana. Mr. Scott said that he did not know of any such planning for the state of Montana, and he did not think anyone had addressed the problem. Mr. Scott also said that the Montana code for the licensing of airports, has been on the books for years, but the Division of Aeronautics and its administration has chosen not to enforce that law.

Representative Harbin asked Mr. Ferguson if he would respond to the comment about the 40 year old law that Mr. Scott was referring to. Mr. Ferguson said that he had not been the administrator for forty years, and he did not write the laws or the codes. He said that he does not know why they haven't been licensing airports and he has been trying to seek that out. He said that his Department has prepared letters and sent out forms to every public use airport operator in the state, and they are receiving applications back. He said that the law states that the person or municipality owning the property, must apply to the department for a license. He said that in reference to Seeley Lake, they had never received an application from anyone.

Representative Peterson asked Mr. Ferguson if the Aeronautics Division becomes the governing board for deciding on water as well as roads. Mr. Ferguson said only if it is an area of water that has been established as an airport.

Representative Pistoria asked Mr. Scott if he was concerned about this bill because of a situation that involved a senator from Great Falls. Mr. Scott said

that he was not a member of the homeowners group and he was not representing anyone other than himself, but he said that the seaplanes on Seeley Lake have been a concern of many for a long time.

Wayne Turner, operator of Triangle Aviation in Big Sandy, who came in late because of the weather, spoke in support of House Bill No. 423.

Representative Moore asked Mr. Ferguson if the passing of this bill would help his department get control of the situation with the lakes. Mr. Ferguson said that it would, if the airport licensing bill stays intact.

In closing, Representative Gilbert said that whether this bill passes or not, there will still be a problem at Seeley Lake; but he said that if the state does get jurisdiction, they may be able to help solve some of the problems on the waterways.

CONSIDERATION OF HOUSE BILL NO. 256: Representative Eudaily said that House Bill No. 256 is by request of the Teacher's Retirement Board. He said that the purpose of the bill is to tighten the use of termination pay which is used to increase retirement benefits and the need to keep the teachers retirement system sound. He said that the few changes to be made in the bill are at the bottom of page 2, and the top of page 3.

PROPOSERS: Bob Johnson, administrator of the Teachers' Retirement System, told the committee how the benefits are calculated. Mr. Johnson passed out a handout listing three options of determining termination pay to the committee. (See Exhibit No. 2) He went over each of these options in detail.

There were no further proponents, and no opponents.

DISCUSSION OF HOUSE BILL NO. 256: Representative Phillips asked Mr. Johnson about the fact that some school districts are paying some of their personnel to retire, and wanted to know if this was included in the termination pay. Mr. Johnson said that it was, and they had one of the three options. Representative Phillips wanted to know if annual leave and sick leave were included. Mr. Johnson said that they were.

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Representative Peterson asked Representative Eudaily why he felt this was not going far enough. Representative Eudaily said that he felt that this had to be looked at by what is best for the Teachers' Retirement Board and how they keep it actuarially sound. He discussed the options further with the committee, and handed out another option sheet II with figures he had noted for the committee. Representative Eudaily suggested that on page 3, lines 5 and 6, the words "with the employer, from whom the termination pay is received" be eliminated. (See Exhibit No. 3)

Representative Nelson asked if they would then put a period after service on line 5. Representative Eudaily said that he would just want the words in brackets deleted.

In closing, Representative Eudaily said that the bill is written so that it will help the system, but if they can improve it he thinks it is a job they should look at. He feels it is very important to keep the system actuarially sound.

CONSIDERATION OF HOUSE BILL NO. 650: Representative Kurt Krueger, District 69, Butte, sponsor of this bill stated that this bill was the result of the recent years of fighting between the democratic party and the national democratic party because of issues on the open primary. He said it is also a result of the caucuses last spring, because he felt that these caucuses were not fair to the electorate as a whole. He said that this is a compromise piece of legislation to keep within the concept of an open primary as close as they can, yet alleviate situations such as the caucuses. He said that what they were doing was on line 25, just adding a new subsection. He said that what this new subsection would do is when a person goes to vote, they would indicate at that time what they were going to vote in the presidential primary only--republican or democrat. This would only apply to the presidential primary which happens every four years.

Mike McGrath, Chairman of the Rules Committee of the Montana Democratic Party, said that in 1968 George Wallace won the democratic primary in the state of Michigan in a campaign for president, and thus started a long battle within the democratic party to prohibit cross-over voting and to prohibit open primaries. He said that in 1972 the rules were reformed substantially, and one of the

reforms was that somewhere in the process to participate in the presidential primary process as a democrat, a person had to publicly declare himself to be a democrat. He said that at that time many states went and adopted a closed primary system where you had to register your party preference and had to be a card carrying member of a particular political party. He said that unless they change the law, they will no longer have a presidential primary in the state of Montana. He said that the democratic party has taken a position that they prefer the presidential primary, because of participation. He said he feels that it gives a lot more people a chance to voice their opinion. He said that it is the position of the democratic party that House Bill 650 be adopted if Montana is going to have a presidential primary. He urged the committee to adopt House Bill No. 650.

Larry Akey, Chief Deputy to the Secretary of State, said the presentations by Representative Krueger and Mr. McGrath pretty much summarized what he wanted to say. He said that it was Secretary Waltermire's position that the open primary is a cherished institution of the state and should be preserved if possible.

There were no further proponents and no opponents.

DISCUSSION OF HOUSE BILL NO. 650: Representative Holliday asked Mr. McGrath if a person would be denied the right to vote, if they did not check the box. Mr. McGrath said that was correct, however, it would only be in the presidential primary. He would be denied and not given a ballot.

Representative Jenkins wanted to know if there would be a separate ballot for the two presidential candidates. Mr. McGrath said that a person could only vote one party's ballot and one party's candidate. He said that at the present time if you vote for a republican presidential candidate you would have to vote republican down the slate in a primary, and with this bill that would change. He said that with this legislation you can indicate first a presidential party preference and then vote the rest of the slate on whichever party you choose.

Representative Phillips wanted to know what would be accomplished by this bill if the national system will not buy this. Mr. McGrath said that what they would have

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accomplished is that the technical requirements of the national rules say that in order to participate in the primary you have to publicly declare your party affiliation or declare you preference. He said that this would satisfy the technical requirement.

Representative Nelson asked if the actual count for the candidates would be off the ballot or off the check in the box. Mr. McGrath said it would be off the ballot.

In closing, Representative Krueger said that they have really tried to stay with the intent of the open primary, and urged the committee to vote for House Bill No. 650.

CONSIDERATION OF HOUSE BILL NO. 535: Representative Tom Hannah, District 86, Billings, appeared before the committee as sponsor of House Bill No. 535. He said that he brought before the committee a bill that has been around before. He said that he felt a voter information pamphlet would be very helpful to the voters in the state of Montana. He said that page 1, lines 16-18, of the bill state what would be in that voter information pamphlet. He said that such a pamphlet would really help the people in this state because it is a transient state. He said that page 6, section 5, establishes a fee that the candidate would would pay.

PROPOSERS: Larry Akey, Chief Deputy to the Secretary of State, said that they support House Bill No. 535. He said that in 1980 and 1984 when Secretary of State Waltermire traveled around the state, people asked why candidates were not included in the voter information pamphlet. He said that House Bill No. 535 contains provision that candidates will pay the additional cost for their inclusion in that pamphlet. He said that they estimate the cost will be \$1500.00. He said they feel that the information in this pamphlet is important for the voters of Montana.

Robert Anderson, lobbyist for Montana Common Cause, said that they are in support of this bill and feel that whenever information is put in front of the voters, it is a good idea. He urged the committee's support.

There were no further proponents and no opponents.

DISCUSSION OF HOUSE BILL NO. 535: Representative Phillips wanted to know if the candidates who say they do not have enough money for the filing fee, would be allowed to be included in this pamphlet if they were not able to pay the fee. Representative Hannah said that they probably would not be excluded.

Representative Cody wanted to know if this pamphlet would be taking away the candidates responsibility and obligation of letting the voters know who he is and what he stands for. Representative Hannah said that he does not feel that this would take away the candidates responsibilities. He again said that there were many new people in our state and this pamphlet would better help the voter be informed about the candidates.

Representative Garcia wanted to know if this publication would be by districts or statewide. Mr. Akey said that it would be a statewide publication because of the cost involved in printing. If it were by districts, the cost would have to be more, because there would be more than one publication.

Representative Pistoria asked Representative Hannah if this wasn't already optional for state offices. Representative Hannah said that yes, it was optional.

In closing, Representative Hannah said that this bill is a vehicle that could be used by the vast statewide candidates that would pay for it. He said that he felt it would be helpful for the people in the state of Montana.

The committee then went into executive session for action on bills.

DISPOSITION OF HOUSE BILL NO. 650: Representative Sales said that he felt this bill should go to the election committee. Representative O'Connell moved that it go to the election committee and it was seconded and carried.

DISPOSITION OF HOUSE BILL NO. 401: Representative O'Connell made a DO PASS motion on House Bill No. 401. It was seconded and carried with one opposing vote of Representative Fritz.

DISPOSITION OF HOUSE BILL NO. 423: Representative Cody said that Representative Gilbert asked that this bill

STATE ADMINISTRATION COMMITTEE

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pass for today because he had received some further information after the hearing was closed, that he would like to present to the committee before any executive action was taken on this bill. Representative Cody made a motion to pass it for today. Representative O'Connell seconded the motion and it carried unanimously.

DISPOSITION OF HOUSE BILL NO. 256: Representative Smith made a DO PASS motion on the amendment to House Bill No. 256. Representative Fritz seconded the motion and the motion carried unanimously. Representative Smith moved that House Bill No. 256 DO PASS AS AMENDED. Representative Fritz seconded the motion. There was committee discussion about the amendment. The DO PASS AS AMENDED motion passed unanimously.

DISPOSITION OF HOUSE BILL NO. 535: Representative Jenkins moved that House Bill No. 535 DO PASS. Representative Smith seconded the motion.

Representative Garcia said that he had a concern about the Public Commission race because he said that some of those races don't even amount to \$5,000.00. He said that he believed that the candidate should get out and be with the people. He said that he would vote against the bill and Representative O'Connell agreed with him.

Representative Fritz said that he also opposed this motion and said he felt that most of our state newspapers give the same information that would be in this pamphlet.

Representative Fritz made a substitute motion that House Bill No. 535 DO NOT PASS. Representative Cody seconded the motion. The DO NOT PASS motion carried 11-7. The following Representatives voted against the substitute motion: Smith, Jenkins, Harbin, Phillips, Hayne, Kennerly, and Campbell.

DISPOSITION OF HOUSE BILL NO. 482: The amendments to this bill were passed out and Sue Bartlett, Lewis and Clark County, Clerk and Recorder, explained the amendments to the committee. Representative O'Connell moved that the amendments DO PASS. Representative Harbin

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seconded the motion. The amendments passed unanimously. Representative O'Connell moved that House Bill No. 482 DO PASS AS AMENDED. Representative Pistoria seconded the motion. The motion carried with one dissenting vote. The dissenting vote was that of Chairman Sales.

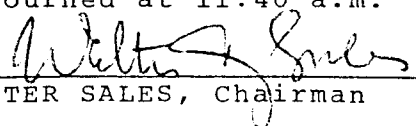
DISPOSITION OF HOUSE BILL NO. 327: Representative Fritz discussed with the committee, the reason for ballot rotation. He said that ballot position counts, and the only offsetting factors are party identification and name identification. He said it is a known fact that people listed first, second, third and last do better during an election. He said that because of this, he feels that there are some changes that need to be made in the present law. Representative Fritz then made a motion that House Bill No. 327 DO NOT PASS. Representative Garcia seconded the motion.

Representative Holliday said that she liked the bill for the purpose of uniformity. She said that she would like to see the ballots alphabetical and only alphabetical.

Representative Cody asked Representative Fritz if this bill could be amended to address the paper ballots. Representative Fritz said that he did not know if it would affect the paper ballots.

Question was called. The DO NOT PASS motion carried 11-7. The following Representatives voted against the DO NOT PASS motion: Holliday, Phillips, Campbell, Smith, Sales, Compton, and Kennerly.

ADJOURNMENT: There being no further business before the committee, the meeting was adjourned at 11:40 a.m.


WALTER SALES, Chairman

(Type in committee members' names and have 50 printed to start).

DAILY ROLL CALL

State Administration COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2-8-85

NAME	PRESENT	ABSENT	EXCUSED
Chairman Walter Sales	✓		
V-Chairman Helen O'Connell	✓		
Campbell, Bud	✓		
Compton, Duane	✓		
Cody, Dorothy	✓		
Fritz, Harry	✓		
Garcia, Rodney	✓		
Hayne, Harriet	✓		
Harbin, Raymond	✓		
Holliday, Gay	✓		
Jenkins, Loren	✓		
Kennerly, Roland	✓		
Moore, Janet	✓		
Nelson, Richard	✓		
Peterson, Mary Lou	✓		
Phillips, John	✓		
Pistoria, Paul	✓		
Smith, Clyde	✓		

STANDING COMMITTEE REPORT

FEBRUARY 9

1985

PAGE 1 of 2

SPEAKER

MR.

STATE ADMINISTRATION

We, your committee on

HOUSE

535

having had under consideration Bill No.

FIRST

WHITE

..... reading copy (.....)
color

PROVIDE CANDIDATE INFORMATION IN VOTER INFORMATION PAMPHLET

HOUSE

535

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

DO NOT PASS

~~XXXXX~~
~~DO PASS~~

STATEMENT OF INTENT ATTACHED

STATE PUB. CO.
Helena, Mont.

.....
Walter R. Sales,

Chairman.

COMMITTEE SECRETARY

A statement of intent is required for this bill because section 5 grants the secretary of state the authority to adopt rules establishing fees for the participation of candidates in the voter information pamphlet. Rules are to be adopted under the Montana Administrative Procedure Act. The rules must be consistent with the requirements of section 5 regarding uniformity for all candidates and fees being reasonably related to costs.

STANDING COMMITTEE REPORT

FEBRUARY 8 19 85

MR. SPEAKER

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 327

FIRST reading copy (WHITE)
color

ELIMINATING ROTATING OF CANDIDATES' NAMES ON BALLOT

Respectfully report as follows: That HOUSE Bill No. 327

DO NOT PASS

~~XXXX~~
~~DO PASS~~

STANDING COMMITTEE REPORT

FEBRUARY 3

19 85

MR. **SPEAKER**

STATE ADMINISTRATION

We, your committee on

HOUSE

having had under consideration Bill No. **401**

FIRST

reading copy (**WHITE**)
color

MAKING RAW MILK TESTING PROGRAM DISCRETIONARY

HOUSE

Respectfully report as follows: That Bill No. **401**

DO PASS

STANDING COMMITTEE REPORT

FEBRUARY 3

1935

19.....

SPEAKER

MR.

STATE ADMINISTRATION

We, your committee on

HOUSE

having had under consideration Bill No. 256

FIRST

reading copy (**WHITE**)
color

USE OF TERMINATION PAY FOR CALCULATING COMPENSATION

HOUSE

Respectfully report as follows: That Bill No. 256

BE AMENDED AS FOLLOWS:

1. Page 3, lines 5 and 6.

Strike: "with" on line 5 through "received" on line 6

AND AS AMENDED

DO PASS

Walter R. Galea,

Chairman.

STANDING COMMITTEE REPORT

FEBRUARY 9 19 35

PAGE 1 of 3

MR. **SPEAKER**

We, your committee on **STATE ADMINISTRATION**

having had under consideration **HOUSE** Bill No. **482**

FIRST reading copy (**WHITE**)
color

**ALLOW ABSENTEE VOTING FOR ILL HEALTH, SUDDEN ILLNESS, OR
HEALTH EMERGENCY**

Respectfully report as follows: That **HOUSE** Bill No. **482**

be amended as follows:

1. Title, line 13.
Strike: "AND"

2. Title, line 15.
Strike: "AND"
Strike: "THROUGH"
Insert: ", AND"

3. Title, line 16.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"

~~DO NOT~~

CONTINUED

4. Page 5, line 12.

Following: "and"

Insert: "a copy of the"

Following: "registration card"

Insert: "to be provided by the election administrator"

5. Page 7, line 22 through line 19, page 8.

Strike: section 9 in its entirety

Reumber: subsequent sections

6. Page 9, line 24.

Following: "candidate"

Strike: "whose"

Insert: "or of a candidate's spouse or the spouse of any one of these if the candidate's"

7. Page 10, line 12.

Following: "Before"

Strike: "the polls open"

Insert: "assuming any of his responsibilities under [this act]"

8. Page 12, line 6.

Strike: "11"

Insert: "10"

Strike: "15"

Insert: "14"

9. Page 12, line 11.

Strike: "11"

Insert: "10"

Strike: "15"

Insert: "14"

10. Page 12, line 13.

Strike: "11"

Insert: "10"

Strike: "16"

Insert: "15"

CONTINUED

11. Page 12, line 15.

Strike: "11"

Insert: "10"

Strike: "16"

Insert: "15"

12. Page 12.

Following: line 15

Insert: "NEW SECTION. Section 17. Effective date. This act is
effective July 1, 1985."

AND AS AMENDED
DO PASS

Exhibit #1

House Committee on State Administration
Walter Sales, Chairman
Capitol Station
Helena, Montana

I would like to take this opportunity to bring to your attention some facts relative to the underlying reasons for HB-354 and repeal of Sections 67-3-301 through 67-3-306, M.C.A.

Also HB 423
RMS
This legislation is "Special Interest," "Out-of-State Special Interest," and a direct attempt to evade compliance and circumvent District Court Order #49580 August 2, 1984. It is further an attempt by the Aeronautics Division Department of Commerce to "cover-up" its failure and refusal to enforce Title 67, M.C.A.

This legislation is a direct result of the Seaplane base controversy at Seeley Lake, Montana, and is a ploy to allow the operation of a Commercial Seaplane Base on Seeley Lake over the objections of the majority of the lakefront property owners, the U. S. Forest Service, and the Montana Fish and Game Commission, not to mention the objections by petition of hundreds of people who use the lake for recreational purposes.

FAA approval of an Airport or Seaplane Base is an "Airspace determination only," and is not an approval of the physical development or land or water use; it is for the safe and efficient use of Airspace by Aircraft. There was No "On-Site" inspection by FAA prior to approval for operation at Seeley Lake, and no verification of the facts on the application.

Favorable consideration of this bill would in effect deprive property owners of due process of law.

Allowing only FAA approval does not afford sufficient protection for general public, property owners, or the State of Montana.

Montana licenses all other businesses and activities; certainly aviation should not be given preferential treatment.


Most states license and regulate airports, and many states with large public water areas have found it necessary to restrict Seaplane operations on some waters (i.e. Minnesota,

California and Oregon). In view of Montana's projected development and growth and its large water areas, most of which are multi-use, we need airport licensing and regulation for the protection of the general public.

Please do not allow actions such as HB-354 to weaken the laws of our state, or circumvent our courts, for the purpose of serving special interest, or allowing state agencies amnesty for their failure to properly administer the law.

Matters of this nature should be left up to the Department of Commerce to make recommendations for changes to the Montana Code, after a thorough study and review of the Aeronautics Division.

Sincerely,


Robert H. Scott

RHS/sr

Enclosures:

Judge Loble Mandate
Montana Fish and Game Commission Resolution
FAA Letter November 4, 1982

1 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
2 STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARK

3 * * * * *

4 SEELEY LAKE HOMEOWNERS'
5 ASSOCIATION, a Montana
6 nonprofit corporation,

7 Plaintiff,

8 vs.

9 LEWIS W. LINDEMER, STAKE, INC.,
10 a Montana corporation,
11 individually and doing business
12 as LINDEY'S PRIME STEAK HOUSE;
13 LINDEY'S, INCORPORATED, a
14 Minnesota corporation; MONTANA
15 DEPARTMENT OF COMMERCE; MONTANA
16 DEPARTMENT OF HEALTH AND
17 ENVIRONMENTAL SCIENCES; and
18 MONTANA DEPARTMENT OF STATE
19 LANDS,

20 Defendants.

No. 49580

PEREMPTORY WRIT OF MANDATE

21 * * * * *

22 TO THE MONTANA DEPARTMENT OF COMMERCE:

23 You are hereby ordered, directed and mandated by this court to forthwith
24 and immediately enforce, undertake, and discharge your duties and responsi-
25 bilities under the provisions of Title 67, M.C.A. concerning "Airport
26 Licensing," and in particular Sections 67-3-301 through 67-3-306 inclusive, as
27 well as 67-3-501 M.C.A., plus all other statutes and regulations regarding
28 licensing and operation of airports, restricted landing areas or other air
29 navigation facilities.

30 This mandate is specifically concerned with the seaplane base known as
31 "Lindey's Landing West" at Seeley lake, Montana, and is to be construed in
light of this court's opinion, memorandum of decision and order issued on
August 2nd, 1984, to which reference is hereby made with the same force and
effect as if the same were fully set forth herein, and a copy of which is
hereto attached.

1 said seaplane base, it manifestly appears that you have failed to enforce and
2 discharge the clear legal duties mandated to you by the airport licensing
3 statutes above referred to.

4 Further, if an application for a certificate of approval of said seaplane
5 base is made to you which reasonably complies with Section 67-3-301 M.C.A.,
6 you are directed to receive and process same under the applicable statutes
7 above referred to for the purpose of ascertaining and ensuring that said
8 property and its use conform to minimum standards of safety and serve the
9 public interest.

10 DATED this 2nd day of August, 1984.

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13 Henry Loble
14 District Judge
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RESOLUTION

SEAPLANE BASE AT SEELEY LAKE

WHEREAS, a seaplane base and fueling facility are planned for Seeley Lake; and

WHEREAS, it is the policy of the Montana Department of Fish, Wildlife and Parks to promote and regulate water safety in the State of Montana; and

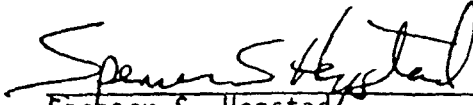
WHEREAS, the Department of Fish, Wildlife and Parks has implemented a successful water safety program that is consistent with all recreational use of Seeley Lake; and

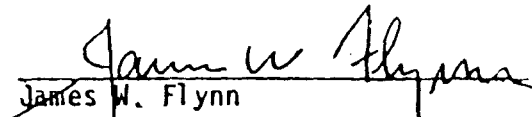
WHEREAS, a seaplane base and fueling facility on Seeley Lake poses a serious safety hazard and interferes with the historic heavy recreational use of this lake by boaters, fishermen and waterskiers; and

WHEREAS, public hearings, environmental impact assessments, consideration of economic loss to other users, nor consideration of zoning have been addressed in the planning of this facility;

NOW, THEREFORE, BE IT RESOLVED, the Montana Fish and Game Commission opposes the establishment of a seaplane base and refueling facility on Seeley Lake, and directs the Department to so inform the Federal Aviation Administration, the Missoula County Commission, the Montana Department of Commerce, and the U.S. Forest Service of that opposition.

MONTANA FISH AND GAME COMMISSION


Spencer S. Hegstad
Chairman


James W. Flynn
Secretary

June 8, 1983



US Department
of Transportation
**Federal Aviation
Administration**

Northwest Mountain Region
Colorado Idaho Montana
Oregon Utah Washington
Wyoming

1200 Main Street, Suite 100
Denver, CO 80202
Telephone: (303) 325-1000

November 4, 1982

Mr. Lewis W. Lindemer
45 E. Golden Lake Road
Circle Pines, Minnesota 55014

Dear Mr. Lindemer:

We have studied your Notice of Landing Area Proposal, FAA Form 7480-1, to establish a public-use seaplane base, Lindey's Landing West, near Seeley Lake, Montana, at latitude 47°10'28"N and longitude 113°28'45"W.

Aeronautical Study No. 82-ANM-124-NRA indicates that the proposed seaplane base would not impact the safe and efficient use of navigable airspace by aircraft. Hence, we have no objection to it.

This airspace determination should not be construed to mean FAA approval of the physical development involved in the proposal. It is only a determination with respect to the safe and efficient use of airspace by aircraft. In making this determination, the FAA has considered matters such as the effect the proposal would have on existing or contemplated traffic patterns of neighboring airports, the effects it would have on the existing airspace structure and projected programs of the FAA, and the effects that existing or proposed man-made objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal. This determination in no way preempts or waives any ordinance, laws, or regulations of any other governmental body or agency.

No evaluation of the environmental aspects of your proposal has been made; therefore, this determination does not constitute environmental approval under the National Environmental Policy Act of 1969.

You should also be aware that the FAA cannot prevent the construction of a structure near the airport. The airport environs can only be protected through such means as local zoning ordinances or acquisition of property rights.

NO EXPERIENCE, AND NO SPECIFIC JURISDICTION.

5. IT LEGITIMIZES ALLEGED AIRPLANE/BOAT SAFETY PROBLEMS BY SUGGESTING THAT WHICH IS STATISTICALLY SHOWN TO BE FALSE AND HAS BEEN SO RULED BY THE COURTS.
6. IT EMBRACES MATTERS OUTSIDE THE COURT ORDER CONCERNING THE CERTIFYING AND LICENSING OF AIRPORTS.

IN LIGHT OF ALL THE ABOVE, I ASK THIS BOARD TO RECOMMEND TO THE MONTANA DEPARTMENT OF COMMERCE, DIVISION OF AERONAUTICS TO:

✓ 1. DELETE PROPOSED RULE NUMBER IV FROM THE PROPOSED AIRPORT CERTIFICATION AND LICENSING RULES.

2. DELETE THE TERM "USED" FROM LINE FIVE OF PROPOSED RULE NUMBER VI AND INSERT IN ITS PLACE THE TERM "OPERATED".

3. DELETE THE TERMS "USED OR" FROM LINE FOUR OF PROPOSED RULE NUMBER VII.

⊗ 4. ACTIVELY WORK WITH ALL SEGMENTS OF THE MONTANA AVIATION COMMUNITY IN LOBBYING THE STATE LEGISLATURE TO DECLARE ALL STATE AIRPORT LICENSING LEGISLATION OBSOLETE AND SUPERFLUOUS, AND THEREFORE BE STRICKEN FROM THE MONTANA CODES.

IF THERE ARE ANY QUESTIONS CONCERNING MY PRESENTATION OR THE REFERENCE MATERIAL I REFERED TO, I WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

IN CONCLUDING, I THANK THIS BOARD FOR THE OPPORTUNITY TO MAKE THIS PRESENTATION AND REQUEST THAT THE PRESENTATION AND SUPPORTIVE DOCUMENTS BE MADE A PART OF THE RECORD OF THIS HEARING.

THANK YOU.

* Extract Mr. Hindlemer's written testimony Dec 14 1984
Airport Licensing Public Hearing

WITNESS STATEMENT

NAME R. H. Scott BILL No. 423 ~~AB~~
ADDRESS PO 223 DATE FEB 8 1985
WHOM DO YOU REPRESENT Myself
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Written STATEMENT FURNISHED

REBUTTAL -

TO GILBERT THE LAW SUIT WAS WON
NONE LOST

THE PROPOSED CHANGE PROVIDES NO REGULATION

THE FID IS TOO FAR REMOVED TO HANDLE
CONFLICTS - NOT RESPONSIVE TO THE GENERAL
PUBLIC.

THE RHY GENERAL NOT ANYONE ELSE
WOULD MAKE A DETERMINATION ON WHO WAS
RESPONSIBLE FOR THE LAKE.

FRA DOES NOT CONTROL ON THE WATER

NO GOVERNMENT AT ANY LEVEL IN
THE STATE OF MONTANA WOULD ADDRESS
THE PROBLEM

Exhibit

#2

OPTION 1:

Add the termination to the total compensation. The member and employee contributions to the retirement system, as Teachers' Retirement Board to adequately for the additional retirement benefit.

High consecutive 3 salaries:	\$21,000
	22,000
	<u>23,000</u>
TOTAL	<u><u>\$66,000</u></u>

Adding in termination pay of \$5,000 gives a total of \$71,000. To get the average salary we divide by 3 or \$23,666.67. The benefit would be $25/60 \times \$23,666.67$ or \$9,861.11 annually. The \$5,000.00 in termination pay increases the benefit \$694.44 per year ($\$5,000 \div 3 \times 25/60 = \694.44).

The cost as determined by the Board is as follows:

Employee:

$\$5,000 \times 2.80\% \times \text{years of service or } 25 = \$3,500.00$

Employer:

$\$5,000 \times 2.95\% \times \text{years of service or } 25 = \underline{\underline{\$3,687.50}}$

<u>Total Contributions Due:</u>	<u><u>\$7,187.50</u></u>
---------------------------------	--------------------------

OPTION II:

Use a yearly amount of termination pay added to each of the three consecutive years salary. The termination pay is divided by the total number of years of service with the employer, from whom the termination pay is received, to determine a yearly amount. The cost is the regular employee/employer contribution rate times the termination pay. In this example we are assuming that the last 20 years of employment are with the employer, from whom the termination pay is received.

$$\$5,000 \div 20 = \$250.00$$

High consecutive 3 salaries: \$21,000 + \$250.00

$$22,000 + \$250.00$$

$$\underline{23,000 + \$250.00}$$

TOTAL \$66,000 + \$750.00 or

$$\underline{\underline{\underline{\$66,750.00}}}$$

Benefit would be $25/60 \times \$22,250$ or $(\$66,750.00 \div 3)$ or \$9,270.83. This option increases benefit \$104.17 per year.

The cost is $\$5,000 \times 7.044\%$ (employee rate) or \$352.20

$$\$5,000 \times 7.320\% \text{ (employer rate) or } \underline{\$366.00}$$

Total Contributions Due \$718.20

OPTION III:

Exclude the termination pay from the average final compensation. No contribution is required by either the employer or member.

We have seen some abuses occurring in option II, in that some members are changing employers when nearing retirement and negotiating a contract with their new employer, for a sizeable termination pay amount and when retiring, electing option II. Therefore, if they are employed 3 years or less with their employer, their benefit is increased in accordance with option I, but at the cost of option II. For example, using the same assumptions as previously, but in this instance the employee would have only 3 years of service, with the employer from whom the termination pay is received. The yearly amount of termination pay would be $\$5,000.00 \div 3$ or $\$1,666.67$. Adding this to each of the 3 salaries used in calculating average final compensation gives the following:

High consecutive 3 salaries: $\$21,000 + \$1,666.67$

$22,000 + \$1,666.67$

$23,000 + \$1,666.67$

TOTAL $\$66,000 + \$5,000.00$ or
 $\$71,000 \div 3 = \$23,666.67$

Benefit is $25/60 \times \$23,666.67$ or $\$9,861.11$ (same as option I).

The cost is $\$5,000 \times 7.044\%$ (employee rate) or $\$352.20$

$\$5,000 \times 7.320\%$ (employer rate) or $\$366.00$

Total Contributions Due $\$718.20^*$

* Same as Option II.

OPTION II:

Use a yearly amount of termination pay added to each of the three consecutive years salary. The termination pay is divided by the total number of years of service [with the employer, from whom the termination pay is received,] to determine a yearly amount. The cost is the regular employee/employer contribution rate times the termination pay. In this example we are assuming that the last 20 years of employment are with the employer, from whom the termination pay is received.

$5000 \div 4 = 1250$
 $\$5,000 \div 20 = \250.00

High consecutive 3 salaries: $\$21,000 + \250.00

$22,000 + \$250.00$

$23,000 + \$250.00$

TOTAL $\$66,000 + \750.00 or

$\$66,750.00$

Benefit would be $25/60 \times \$22,250$ or $(\$66,750.00 \div 3)$ or $\$9,270.83$. This option increases benefit $\$104.17$ per year. 582.32

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$\$5,000 \times 7.320\%$ (employer rate) or $\$366.00$

Total Contributions Due $\$718.20$

Proposed amendments to House Bill No. 482

1. Title, line 13.

Strike: "AND"

2. Title, line 15.

Strike: "AND"

Strike: "THROUGH"

Insert: ", AND"

3. Title, line 16.

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

4. Page 5, line 12.

Following: "and"

Insert: "a copy of the"

Following: "registration card"

Insert: "to be provided by the election administrator"

5. Page 7, line 22 through line 19, page 8.

Strike: section 9 in its entirety

Re-number: subsequent sections

6. Page 9, line 24.

Following: "candidate"

Strike: "whose"

Insert: "or of a candidate's spouse or the spouse of any one of these if the candidate's"

7. Page 10, line 12.

Following: "Before"

Strike: "the polls open"

Insert: "assuming any of his responsibilities under [this act]"

8. Page 12, line 6.

Strike: "11"

Insert: "10"

Strike: "15"

Insert: "14"

9. Page 12, line 11.

Strike: "11"

Insert: "10"

Strike: "15"

Insert: "14"

10. Page 12, line 13.

Strike: "11"

Insert: "10"

Strike: "16"

Insert: "15"

11. Page 12, line 15.

Strike: "11"

Insert: "10"

Strike: "16"

Insert: "15"

12. Page 12.

Following: line 15

Insert: "NEW SECTION. Section 17. Effective date. This act is
effective July 1, 1985."

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STATEMENT OF INTENT

 BILL NO. 535

A statement of intent is required for this bill because section 5 grants the secretary of state the authority to adopt rules establishing fees for the participation of candidates in the voter information pamphlet. Rules are to be adopted under the Montana Administrative Procedure Act. The rules must be consistent with the requirements of section 5 regarding uniformity for all candidates and fees being reasonably related to costs.

STATEMENT OF INTENT

____ BILL NO. ____

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WITNESS STATEMENT

NAME William E. Ross

BILL No. ^{HB} 401

ADDRESS 1731 Townsend Ave. Helena

DATE February 8, 1985

WHOM DO YOU REPRESENT Commonwealth

SUPPORT X

OPPOSE

AMEND

X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: House Bill 401 is simply a house keeping measure
amend the Law so the requirements in the Law are consistent
with responsibility of funding for the Program.

VISITORS' REGISTER

COMMITTEE

BILL NO. H.B. 256DATE Feb. 8, 1985

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>F. Robert Johnson</i>	<i>Teachers' Retirement</i>	<i>✓</i>	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

COMMITTEE

BILL NO. H. B. 535DATE Feb. 8 - 1985

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Teri England	Montpelier	x	
EARL REILLY	HELENA	X	
Robert Anderson	Helena	x	
LARRY AKEY	SECRETARY OF STATE	x	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

COMMITTEE

BILL NO.

650

DATE _____

Feb. 8, 1965

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STATE ADMINISTRATION COMMITTEE

HB ~~354~~
423

Feb 8 1985

Q. L. 6501

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

State Administration COMMITTEE

DATE February 8, 1985

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.