

MINUTES OF THE MEETING  
STATE ADMINISTRATION COMMITTEE  
MONTANA STATE SENATE

March 18, 1985

The forty-fourth meeting of the State Administration Committee was called to order by Chairman Jack Haffey in Room 331, Capitol, at 10 a.m. on Monday, March 18, 1985.

ROLL CALL: All the members were present with Senator Manning arriving late.

CONSIDERATION OF HOUSE BILL 288: Representative Bob Thoft, House District 63, is the sponsor of this bill entitled, "AN ACT TO INCREASE FROM 14 DAYS TO 45 DAYS THE TIME PRIOR TO AN ELECTION THAT ABSENTEE BALLOTS MUST BE PREPARED; TO PROVIDE FOR CHANGES IN OTHER RELATED ELECTION DEADLINES TO REFLECT THE CHANGE IN THE ABSENTEE BALLOT DEADLINE; AND AMENDING SECTIONS..., MCA." Representative Thoft told the Committee that this bill amended about 41 sections of law, but it doesn't do that many things. He said it deals with absentee ballots, and that we are being sued by the federal government because if these ballots are not mailed 45 days in advance the servicemen are not receiving them in time. Representative Thoft said that Betty Lund would explain this further.

PROPOSERS: Betty Lund, Ravalli County Election Administrator, Secretary of Montana Clerk & Recorders, supports this bill. Ms. Lund said that they have known for some time that the state's deadline for absentee ballots has not been in compliance with the Federal Government deadlines and as you know, the State of Montana was sued in October by the Federal Government because we had not mailed our absentee ballots to the overseas citizens 45 days before the election. For that reason, all counties in the State of Montana had to keep their results open until 14 days after the election. She said this in itself presented many problems because people came to the caucuses in Helena not knowing if they had been elected or not. Ms. Lund passed out a handout and then explained it to the Committee. She said the first page is a list of the deadlines, present law versus HB-288 (attached hereto marked Exhibit "1" and by this reference made a part hereof). Page 2 is a fact sheet, which Representative Thoft covered. Page 3 addresses the ballot schedule. The next set of pages is the Secretary of State's report to the court about the absentee ballots that came in after the election day on November 6, 1984, and were counted and added to the totals. The last set of pages is the Secretary of State's directions to the election judges, and then a fold-out of a calendar of election events. (For more of Ms. Lund's testimony see Exhibit "2" attached hereto and by this reference made a part hereof.)

March 18, 1985

C. Hal Manson, American Legion, supports this bill. Mr. Manson said that they had many members worldwide and that 14 days is not adequate to get their absentee ballots and return them. He said that they should all be able to vote.

Mike Stephen, Montana Clerk & Records Association, supports this bill.

OPPONENTS: There were no opponents.

COMMITTEE QUESTIONS: There were no committee questions.

Representative Thoft closed by asking the Committee to pass this bill. HOUSE BILL 288 is closed.

EXECUTIVE ACTION ON HOUSE BILL 288: Senator Conover moved that HOUSE BILL 288 be concurred in. Question was called, and the Committee voted unanimously that HOUSE BILL 288 BE CONCURRED IN. (Senator Harding will carry this to the floor.)

CONSIDERATION OF HOUSE BILL 724: Representative Kerry Kyser, House District 74, is the sponsor of this bill entitled, "AN ACT PROVIDING THAT A SPECIAL ADDITIONAL MILL LEVY FOR A HOSPITAL DISTRICT MAY BE VOTED UPON AT A PRIMARY ELECTION IN EITHER AN ODD- OR EVEN-NUMBERED YEAR; AMENDING SECTION..., MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." Representative Kyser said that this provides an additional mill levy may be voted on for a hospital district in an odd or even numbered year. He said at present it can only be voted on in odd-numbered years, and this presented problems in that they sometimes had to wait two years before putting this on the ballot and implementing it. He said that the county commissioners would determine if this could be needed. Representative Kyser said this does not automatically allow it, it simply says commissioners can make that request and put it to a vote of the people.

PROPOSERS: Bill Leary, Montana Hospital Association, supports this bill for all the reasons listed above. Mr. Leary said many of their hospital districts were in rural areas.

Elmer Hodvedt, Madison Valley Hospital, supports this bill. He said that they do need this money as soon as possible. He said they were going to save their hospital if at all possible, and that they needed the tax money as soon as possible, the people willing.

OPPONENTS: There were no opponents.

COMMITTEE QUESTIONS: Senator Harding wanted to know if these hospital districts involved a whole county. Representative Kyser replied that there were small districts in the county.

March 18, 1985

Senator Harding said that maybe besides the primary this should be tied in with school elections. Senator Haffey felt that perhaps this could be tied in with the mail ballots and asked Valencia to look into school district elections and mail ballots. He asked Representative Keyser if he would object to this being amended. Representative Keyser said that it was not a problem. Senator Anderson asked if this was already a permissive levy and if this would be an extra levy. Representative Keyser replied yes.

Representative Keyser is closed. HOUSE BILL 724 is closed.  
(Senator Anderson will carry this to the floor.)

EXECUTIVE ACTION ON HOUSE BILL 724: Executive action will be deferred until tomorrow, March 19, 1985.

CONSIDERATION OF HOUSE BILL 274: Representative Gay Holliday, House District 31, Roundup, is the sponsor of this bill entitled, "AN ACT PERMITTING A STATE GAME WARDEN TO RETIRE AT AGE 50 RATHER THAN 55; REMOVING THE COMPULSORY RETIREMENT AGE FOR STATE GAME WARDENS; REVISING THE METHOD FOR CALCULATING THE SERVICE RETIREMENT ALLOWANCE FOR A STATE GAME WARDEN WITH OVER 25 YEARS OF SERVICE; INCREASING EMPLOYEE AND-EMPLOYER CONTRIBUTIONS TO THE MONTANA STATE GAME WARDENS' RETIREMENT SYSTEM; AMENDING SECTIONS ..., MCA; AND PROVIDING AN EFFECTIVE DATE." Representative Holliday said that this bill does three things. First, it changes the age at which a game warden can retire from 55 to 50. Secondly, it changes method for calculating the service retirement allowance for a state game warden with over 25 years of service. And third, changes from 7% to 7.9% the employees contribution to this retirement system.

PROPOSERS: Tom Schneider, Montana Public Employees Association, supports this bill. Mr. Schneider said that currently a member of the F & G Retirement system must be at least 55 years of age to draw a service retirement benefit. Members of the Montana Highway Patrol Retirement system can retire at any age. It was the desire of the F & G Wardens to have the same rights as the Highway Patrol. However, there is a bill in to require a minimum age 50 for Highway Patrolmen. Passage of the change in section 1 would accomplish that equality. Police also have a minimum age 50 for service retirement. Mr. Schneider said that these changes were recommended by the actuary. (For more of Mr. Schneider's testimony see Exhibit "3" attached hereto and by this reference made a part hereof.)

Jim Flynn, Administrator, Fish, Wildlife and Parks, supports this bill. Mr. Flynn said the bill had been very well presented, and that this bill allows an employee the option of retiring when he no longer feels mentally or physically capable of handling

March 18, 1985

all phases of his position. It would also allow management more options when an employee's performance falls below acceptable levels. (For more of Mr. Flynn's testimony see Exhibit "4" attached hereto and by this reference made a part hereof.)

Larry Nachtsheim, Public Employees Retirement System, said that he was at the hearing for informational purposes only. He said the Board did not have a position on this bill. He said the Board and its actuarial staff discussed this with Mr. Schneider.

OPPONENTS: There were no opponents.

COMMITTEE QUESTIONS: Senator Mohar wanted to know why on this retirement system, the contribution had not been raised for the employer. Mr. Schneider said that the game wardens receive all fines and forfeitures for their retirement system. He said if they go to the retirement board it comes out of fines and forfeitures and it was no big thing. He said there is actually a 50/50 split on funding.

Representative Keyser closed by saying that he would appreciate the Committee's support. HOUSE BILL 274 is closed.

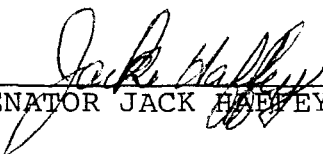
EXECUTIVE ACTION ON HOUSE BILL 274: Senator Lynch made a motion that HOUSE BILL 274 be concurred in. Question was called and the Committee voted unanimously that HOUSE BILL 274 BE CONCURRED IN. (Senator Haffey will carry this to the floor.)

EXECUTIVE ACTION ON HOUSE BILL 550: Senator Farrell still had concerns regarding someone's using all their sick leave to take care of their mother and then having to borrow from the bank when they became ill. Senator Lynch told him that they have this in Butte and that it is very well policed by those members who have donated sick leave. He said they are not going to let someone use all the hours in the bank. He said their system is never abused. Senator Lynch told the Committee what a good system it was and listed some of the rules. Senator Farrell felt that they ought to amend the Statement of Intent to compel the rule makers to look at these systems. (Amendment attached hereto marked Exhibit "5" and by this reference made a part hereof.) Senator Mohar was afraid that maybe we were setting up another bureaucracy and that maybe half the cost should come out of the system. Valencia Lane, staff Attorney said that would be impossible because there is no money in the system it is only time. Senator Lynch made a motion that HOUSE BILL 550 be concurred in with the amendment to the Statement of Intent. Question was called, and the Committee with Senator Hirsch and Senator Tveit voting no, voted that HOUSE BILL 550 BE CONCURRED IN AS AMENDED. (Senator Fuller will carry this to the floor.)

March 18, 1985

Senator Haffey told the Committee that we would act on the first of the Boards on Friday, March 22, 1985.

The meeting was adjourned at 10:45 a.m.

  
\_\_\_\_\_  
SENATOR JACK HAFFEY, CHAIRMAN



DATE March 18, 1985

COMMITTEE ON State Administration

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Betty T. Lunn	Montana Club & Garden	288	X	
Dorothy E. Hays	Montana Club & Garden	288	X	
Tom Lunn	WPEA	274	X	
Wm. A. Hays	Valley Forge	274	X	
Q. Hal Manson	American Legion	288	X	
William E. Hays	Mont. Hospital Assoc.	774	X	
Tom Lunn	Game Warden	274	X	
Jim Hays	Game Warden	274	X	
Opie Clark	Fish & Game	274	X	
Larry Nash	PERD (Trotter)	274		

Exhibit "C"  
HB-288  
3-18-85

SCHEDULE OF DATES OF HOUSE BILL 288  
VERSUS MONTANA CODES TODAY

Filing deadline

Present	Jan. 1 until 50 days before election
HB 288	Jan. 1 until 75 days before election

Withdrawal of candidates

Present	30 days before election
HB 288	75 days before election

Begin absentee ballot period

Present	14 days before election
HB 288	45 days before election

Close of Registration

Present	30 days before election
HB 288	30 days before election

Certification of Ballot by Secretary of State

Present	50-42 days before election
HB 288	75-67 days before election

Certification of Ballot to printer by Election Administrator

Present	42-30 days before election
HB 288	67-62 days before election

Notification of WINNERS

Present	14 days after election day
HB 288	Election day



FACT SHEET FOR  
HOUSE BILL NO. 288

1. The State of Montana was sued by the United States Justice Department on October 31, 1984 because the Montana election law gives the counties until 14 days before the election as a deadline for mailing absentee ballots. See MCA 13-13-222. The Overseas Citizens Voting Rights Act, 42 U.S.C. 1973dd et seq., and the Federal Voting Assistance Act, 42 U.S.C. 1973cc (b) require that the states mail overseas absentee ballots at least 45 days before the election, giving these ballots enough time to travel in the mail to the voter and be received by the Election Administrator by election day. Therefore, the State of Montana counties had to hold the results open and could not declare any candidates as winners until 14 days after the election, therefore giving the overseas ballots times to be received by the Election Departments. There were 1811 international absentee ballots mailed throughout the State of Montana, 1290 were received before the polls closed on election day, 229 were counted at the end of the 14 day extension period.

2. This new bill gives the overseas voters more time to apply for a ballot, receive, vote and return it to the Election Administrator.

3. This new bill moves up the withdrawal deadline, therefore allowing the printers to begin printing immediately after receiving the certification from the Election Administrator instead of waiting until 30 days before the election to make all the candidates certified on the ballot will remain on it.

4. This new bill allows a full time span for special district elections such as water/sewer districts. The election date being set at "no less than 75 or more than 90 days" is the answer Election Administrators have been waiting for.

5. Opponents of this bill believe that because the filing deadline has been moved up 25 days that the campaign period will be lengthened. Most serious candidates file in the first part of January but usually do not start to campaign until around the first part of May.

6. This new bill will relieve the pressure on printers as the ballot will be finished and out of their shops before they have to do all the printing for the candidates.

# BALLOT SCHEDULE

## UNDER LAW AS IT EXISTS TODAY:

Certification of Secretary of State to Election Administrator	Not more than 50 days and not less than 42 days before election	
Election Administrator takes ballot to Printer	Not more than 40 days and not less than 30 days before election	Not more than 40
Printer delivers ballot to EA	14 days before election	Deadline $\frac{14}{26}$ days
		Not less than 30
		Deadline $\frac{14}{16}$ days

## H.B. 288 AS AMENDED

Certification of Secretary of State to Election Administrator	Not more than 75 days and not less than 67 days before election	
Election Administrator takes ballot to Printer	Not more than 67 days and not less than 62 days before election	Not more than 67
Printer delivers ballot to EA	45 days before election	Deadline $\frac{45}{22}$ days
		Not less than 62
		Deadline $\frac{45}{17}$ days

ALAN D. ROBERTSON  
Chief Legal Counsel  
Office of the Secretary of State  
State of Montana  
State Capitol  
Helena, MT 59620  
(406) 444-2034

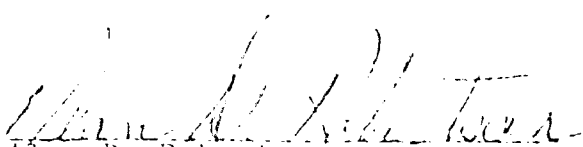
ATTORNEY FOR DEFENDENT  
WALTERMIRE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

UNITED STATES OF AMERICA	)	NO. CV-84-266-H
	)	
Plaintiff,	)	DEFENDENT WALTERMIRE'S
	)	REPORT TO THE COURT
v.	)	
	)	
STATE OF MONTANA;	)	
JIM WALTERMIRE, SECRETARY	)	
OF STATE OF THE STATE OF	)	
MONTANA,	)	
	)	
Defendants.	)	

DEFENDENT JIM WALTERMIRE respectfully submits the attached documents in satisfaction of order item number four of that certain consent decree entered in the above captioned action on November 1, 1984.

Respectfully submitted this 24 day of December, 1984.

  
Alan D. Robertson

COMPLETE FOR ELECTION HELD NOVEMBER 6, 1984

COUNTY STATEWIDE TOTALS

1. Date first Absentee Ballot (any kind) mailed out 10/3/84
2. Date last International Absentee Ballot mailed out 11/5/84
3. Number of International Absentee Ballots mailed 1811
4. Number of valid International Absentee Ballots re-  
turned before close of polls 1290
5. Number of International Absentee Ballots returned  
after November 6 but before November 20 which were:
  - a) Not counted because signed and dated after  
November 6 18
  - b) Not counted because otherwise invalid 16
  - c) Counted pursuant to the Court's Order 229
6. Number of International Absentee Ballots returned  
after November 20 and thus not counted 25
7. Number of all Absentee Ballots (not International)  
mailed \_\_\_\_\_
8. Number of non-international Absentee Ballots re-  
turned after close of polls and thus not counted \_\_\_\_\_

Signed \_\_\_\_\_

Election Administrator

Date \_\_\_\_\_

(COUNTY SEAL)

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5a</u>	<u>5b</u>	<u>5c</u>	<u>6</u>
Beaverhead	10/10	10/12	16	15	0	1	0	0
Big Horn	10/29	10/30	10	1	0	0	7	0
Blaine	10/18	10/24	16	11	0	2	0	0
Broadwater	10/11	10/11	12	12	0	0	0	0
Carbon	10/17	10/18	28	19	1	0	2	0
Carter	10/9	10/9	5	5	0	0	0	0
Cascade	10/9	11/3	274	238	4	1	15	1
Chouteau	10/10	10/18	15	11	0	2	2	0
Custer	10/7	10/17	29	24	0	3	2	1
Daniels	10/5		0	0	0	0	0	0
Dawson	11/8	10/22	13	15	0	0	1	0
Deer Lodge	10/12	10/30	27	23	0	0	3	0
Fallon	10/23	10/23	5	3	0	1	0	0
Fergus	10/17	10/17	33	26	0	0	3	0
Flathead	10/22	10/23	23	9	0	0	4	0
Gallatin	10/13	10/29	152	98	0	0	37	3
Garfield	10/7	10/11	2	1	0	0	0	0
Glacier	10/16	10/18	10	8	0	0	2	0
Golden Valley	10/9	10/9	4	3	0	0	1	0
Granite	10/9	10/29	14	9	1	0	0	1
Hill	10/19	10/22	24	17	0	0	4	0
Jefferson	10/10	10/22	9	8	0	0	1	0
Judith Basin	10/4	10/4	2	2	0	0	0	0
Lake	10/10	10/22	53	36	1	0	9	0
Lewis & Clark	10/16	10/25	102	75	0	0	12	0
Liberty	10/11	10/11	3	3	0	0	0	0
Lincoln	10/23	11/5	47	16	1	2	13	15
Madison	10/16	10/23	20	13	0	0	6	0
McCone	10/9	10/12	4	3	0	0	0	0
Magher	10/19	10/19	3	3	0	0	0	0
Mineral	10/11	10/22	13	8	0	0	2	0
Missoula	10/18	11/5	221	123	7	0	62	3
Musselshell	10/15	10/29	9	5	0	3	1	0
Park	10/11	10/29	23	21	0	1	1	0
Petroleum	10/15	N/A	0	0	0	0	0	0
Phillips	10/12	10/13	6	3	0	0	2	0
Pondera	10/10	10/10	18	15	0	0	0	0
Powder River	10/9	10/22	4	2	0	0	1	0
Powell	10/10	10/16	11	11	0	0	0	0
Prairie	10/10	10/10	8	1	0	0	0	0
Ravalli	10/4	10/29	66	42	0	0	2	0
Richland	10/15	10/26	21	14	0	0	1	0
Roosevelt	10/12	10/14	14	11	0	0	0	0
Schubert	10/15	10/22	6	5	0	0	1	0
Sanders	10/10	10/23	26	16	0	0	3	0
Sheridan	10/11	10/12	12	12	0	0	0	0
Silver Bow	10/12	10/19	97	61	1	0	12	1
Stillwater	10/9	10/10	12	9	0	0	0	0
Sweet Grass	10/11	10/11	7	4	0	0	0	0
Teton	10/11	10/11	6	5	0	0	0	0
Toole	10/12	11/2	12	7	0	0	0	0
Treasure	10/10	10/10	1	0	0	0	1	0
Valley	10/17	10/18	16	12	1	0	1	0
Heatland	10/9	10/9	9	8	0	0	0	0
Vibaux	10/17	10/17	1	1	0	0	0	0
Lowstone	10/3	11/5	214	181	1	0	0	0
TOTAL			1811	1290	18	16	229	25

# SECRETARY OF STATE

STATE OF MONTANA

**Jim Waltermire**  
Secretary of State

State Capitol  
Helena, Montana 59620

TO: Election Administrators

FROM: Jim Waltermire, Secretary of State

RE: Federal Court Action on International Absentee  
Ballots and other Federal Matters.

DATE: November 1, 1984

Yesterday the United States filed suit against the State of Montana regarding counting overseas absentee ballots after election day. And today, a Consent Decree is being entered requiring just that.

This action is part of the Department of Justice's ongoing effort to protect the voting rights of overseas citizens. That effort has resulted in many states being sued over the last six years -- three others on the same day Montana was -- and 19 states now counting at least some absentee ballots after election day.

We were first contacted by the Justice Department shortly after the CI-23 challenge was reported nationally. Their inquiry at that time was regarding how any order requiring reprinting of ballots would affect overseas voters. The law suit was in response to that inquiry.

I want to be clear that the State of Montana had no alternative. The federal law is pretty clear, and once the Justice Department undertook a legal action against Montana, we had no choice but to comply.

A copy of the Decree and Order is enclosed for your reference and review. But let me summarize the major provisions. They are:

1. You are ordered to count and include in the official results international absentee ballots received up to the close of business on November 20th.
2. This applies to all absentee ballots cast pursuant to the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act. Basically that means any ballot mailed from outside the territorial borders of the U.S. This includes Canada and Mexico but does not include Alaska, Hawaii, Guam, or Puerto Rico.
3. It does not apply to any other absentee ballot. Any other absentee ballot must be received by you before the close of polls on election day or it must be rejected.
4. You are not permitted to count absentee ballots received after the deadline unless they come within this order (e.g. from another country).
5. It only applies to those international ballots that were: a) signed and dated on or before November 6th; b) received on or before the close of business on November 20th; and c) otherwise valid absentee ballots. If these three conditions are met, the ballots must be counted as validly cast and included in your final official canvass.
6. The ballots can not be counted if they are: a) signed and dated after November 6th; b) received by you after November 20th; c) or invalid for any reason other than being late.
7. You are further ordered to gather certain information and report to the Court by December 21, 1984.
8. There are two ways you can comply with the reporting provision.
  - a) You can report directly to the Court yourself -- your County Attorney could assist you, or
  - b) You can report the required information to us, by December 14th, and we will compile it and report it to the Court for you.

9. We've enclosed a form for your use should you chose to provide us with the information and avoid filing legal documents yourselves. Unless you return this completed form to us by December 14th, we will assume you will be filing your own documents directly.

That's the basic substance of the Court's order, now, how will that affect the canvass? Here are some points about that:

1. Your board of canvassers is still required to meet within 3 days after the election to canvass the returns. They should do that and proceed with the canvass to determine preliminary totals.
2. Since you should have records of everyone to whom an absentee ballot was sent -- and the address to which it was sent -- you may not have to wait the full 20 days.
3. If you did not mail any absentee ballots outside the U.S., then proceed with your canvass as you normally would.
4. If all the absentee ballots mailed outside the U.S. are returned before the close of polls on election day, then you can also proceed with the canvass in the normal fashion.
5. As soon as all your absentee ballots from outside the U.S. have been returned, you can complete the canvass. You don't have to wait the full 20 days if all ballots from other countries are accounted for.
6. In order to assure maximum secrecy for overseas voter's ballots, we recommend the following procedures:
  - a) that you simply collect all absentee ballots received after the election from other countries and retain them unopened until after 1) the close of business on November 20th; or 2) all of those mailed have been returned, whichever is earlier;
  - b) at that time, empanel a special counting board for absentee ballots under section 13-15-104 and process all the absentee ballots returned after the close of the polls at the same time;



- c) validate and count the late ballots according to statutory procedures except as specifically modified by the Court Order;
- d) have the judges report the results as usual;
- e) have the board of canvassers canvass these results as it would other returns;
- f) have the board of canvassers complete the canvass and forward to this office;

Finally, when the lawyers for the Justice Department were in town, they hand delivered a letter concerning two other issues where federal law supersedes Montana Law. These are:

- 1. Voters allowed to be assisted by "any person" of their choosing, not just a judge or qualified elector, and
- 2. Qualification of voters who are unable to sign their name.

A copy of their letter on these matters is enclosed for your reference. Please review it to be sure that your county complies. Basically the rules under federal law are:

- 1. A voter requiring assistance may be assisted by any person of their choice.
  - could include a child in high school
  - could include a friend who is unregistered or otherwise not qualified to vote

except

  - their employer or
  - their union official
- 2. A voter who is unable to sign his name is not required to produce two witnesses to vouch for him and may not be denied the right to vote for failing to do so.

If you have questions on any of this, please consult your county attorney -- or feel free to contact me, my attorney, or the staff in the elections office.

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MONTANA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	
STATE OF MONTANA;	)	
JIM WALTERMIRE, SECRETARY OF	)	<u>CONSENT DECREE</u>
STATE OF THE STATE OF MONTANA,	)	
	)	
Defendants.	)	

---

A. STIPULATIONS OF THE PARTIES

The United States of America, plaintiff, and the State of Montana and Jim Waltermire, Secretary of State of the State of Montana, defendants, stipulate and agree that:

1. This action was brought by the Attorney General on behalf of the United States to enforce the provisions of the Overseas Citizens Voting Rights Act, 42 U.S.C. 1973dd et seq., and the Federal Voting Assistance Act, 42 U.S.C. 1973cc(b).

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. 1345.

3. The Overseas Citizens Voting Rights Act guarantees to citizens residing outside the United States the right to register and vote absentee in elections conducted by the

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MONTANA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	
STATE OF MONTANA;	)	
JIM WALTERMIRE, SECRETARY OF	)	<u>CONSENT DECREE</u>
STATE OF THE STATE OF MONTANA,	)	
	)	
Defendants.	)	

---

A. STIPULATIONS OF THE PARTIES

The United States of America, plaintiff, and the State of Montana and Jim Waltermire, Secretary of State of the State of Montana, defendants, stipulate and agree that:

1. This action was brought by the Attorney General on behalf of the United States to enforce the provisions of the Overseas Citizens Voting Rights Act, 42 U.S.C. 1973dd et seq., and the Federal Voting Assistance Act, 42 U.S.C. 1973cc(b).
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. 1345.
3. The Overseas Citizens Voting Rights Act guarantees to citizens residing outside the United States the right to register and vote absentee in elections conducted by the

state in which they last were domiciled (provided that certain minimum conditions are met). 42 U.S.C. 1973dd-1. The Federal Voting Assistance Act provides, inter alia, that members of the Armed Forces and merchant marine (and their spouses and dependents) located abroad, who are otherwise qualified to vote, have the right to register and vote absentee in federal elections conducted by the state of their voting residence. 42 U.S.C. 1973cc(b).

4. Under the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act, defendant State of Montana is charged with the responsibility of assuring that state election officials permit Montana voters to exercise their rights guaranteed by the said Acts. Defendant Jim Waltermire, sued in his official capacity as Secretary of State, is the chief election officer of the State of Montana and is responsible for the administration and enforcement of election laws in Montana.

5. The United States, by this action, seeks injunctive relief to remedy the failure of defendants to ensure that those individuals who are qualified and apply for absentee ballots, pursuant to the Overseas Citizens Voting Rights Act and Federal Voting Assistance Act, will be given a reasonable opportunity to execute and return such ballots before the close of the polls on November 6, 1984.

6. Montana election law provides only that absentee ballots must be mailed at least 14 days prior to the election. This, compiled with a late date for certification of the ballot by the Secretary of State (50 days prior to the election), results in preparation and mailing of absentee ballots being delayed until the middle of October.

7. Montana law provides that ballots received after the close of the polls on the day of the election are rejected. Mont. Code Ann. §13-13-232.

8. In 1984, the general election in Montana will be held on November 6, 1984. State election officials have received a substantial number of timely requests for absentee ballots from overseas citizens who are entitled to vote pursuant to the provisions of the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act.

9. In order to allow overseas citizens a fair opportunity to vote by absentee ballot, election officials of Montana must mail the ballots to the voters on a date sufficiently in advance of election day to allow the voter to receive the ballot, cast his or her vote and return the ballot to the office of the election official by the time the polls close on election day.

10. The mailing time (one way) between the United States and persons in foreign countries varies depending

upon the country of destination. A reasonable period for delivery is estimated by the United States Postal Service and the United States Department of State to be 10-14 days, each way, and the Military Postal Service Agency estimates that 30-35 days are necessary for a complete round trip.

11. Officials of the State of Montana have not mailed absentee ballots to overseas citizens (who have filed timely requests) on a date sufficiently in advance of November 6, 1984 to allow such voters to receive the ballot, cast a vote and return the ballot to election officials by the close of the polls on November 6, 1984. In most jurisdictions of the state absentee ballots were not mailed to overseas voters by the municipal clerks until mid-October, 1984, and it is unlikely that such late mailing will allow ballots to be received, executed and returned by November 6, 1984. For example, Flathead County did not begin to mail ballots to overseas citizens until October 22, 1984, allowing only 15 days for the round trip; Missoula County did not begin mailing these ballots until October 19-23, 1984, allowing only 14-18 days for the round trip; Lewis and Clark County (Helena) began mailing overseas ballots on October 17, 1984; Silver Bow County (Butte) began mailing overseas ballots on October 15, 1984; and Gallatin County began mailing overseas ballots on October 13, 1984.

12. The late mailing of absentee ballots to overseas citizens, coupled with the requirement that ballots be received by the close of the polls on election day in order to be counted, violates the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act.

13. To ensure that all citizens located abroad, protected under the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act and qualified to vote in Montana, have a reasonable opportunity to return their ballots for the November 6, 1984, general election, it is necessary that this Court enter an order extending by fourteen days the deadline for receipt of ballots cast pursuant to the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act. Under this extension overseas ballots received by the close of business on November 20, 1984, will be accepted and tabulated in the final election results.

This consent decree is final and binding as to all issues resolved here.

B. ORDER

WHEREFORE, the parties having freely given their consent, and the terms of the decree being fair, reasonable and consistent with the requirements of the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The State of Montana and defendants herein have not provided American citizens located abroad a reasonable opportunity to exercise their right to vote absentee in the November 6, 1984, federal election in violation of the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act.

2. The defendants shall take all steps necessary to ensure that all ballots cast pursuant to the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act which are signed and dated by voters on or before November 6, 1984, and received on or before the close of business on November 20, 1984, by the appropriate election officials, are counted as validly cast ballots, so long as the ballot would have been counted if it had been received by the close of the polls on election day.

3. The defendants shall notify the Director of the United States Department of Defense's Federal Voting Assistance Program (FVAP) as soon as this decree has been signed and request that the FVAP take such action as is necessary to notify overseas voters of the extension of time for receipt by Montana election officials of such ballots. The state shall assist the FVAP in whatever way necessary to publicize such extension of time.



4. Within 45 days after the 1984 general election, defendants shall file a report with this Court, with respect to the 1984 federal elections, which sets forth the following information:

- (a) the dates on which each county began and completed the process of mailing ballots to citizens located in a foreign country for voting in the general election;
- (b) the number of valid absentee ballots, by county, received before the close of the polls in the general election from citizens located in a foreign country;
- (c) the number of absentee ballots, by county, in the general election received after November 6, 1984, which were counted pursuant to this Consent Decree; and
- (d) the number of absentee ballots, by county, in the general election which were received after the close of the polls on election day from citizens located in a foreign country but not counted because signed after November 6 or received after the close of business on November 20, 1984.

5. The Court retains jurisdiction of this action for the purpose of enforcing the foregoing provisions.


ORDERED this       day of                  1984.

United States District Judge


The undersigned agrees to the entry of this Decree.

For the Plaintiff  
United States of America:

For the Defendants  
State of Montana and the  
Secretary of State of the  
State of Montana

  
Christopher G. Lehmann  
Attorney, Voting Section  
Civil Rights Division  
Department of Justice  
10th and Pennsylvania Ave., N.W.  
Washington, D.C. 20530  
(202) 724-6304

Judy Browning  
Judy Browning  
Assistant Attorney General  
for the State of Montana

  
Alan Robertson  
Chief Counsel to Secretary  
of State Jim Waltermire

Original - JAN 1984

3rd - Begin Filing 13-10-201 (C)  
until 50 days before Primary

## FEB

1st - Appoint & instruct Registrar's

1st boundaries finished 100 days before Primary 13-3-102

## MARCH

1st - 13-10-405  
1st boundaries finished 100 days before Primary

1st - 13-13-211

## APRIL

1st - 13-10-406

H. B. 288 Amendment (JAN) 1984

3rd - Begin Filing 13-10-201 (C)  
until 75 days before Primary

## FEB

1 - Mar 15 - Appoint & instruct Registrar's

21 - Deadline filing Petitions 13-10-405  
30 days before 75 days

24th - 13-3-102 - 1st boundaries finished - 100 days before primary

## MARCH

7th - 13-10-406  
13th - 13-10-503  
15th - 13-10-503  
Notification of Petition Candidates - 15 days before  
Independent Candidates - 1 week before

20th - 13-10-201 Filing deadline - 75 days before Primary 75 days

22nd - 13-10-208 Certification Ballot from Sec State 75-67 day before

25th - 13-10-601 Political Parties eligible for Primary - file petition  
with EA - forward Sec State 75 days before primary

22nd - 13-13-211 - Begin absentee ballot period

## APRIL

1st - Ballot to printer by EA 67-62 days

1st - No more withdrawals 13-10-325  
13-10-326

16th - Close of Registration

23rd - Ballots available for Absentee Ballot 45 days  
13-13-205

MAY

- 6 - Last day Registration - cert to Sec State
- 22 - 13-13-205 Absentee Ballots must be available

26 June 3 Publish Polling places

JUNE

- 4 - Absentee Ballot close - Noon
- 5 - Primary

29 - Deadline for const & init. Rpt. to EN for cert. f.

July

13 - Deadline for init & const Rpt Sec State 13-27-104  
and Friday 4th month prior to election unless on

Aug

1st - 13-10-204 - Deadline for filing pet. f. u. for nomination  
by indep pres. candidates w/EA

8th - " " w/Sec State

23 - 13-13-211 Begin absentee ballot period 75 days

MAY

- 6 - Last day Registration - cert to Sec State

26 June 3. Publish Polling places 13-3-105 (2)

JUNE

- 4 - Absentee Ballot close - Noon
- 5 - Primary

29 - Deadline for const & init Rpt to EN for cert. f.

July

13 -

Aug

8th - 13-10-204 - 90 days before Gen - End of primary candidates file  
to Sec State for pres

9th - 13-27-201 (41) - Last day (14 days before cert by Sec State)  
to request absentee ballot

23rd - 75 - 67 day before gen. Ballot certificate by Sec State  
13 day

SEPT

3<sup>rd</sup> - 13-27-201 (U) Last day to request absentee form  
14 days prior to deadline ballot cert.  
17<sup>th</sup> - 13-12-201 Last day Sec State cert. Ballot  
17<sup>th</sup> Close of Registration

OCT

7<sup>th</sup> - Last day for delivery of voter pamphlets to EA  
13-27-410

23<sup>rd</sup> - Absentee ballots must be available

NOV  
5<sup>th</sup> Close of absentee ballot  
for General Election

DEC

SEPT

2<sup>nd</sup> - 13-10-327 - No more withdrawal's 75 days before  
Ballot to printer by EA 67-62  
22<sup>nd</sup> - 10-13-205 - 45 days before general absentee ballot  
available -

OCT

7<sup>th</sup> - Last day for delivery of voter pamphlets to EA  
13-27-410

NOV  
5<sup>th</sup> Close absentee ballot Room  
for General Election

DEC

Exhibit 2  
HB-288  
3-18-85

March 18, 1985

Mr. Chairman and Members of the Committee,

For the record, my name is Betty Lund. I am the Election Administrator for Ravalli County and I am also on the legislative committee of the Clerk and Recorders Association.

Today I come before you to ask for your support on HB 288. The bill is the result of a resolution from the Clerk and Recorder's Convention in August of 1984. We have known for some time that our deadline for absentee ballots has not been in compliance with the Federal Government deadlines and tried to begin to do something to come into compliance. As you know by now the State of Montana was sued in October, by the Federal Government because we had not mailed our absentee ballots to the overseas citizens 45 days before the election. Therefore, all counties in the State of Montana had to keep their results open until 14 days after the election. This in itself created many problems. For instance, several members of legislature came to the caucuses in Helena not knowing if they were elected or not. In fact, when I called Rep. Thoft to see if he would sponsor this bill, I mentioned that I could not declare any winners until the Nov. 21st deadline imposed by the Federal Government. He immediately panicked and asked if he had won the election!

With that background, I will explain the material I have passed out to you. The first page is a list of the deadlines, present law versus HB 288. We had to move some of the deadline in order to have the time to have absentee ballots out 45 days before the elections. The time came from the filing deadline. It has been moved up 25 days - now around March 21st instead of April 15th. The close of registration remains the same. Certification of the ballot was moved up.

The second page is a fact sheet that might be of interest to you - it states the facts of the court case and addresses other problems. Rep. Thoft has covered some of them.

The third page address the ballot schedule. It gives you an idea of the time frame of present law versus HB 288 in the preparation of the ballot.

The next set of pages is Secretary of State's report to the court about the absentee ballots that came in after the election day on November 6, 1984 and were counted and added to the totals.

The last set before the fold out page is the Secretary of State's direction to the County Election Administrators as to what the court case was about and how we were to handle the order.

The fold out page is a calendar of election events - present law versus HB 288. Hopefully, it will help clarify what this bill is doing.

I would again ask for your support for this bill. We all would like to be able to declare the winners on election day. Thank you.

# MONTANA

Helena, Montana 59604

1426 Cedar Street • P.O. Box 5600

Exhibit 3  
HB-274  
3-18-85  
Telephone (406) 442-4600

## PUBLIC

## EMPLOYEES

## ASSOCIATION

### HOUSE BILL 274

House Bill 274 amends the Game Wardens Retirement Act by changing the minimum retirement age from 55 to 50 and providing that a member's retirement benefit will continue to increase 2% each year for each year of service the member works after completion of the required 25 years.

### TO EXPLAIN THE BILL

Currently a member of the F & G Retirement System must be at least 55 years of age to draw a service retirement benefit. Members of the Montana Highway Patrol Retirement System can retire at any age. It was the desire of the F & G Wardens to have the same rights as the Highway Patrol. However, there is a bill in to require a minimum age 50 for Highway Patrolmen. Passage of the change in section 1 would accomplish that equality. Police also have a minimum age 50 for service retirement.

Section 2 would change the method of calculating benefits for years of service after 25 by providing a continuation of 2% for each year rather than the present method of calculating the actuarial equivalent of an annuity. The annuity currently provides a benefit of approximately 1.35% but because it is tied to death and interest rates, it does not remain constant. The actuary for the system recommended the law be changed to provide a constant percentage.

It is important to remember that the employee continues to pay a full contribution which, under this bill, would be 7.9% during every year he works so it is only fair that the percent of final salary be the same each year.

### COST OF THESE CHANGES

The actuary calculated that the changes would require an increase in contributions of 1.8%. As you can see in Section 3 the bill increases the employee cost from 7% to 7.9% or half of the cost.

After meetings with the PERD Board, administrator, and actuary, it was decided that the employer cost would come from fines and forfeitures. This method would change the period of years necessary to fund the unfunded liability from 15½ to 17½. The standard used by actuaries for public systems is 40 years so this method is sound. With the increases which are being realized in fines and forfeitures, the period of funding may not be increased at all.

#### Eastern Region

(Mailing Address) 502 Nelson  
Billings, Montana 59102

(Phone) (406) 652-3530

#### Western Region

(Mailing Address) 1420 Jackson  
Missoula, Montana 59801

(Phone) (406) 728-4768





Exhibit <<4>>  
NB-274  
3-18-85

HB 274

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

March 18, 1985

I appear before you today in support of HB 274 which would allow state game wardens to retire at age 50 with a minimum of 20 years of service. This act provides that the amount of the retirement allowance shall be 2% of the member's final salary for each year of creditable service. The 2% provision is consistent with other retirement systems, and the state's contributions will remain at current level with the employees' contribution increasing by .9%.

This bill allows an employee the option of retiring when he no longer feels mentally or physically capable of handling all phases of his position. It would also allow management more options when an employee's performance falls below acceptable levels.

CARROLL D  
HB-550  
3-18-85

Statement of Intent to HB 550 be  
amended as follows:

1. Page 1, line 25.

Following: line 24

Insert: "It is intended that when  
promulgating these rules, the  
Department of Administration review  
similar programs, including the  
programs in use in School District  
No. 1 in Helena and School District  
No. 1 in Butte, and use those  
programs as guidelines for the  
adoption of the rules required ~~under~~  
by this bill."

# STANDING COMMITTEE REPORT

March 18 19 85

MR. PRESIDENT

## STATE ADMINISTRATION

We, your committee on.....

having had under consideration..... HOUSE BILL No. 550

third reading copy ( blue )

color

(Senator Fuller will carry)

## NONREFUNDABLE SICK LEAVE FUND FOR STATE EMPLOYEES

Respectfully report as follows: That..... HOUSE BILL No. 550

be amended as follows:

1. Statement of Intent, Page 1, line 25.

Following: line 24

Insert: "It is intended that when promulgating these rules, the department of administration review similar programs, including the programs in use in school district no. 1 in Helena and school district no. 1 in Butte, and use those programs as guidelines for the adoption of the rules required by this bill."

AND AS AMENDED

BE CONCURRED IN  
~~XXXXXX~~

~~XXXXXXXXXX~~

.....  
Chairman.

# STANDING COMMITTEE REPORT

March 18 19 85

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE BILL No. 274

third reading copy ( blue )  
color

(Senator Haffey will carry)

**REVISING SERVICE RETIREMENT PROVISIONS UNDER GAME WARDENS'  
RETIREMENT SYSTEM**

Respectfully report as follows: That HOUSE BILL No. 274

BE CONCURRED IN

XXXXXX

XXXXXXXXXX

Chairman.

# STANDING COMMITTEE REPORT

March 18 1935

MR. PRESIDENT

We, your committee on **STATE ADMINISTRATION**

having had under consideration..... **HOUSE BILL** No. **288**

**third** reading copy ( **blue** )  
color

(Senator Harding will carry)

**EARLIER PREPARATION OF ABSENTEE BALLOTS AND CHANGES IN RELATED DEADLINES**

Respectfully report as follows: That..... **HOUSE BILL** No. **288**

**BE CONCURRED IN**

~~XXXXX~~

~~XXXXXXXXXX~~

.....  
Chairman.