

MINUTES OF THE MEETING  
STATE ADMINISTRATION COMMITTEE  
MONTANA STATE SENATE

February 19, 1987

The twenty-eighth meeting of the State Administration Committee was called to order by Chairman Jack Haffey on February 19, 1987 at 10:07 a.m. in Room 331 of the State Capitol.

ROLL CALL: All committee members were present.

The hearing was opened on Senate Bill 339.

CONSIDERATION OF SENATE BILL 339: Senator Paul Boylan, Senate District 39, Bozeman, was sponsor for this bill entitled, "AN ACT REGULATING GOVERNMENT EMPLOYEE INVOLVEMENT IN POLITICS." It would just regulate employee involvement in politics.

PROPONENTS: Mr. Gary Marbut, representing himself and the Montana Council of Organizations, distributed a list of some abuses that have occurred in recent elections and gave the committee copies of his testimony. (EXHIBIT 1) He felt the need arose because of actions that have occurred over the past few years where public employees have lobbied against proposals and made quite a difference in elections which was unfair. He felt the employees were using taxpayer's funds and resources to directly affect the outcome of an election. He cited an example of the past election on the Initiative CI-27 where school children took home information against the proposal. He stated no actions were taken by the county attorneys, the attorney general's office or the Office of Political Practices. He said they had said the law was unclear in most instances. Mr. Marbut felt part of the problem was lack of enforcement. He stated the legislature is responsible for the purity of elections and if the laws are not satisfactory they need to be clarified. This proposal would make it illegal to have state employees lobby and they could only appear at hearings if they were requested to be there. This would define some of the gray areas of the law regarding a definition of a public employee, define the time they are actually working, what is meant by appearing at a hearing and make it illegal for a public employee, while on the job, to attempt to influence the outcome of an election.

The measure would also provide a mechanism where a prosecution could be put into district court and bypass the county attorney should he decide not to take action or enforcement. It also specified penalties. The bill would not prevent elected officials from lobbying, nor prevent public employees from having involvement in political activities on their own time or deny free speech and their ability to give out information. There was a provision in the bill which would state if a county attorney does not take a prosecution to court within 15 days his office would become vacant. He felt fair and honest elections are necessary and the legislature must oversee that responsibility.

Jack Traxler, Missoula, noted they have seen people from their county offices lobbying on their working time and felt the expenditures for this amount to thousands of dollars. He urged consideration.

Robert Lee, Bigfork, was a proponent of CI-27 and he stated he had helped bring a lawsuit against the teachers in his area for lobbying and noted there is another pending case in the Kalispell area. The powers of the county attorneys are dictatorial on matters such as this he felt. He thought the bill had a lot of merit.

Dave Fox, Missoula, felt the concern was similar to what our government faced 200 years ago. The people should be the final decision makers he stated and we must have free elections to prevent the utilization of our tax money to fight the very things the citizenship wants. He felt this was just asking the legislature to mend the fabric of our constitution to insure we have free elections.

Bob Bancroft, Corvallis, was in full agreement with Mr. Murbut and Mr. Fox. He showed the committee samples of news articles quoting our agency director's opinions on recent elections. He felt these had had a direct affect on the outcome of many of the issues in a past election. He did not feel this kind of activity should be allowed.

Naomi Powell, Corvallis, representing the Friends of the Constitution, who was very instrumental in promoting CI-27, stated she felt we need fair elections and urged support.

Vera Cahoon, representing the Missoula County Freeholders, noted she had been quite intimidated by the numbers of state employees who lobbied against measures they opposed during legislative session. She urged careful consideration.

Julie Parker, representing the Missoula County Freeholders, noted it would not prohibit the public employees from speaking provided they take a leave of absence and not appear as a public employee. She noted there are presently 172 state employees registered as lobbyists this session. She wanted fair and free elections.

Lowry Risdahl, Missoula County Freeholders, spoke for the twelve people who had come over for the hearing who were in support of the proposal.

OPPONENTS: Eric Feaver, of the Montana Education Association, noted he himself represented no expenditure of public funds in his present capacity and that member's due pay for his involvement. He felt this bill would affect just about everyone in Montana and apprehending violators would wreak havoc on public employment and public agencies. The bill raises constitutional questions regarding free speech he thought. He wondered what

"paid time" meant. He noted if an employee were to appear at a hearing they had to maintain a file of all requests and it could become a very cumbersome, time consuming process. He maintained if a public employee could not express an opinion regarding ballot issues that there would not be a social studies class taught in the schools without being in violation. He felt the proposal was a legal invitation to insubordination. He noted if only ten people filed a complaint the county attorney would have to prosecute within 15 days or vacate his office. He felt this would not be very workable. The penalties were very extreme. He also noted there would be personal liability involved also wherein if you were found guilty you would have to be held responsible for the costs of conducting a new election. He stated the bill was an offense to the people of Montana and would cause a dramatic change in the conduct of public business.

Kim Wilson, representing Common Cause, noted there may have been some abuses in the past election and they, too, desired fair elections, but this bill was too extreme. He felt we need to look at our individual constitutional rights, our freedom of speech and our rights to privacy which he felt this proposal would violate.

Tom Schneider, representing the Montana Public Employee's Association stated if legislators were to deal with legislation without knowing all the facts we would be far worse off. He hated to think that supporters of this legislation intend to limit information which would not produce healthy debate. He felt in the end, this might be a very costly measure.

Nadlean Jensen, representing the public employees who are members of the American Federation of State, County and Municipal Employees, found many flaws in the bill. She expressed concern about utilizing public resources in support or opposition of a ballot issue. She noted public employees are paid by public resources and she wondered if this pay forever constituted public resource. She noted there is a law in the code book regarding public employees being able to speak out politically and felt this was sufficient.

Terry Minnow, with the Montana Federation of Teachers, stated they were in strong opposition to this proposal as it was very flawed and raised many constitutional questions.

Debra Schlesinger, representing the Montana Library Association, urged a do not pass because it would have a very dramatic effect on their abilities as a library to distribute information.

Alex Hanson, with the Montana League of Cities and Towns, opposed the bill because he felt our freedom of association is a basic right and this was denied in this legislation. He did not feel anyone's rights in the legislative process should be stifled.

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He felt it was a loss of due process imposing a penalty on the county attorneys to vacate their office if they did not respond within 15 days.

Michael Hunt, representing the Montana State Firemen's Association, stated the lobbying they do is all paid for from membership dues and not from tax dollars. As a taxpayer, one has a right to express your opinions he felt.

QUESTIONS ON SENATE BILL 339: Senator Harding asked Mr. Marbut if there could possibly be some compromises made. Mr. Marbut felt it was necessary in order to have a complete process from beginning to end but could perhaps be softened. Senator Harding felt it was wrong to stifle an official and Mr. Murbut responded that this did not apply to elected officials only to non-elected officials. Senator Hofman asked Mr. Feaver if he felt there had been some abuses by the teachers in the past election and he stated his organization is privately funded and since there was no use of public moneys there could therefore be no abuse of public moneys. Senator Hofman asked Tom Schneider if he had polled his people on their views of CI-27 and he noted they did have a resolution on their position. Mr. Schneider then added if this measure were to pass there would be many more lawsuits in court. The bill as written was just not workable he felt and would result in people becoming afraid to express themselves on any issues.

Senator Boylan then began his CLOSING by noting when he first began serving in the legislature under Governor Anderson's leadership that he was very adamant about having state employees in the halls or influencing the legislators. He noted about 1/3 of the registered lobbyists are state employees and felt the bureaucrats are running government and there needed to be a separation.

The hearing was CLOSED on Senate Bill 339.

The hearing was opened on Senate Bill 354.

CONSIDERATION OF SENATE BILL 354: Senator Larry Stimatz, Senate District 35, Butte Silver-Bow, was the sponsor of this bill entitled, "AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AMENDMENTS TO THE MONTANA CONSTITUTION ABOLISHING THE BOARD OF REGENTS OF HIGHER EDUCATION AND PROVIDING FOR THE STATEWIDE ELECTION OF A COMMISSIONER OF HIGHER EDUCATION; AMENDING ARTICLE VI, SECTIONS 1 THROUGH 4 AND 6, AND ARTICLE X, SECTION 9, OF THE MONTANA CONSTITUTION; AND PROVIDING AN EFFECTIVE DATE." He stated when the system was first set up, it was considered to be a very enlightened way to coordinate our educational system. The Board has since been engaged in much bickering, turmoil, dissension and legislative interference. He noted the Board's activities over

the past 6 or 7 years has been very chaotic. He felt a Board was not needed to run the university system. This proposal would call for a referendum to abolish the Board and provides for a Commissioner of Public Education to run the operation. He noted the administrator would not have to have a graduate degree but just needed to be a very good administrator in order to get cooperation of the six unit heads. He urged a do pass.

PROPOSERS: There were none.

OPPOSERS: Jeff Morrison, a member of the Board of Regents, spoke in defense of the system as it exists today. He felt our constitution envisioned a board that was semi-insulated from politics. He noted there has been some turmoil in the past but the problem has mostly been in budgets. They do not generate revenue and since the economy has gone down there has been much frustration trying to balance the budgets. He felt a different method of governing would not cure the frustrations by throwing it into the public arena. He did note they are educating 26,000 students for the same amount of money that Wyoming does for 8,500 students which he felt was a very fine record. He did not believe a change in governing was necessary at this time.

Terry Minnow, Montana Federation of Teachers, rose in opposition. She stated their association has not always been pleased with the Board's decisions but the biggest problems have been inadequate funding and they did not support a change in governing at this time.

QUESTIONS ON SENATE BILL 354: Senator Hirsch asked about the management problems the Board has experienced. Mr. Morrison noted they are criticized if they do too much and if they do not do enough. He felt there has been some duplication in teacher education and in business and felt they needed to look at unnecessary duplication. He felt turfbuilding would always be a problem and a strong board was needed to deal with these pressures. Senator Farrell asked if a plan could perhaps be developed for further down the road which might help the legislature. Mr. Morrison stated they always face the dilemma of uncertain funding. Once a system is in place it is hard to move backwards again. Senator Farrell noted again it would be very helpful to have some sort of a plan for guidance. Mr. Morrison stated they do have a plan it just was not as long term as Senator Farrell wished.

In CLOSING, Senator Stimatz noted that historically there has always been a lack of funds. This proposal would put a management technique back into place. He CLOSED the hearing on Senate Bill 354.

The hearing was opened on Senate Bill 355.

CONSIDERATION OF SENATE BILL 355: Senator Mike Walker, Senate District 20, was sponsor for this bill entitled, "AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE X, SECTION 9, OF THE MONTANA CONSTITUTION TO LIMIT THE CONSTITUTIONAL AUTHORITY OF THE BOARD OF REGENTS AND PROVIDE FOR THE ELECTION OF A FIVE-MEMBER BOARD OF REGENTS FROM FIVE REGIONAL DISTRICTS; AND PROVIDING AN EFFECTIVE DATE." This bill would change the constitution by changing the Board's powers and reconstruct it to a five-member board which would be elected. He felt the Board's powers now are equal to a fourth branch of government and this was in direct conflict to the way the rest of the schools are operated. He felt we should not let politics interfere with our children's educations. This way the people would have a choice he felt.

PROPOSERS: There were none.

OPPOSERS: Carroll Krause, Commissioner of Higher Education, felt the bill would make the Board of Regents a coordinating board rather than a governing board. He noted that most states do appoint the governing boards for higher education. He was concerned this would take away the governing powers and put it into the political arena. He felt you would see even more duplications if this measure were to pass.

Jeff Morrison, from the Board of Regents, noted this would create another bureaucracy by eventually having a board with salaries and staff similar to the Public Service Commission.

QUESTIONS ON SENATE BILL 355: Senator Harding wondered about the costs of holding an election for five people and Senator Walker was uncertain what it would cost. He noted, though, our local school boards work on a volunteer basis part-time.

Senator Walker then CLOSED by stating he felt as elected officials the Board would be more accountable to the public. The hearing was CLOSED on Senate Bill 355.

EXECUTIVE ACTION ON SENATE BILL 339: Senator Haffey noted that parts of this bill had already been heard in SB 67 sponsored by Senator Gage. He noted, too, there are concerns about the constitutional concerns with the bill. Senator Hirsch MOVED THAT SENATE BILL 339 DO NOT PASS. He stated he felt our current election laws are more than adequate. Senator Hofman felt there might have been some abuses in past elections but this bill was not the answer. It might send out a message though to people to be more careful in the future. Senator Anderson felt there were just too many constitutional problems with the bill. Senator Lynch seconded the motion. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 354: Senator Lynch MOVED THAT SENATE BILL 354 BE SENT ONTO THE SENATE FLOOR WITHOUT RECOMMENDATION. Senator Harding seconded the motion. Senator Haffey felt we should express our recommendations by a vote. Senator Lynch favored sending it out without recommendation. Senator Hofman made a SUBSTITUTE MOTION THAT SENATE BILL 354 DO PASS. Senator Farrell seconded the motion. The motion carried with Senators Haffey, Rasmussen and Abrams voting "no." This was a roll call vote.

EXECUTIVE ACTION ON SENATE BILL 355: Senator Lynch MOVED THAT SENATE BILL 355 DO PASS. Senator Hirsch seconded the motion. The motion carried with Senators Haffey, Rasmussen and Abrams voting "no."

EXECUTIVE ACTION ON SENATE BILL 279: There were some amendments that had been coordinated by the librarians and Jim Pellegrini along with Eddy McClure, Legislative Researcher. A letter noting this cooperation had been received by the committee. (EXHIBIT 2) Senator Harding then MOVED THAT THE AMENDMENTS BE ADOPTED. Senator Vaughn seconded the motion. The motion carried. Senator Hofman then MOVED THAT SENATE BILL 279 DO PASS AS AMENDED. The motion passed unanimously.

EXECUTIVE ACTION ON SENATE BILL 334: In earlier action on February 18, 1987 there had been a motion to TABLE SENATE BILL 334 by Senator Farrell and he had later withdrawn this motion. Senator Harding then MOVED THAT SENATE BILL 334 DO PASS. Senator Hofman seconded the motion. Senator Haffey spoke against the motion. He felt it was the same as a reduction in salary. On a vote, Senator Hofman and Senator Harding voted "yes" and the remainder of the committee voted "no." The motion failed.

The meeting was adjourned at 11:50 a.m.

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SENATOR JACK HAFFEY, Chairman

ROLL CALL

SENATE STATE ADMINISTRATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2-19-87

NAME	PRESENT	ABSENT	EXCUSED
SENATOR JACK HAFLEY	X		
SENATOR WILLIAM FARRELL	X		
SENATOR LES HIRSCH	X		
SENATOR JOHN ANDERSON	X		
SENATOR J. D. LYNCH	X		
SENATOR ETHEL HARDING	X		
SENATOR ELEANOR VAUGHN	X		
SENATOR SAM HOFMAN	X		
SENATOR HUBERT ABRAMS	X		
SENATOR TOM RASMUSSEN	X		

Each day attach to minutes.



DATE FEBRUARY 19, 1987

## COMMITTEE ON SENATE STATE ADMINISTRATION

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
Carol S. Harbow	M.C.C.	339	✓	
Tom Hudak	Assoc. Students	339		
Laura M. Moseley	myself	339	—	
Marylin Louise	myself	339	—	
Nadine Jensen	ET FSCME	339		✓
Joy Anderson	myself	339	✓	
Ph Bonaroff	Richth of C-1-27	339	✓	
Mrs Wilson	Community Center	339		✓
Michael Ward	USTA	339		✓
Tim BERGSTROM	MT STATE COUNCIL PROF. Fire Fighters	339		✓
Raymond J. Fisher	Myself	339	✓	
Edward H. Best	myself	339	✓	
David L. Fox	Myself	339	✓	
Laura M. Nichols	Myself	339	✓	
Louise K. Smith	Missouri State Teacher	339	✓	
John H. H. H.	Missouri State Teacher	339	✓	
Ellen S. S.	myself	339	—	
Robert S. S.	myself	339	✓	
Jan S. S.	myself	339		✓
Jan S. S.	myself	339		✓
Theresa Carson	Missouri State Teacher	339	✓	
Ellen S. S.	myself	339	✓	
Vivian S. S.	myself	339	✓	
Carol S. S.	myself	339	✓	
Carol S. S.	myself	339	✓	

(Please leave prepared statement with Secretary)

DATE FEBRUARY 19, 1987

COMMITTEE ON SENATE STATE ADMINISTRATION

# VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

SENATE JOURNAL  
DATE 2-19-87  
BILL NO. SB 339

TESTIMONY of  
Gary S. Marbut, Chairman of the Board of Policy  
Montana Council of Organizations

MONTANA SENATE, STATE ADMINISTRATION COMMITTEE, Feb. 19, 1987

in SUPPORT OF  
SENATE BILL # 339: "AN ACT REGULATING GOVERNMENT EMPLOYEES  
INVOLVEMENT IN POLITICS

#### NEED FOR S.B. 339

During the campaigns preceeding the November 4, 1986 elections, there occurred many examples of public employees improper and illegal use of taxpayers' funds and resources to affect the outcome of an election. Many of these illegalities concerned school officials distribution of anti-CI-27 materials to parents and voters. In most cases, these materials were printed on school paper, using school copiers, and distributed using school postage.

The attention of several county attorneys, the Commissioner of Political Practices, and the Attorney General has been called to these infractions of existing Montana law. The Commissioner of Political Practices has been unwilling or unable to act on these infractions. No county attorney has brought charges to correct these problems, and the Attorney General has refused to assume supervisory control of the county attorneys in this matter. All of these enforcement officials contend that the existing law is "vague" or "grey".

#### EXISTING LAW

The Montana Code Annotated, at 13-35-226(3) says, in part, "No public employee may solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at his place of employment."

This is the existing statute which enforcement authorities claim is "grey", "vague", and difficult to enforce.

#### EXAMPLES OF WRONGDOING

1. In early October of 1986, Missoula School District 1 distributed material to about 5,700 students, to take home to parents, which urged parents and voters to oppose CI-27. When this act was called to the attention of the Missoula County Attorney, he authored a memo to "All School Officials", dated October 24, 1986, citing M.C.A. 13-35-226(3), and warning them that such acts were likely illegal. Distribution of this memo included the Superintendent of District 1. The County Attorney then followed up this memo with a phone call to the Superintendent of District 1 to make certain that the Superintendent understood the message, and was assured by the Superintendent that the school district would not repeat this act. On about October 29, 1986, the Superintendent of District 1 ordered distribution of another printed page to some 5,700 students, for these students to take home to parents, which page contained allegations about the "Effects" of CI-27 passage, including the allegation, "Schools would be closed." A Missoula County resident, registered voter, and District 1 parent demanded that the County Attorney prosecute the Superintendent of District 1 for this flagrant violation of M.C.A. 13-35-226(3). The County Attorney refused to take action, and decided, instead, to defend the Superintendent in a civil suit

brought in this matter.

2. The Superintendent of Falxville Public Schools mailed a flyer, using the school bulk mail permit, to all boxholders in his area, which had the large headline, "VOTE 'NO' on CI-27 Tuesday, November 4", which flyer was printed on school equipment. That flyer was accompanied by a "CLOSING OPINION ON CI-27" by the Superintendent, which said, "I also know that when the state says that many of our schools will close down, they're not lying." This infraction was called to the attention of the Commissioner of Political Practices, who has failed to commence any enforcement action in this example.

3. A teacher and President of the PTA at Hellgate Elementary School, Missoula District 4, printed a PTA newsletter on school printing equipment, and distributed this newsletter to about 800 schoolchildren to take home to their parents and voters. This newsletter was dated October 23, 1986, and contained the following statement, "MISSOULA PTA COUNCIL, INC., VOTED TO OPPOSE I-27 AND I-105 AT ITS OCTOBER 7, 1986 MEETING. AS CONCERNED MISSOULIANS AGAINST I-27, WE CAN HELP BY SENDING OUR SIGNATURES FOR A PAID AD OF CITIZENS AGAINST I-27. IF YOU WANT YOUR NAME LISTED IN THE MISSOULIAN, SEND \$1.00 AND YOUR SIGNATURE TO: RUTH KRAFT 1701 CYPRESS CT., MISSOULA 59801. CHECKS SHOULD BE PAYABLE TO MISSOULIANS AGAINST I-27." The Missoula County Attorney and the Commissioner of Political Practices have declined to prosecute this violation.

4. A transcript from a Kalispell TV station, on October 29, 1986, says, "THE STATE OFFICE OF CAMPAIGN PRACTICES TOLD US TODAY THAT SCHOOL DISTRICT FIVE LIKELY VIOLATED STATE LAW WHEN THE DISTRICT ACTIVELY PARTICIPATED IN THE DISTRIBUTION OF THIS ANTI-CONSTITUTIONAL INITIATIVE 27 INFORMATION TRACT. THE DOCUMENT WAS PAID FOR BY PRIVATE DONATIONS AND SIGNED BY REPRESENTATIVES OF BOOSTERS AND PARENTS GROUPS, BUT ITS DISTRIBUTION THROUGH THE SCHOOL SYSTEM WAS ALMOST CERTAINLY AN INFRACTION. THE LAW SAYS THAT IT IS ILLEGAL FOR ANY PUBLIC EMPLOYEE TO WORK IN SUPPORT OF OR OPPOSITION TO THE PASSAGE OF ANY BALLOT ISSUE WHILE ON THE JOB OR AT THE PLACE OF EMPLOYMENT. IN ASSISTING IN THE DISTRIBUTION OF INFORMATION, SCHOOL EMPLOYEES INVOLVED DID JUST THAT." The Commissioner of Political Practices and the County Attorney were both aware of this infraction. No enforcement action was taken.

Concluding examples, these are just a few examples, and as many as thirty (30) other similar examples could be cited to the committee, with accompanying evidence. It is presumed that the committee is too pressed for time to review all of these examples and their documentation, however, that documentation is available. It is maintained that there were between 100,000 and 200,000 illegal voter contacts prior to the November 4, 1986 election, and between \$20,000 and \$100,000 of taxpayers' resources expended illegally. To date, there has been NO enforcement action taken in this matter by any enforcement authority.

#### OPINION OF ENFORCEMENT AUTHORITIES

1. In a letter about lobbying by public employees dated April 29, 1985, Jack Lowe, Staff Attorney for the Commissioner of Political Practices says, concerning existing statutes about lobbying by public employees (M.C.A. 5-7-102(6) ), "I think this suggests a need for clarifying amendments to the statute."

2. In a letter to County Attorneys concerning the 1986

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elections infractions, dated 19 November, 1986, Jack Lowe says, "Frankly, whether the law should be applied to these situations is not very clear. And the number and widespread nature of the incidents suggests to me that it might be useful attempt (sic) to develop a statewide policy as to the proper interpretation of the law."

3. In a letter to Gary S. Marbut, dated 14 November, 1986, Jack Lowe says, "There were similar activities in five Montana counties that I know of", and goes on to say, "Surprisingly, it is not yet clear whether and to what extent such activities violate Montana criminal law."

4. In a letter to Gary S. Marbut, dated 29 December, 1986, Attorney General Mike Greely says, "The materials you submitted certainly present questions which deserve attention by the various county attorneys involved. However, you do not present facts upon which I intend to exercise supervisory power over all or any of them."

#### CONSTITUTIONAL IMPERATIVE

Article IV, Section 3. of the Montana Constitution says, "The legislature ... shall insure the purity of elections and guard against abuses of the electoral process." It is agreed that the legislature felt that it had properly satisfied this MANDATE for PURITY with previous law. It is apparent, however, that there are loopholes in the existing laws that are so huge that a whole convoy of Mack trucks has been driven through. The people of Montana, who are the sovereigns under Article II, Section 1. of the Montana Constitution, have had their political processes hugely violated, with their own resources. The people of Montana insist on an end to this violation and full implementation of Constitutional protections.

#### SENATE BILL 339

S.B. 339 cures existing and apparent loopholes in the law by five types of provisions, which are:

1. S.B. 339 defines terms which are currently called "vague" or "grey", so there can be little question about what is covered and what is not.
2. S.B. 339 makes it illegal for public employees to lobby legislative bodies while they are being paid for working.
3. S.B. 339 makes it clearly illegal for public employees to attempt to influence the outcome of elections while they are being paid by taxpayers.
4. S.B. 339 provides an alternate route to enforcement, to circumvent enforcement agencies which may refuse to enforce the laws.
5. S.B. 339 specifies clear penalties for violations which will act as a deterrent to illegal acts and violations of public trust.

Generally, S.B. 339 will help prevent the might of government from serving, first, the interests of government employees, as opposed to the people of Montana.

S.B. 339 would NOT:

1. Prevent elected officials from lobbying legislative bodies.
2. Prevent public employees from having involvement in public, legislative, or elective processes when acting on their own time and outside of official capacity.
3. Deny any private citizen of any rights of speech or suffrage.
4. Prevent public employees from providing information to the legislative bodies or prevent public employees from performing other appropriate public services.

#### CONCLUSION

The legislature has a constitutionally mandated responsibility to "insure the purity of elections" and maintain integrity and propriety of public processes. Previous attempts by the legislature have not accomplished these goals. Widespread abuse of current law has been documented. Much of the current problem arises out of lack of definition and unwillingness of enforcement agencies to enforce existing laws. The legislature has a moral and constitutional mandate to correct these faults. S.B. 339 provides the means for a correction.

Whether or not a person agrees with CI-27 is irrelevant to the requirement for fair elections. Justices of the Montana Supreme Court have said, "CI-27 is not so much a fatal disease as it is a symptom that something is ailing in the Montana body politic." If Montana cannot depend on fair elections and fair political processes, the disease will then have been fatal, and Montana's constitution will have been breached and voided.

The legislature cannot be too strongly or sincerely urged to support S.B. 339.

- - - END - - -

11-35  
COMMISSIONER OF POLITICAL PRACTICES



TED SCHWINDEN, GOVERNOR

PEG KRIVEC, COMMISSIONER  
1205 EAST EIGHTH AVENUE

STATE OF MONTANA

(406) 449-2942

CAPITOL STATION  
HELENA, MONTANA 59620

29 April 1985

Gary S. Marbut  
P.O. Box 4924  
Missoula, MT 59801

SENATE BILL ALREADY  
FILED NO. 1  
DATE 2-19-87  
BILL NO. SB 339

This will acknowledge your letter of 22 April, regarding recent lobbying activities by certain Missoula County employees.

The facts of this matter are substantially as you describe them in your letter, and there does not seem to be any dispute about them. However, we received a registration statement from Mr. Schwartz and Missoula County on April 25, which is within the one-week period mandated by section 5-7-203, MCA.

At some earlier date, Mr. Sehestedt of the Missoula County Attorney's office had called this office to inquire as to whether or not county employees such as Mr. Schwartz needed to register as lobbyists. I am somewhat embarrassed to learn that he was told they did not. But Sehestedt so advised Mr. Schwartz.

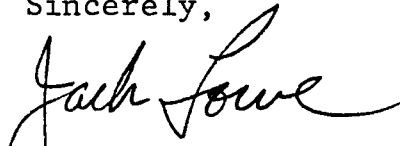
Furthermore, the Missoula County Attorney still has some question as to whether Schwartz should be required to register, based on his interpretation of section 5-7-102(8)--the definition of "principal"--and the fact that the County has not spent \$1000 paying him to lobby. If the County is not a "principal," according to his reasoning, then Mr. Schwartz cannot be a "lobbyist for hire" under section 5-7-102(6). I do not agree with this interpretation, but I must admit it is a creditable argument. I think all this suggests a need for clarifying amendments to the statute.

Anyway, in answer to your numbered questions, I maintain that Mr. Schwartz is indeed required to register and did so within the applicable time limit. His "principal," in any event, would be the County of Missoula and not Ms. Dussault personally. Thus the reference to the recall act is not applicable here and in fact is a little mysterious to me.

I hope this serves to clarify the situation somewhat, and  
needless to say I don't feel that any enforcement action  
is called for at this point.

Feel free to contact us if you have further questions.

Sincerely,



JACK LOWE  
Staff Attorney



# COMMISSIONER OF POLITICAL PRACTICES



TED SCHWINDEN, GOVERNOR

PEG KRIVEC, COMMISSIONER  
1205 EAST EIGHTH AVENUE

## STATE OF MONTANA

(406) 449-2942

CAPITOL STATION  
HELENA, MONTANA 59620

19 November 1986

2-19-87

SB339

Dear County Attorney:

During the recent statewide election, there were a number of instances of local schools or school personnel distributing materials having to do with Constitutional Initiative 27, the measure which would have eliminated property taxes in our state.

Our office has received a number of complaints alleging that activities of various school personnel may have violated §13-35-226(3), "Unlawful acts of employers and employees." Some of these allegations concern material originating with the schools themselves, some with material which was prepared by other persons and distributed through the school system.

Frankly, how and whether the law should be applied to these situations is not very clear. And the number and widespread nature of the incidents suggests to me that it might be useful attempt to develop a statewide policy as to the proper interpretation of the law. Our office has authority to interpret the above-mentioned statute, as of course does the Attorney General. Mr. Greely has agreed to assist in this matter, but we would prefer to be apprised of as many of the complaints as possible before attempting to reach a decision. Any policy we might develop would not necessarily be binding on the County Attorneys, but it certainly could be useful to you if you are faced with this problem.

For these reasons I would appreciate it if you could pass on to me any complaints you have received in this area, along with examples of the materials that were distributed and received by residents of your county. Our address appears above, or you may call me at 444-2942.

Sincerely,

A handwritten signature in cursive script that reads "Jack Lowe".

JACK LOWE  
Staff Attorney

RECEIVED  
11-21-86

# COMMISSIONER OF POLITICAL PRACTICES



TED SCHWINDEN, GOVERNOR

PEG KRIVEC, COMMISSIONER  
1205 EAST EIGHTH AVENUE

## STATE OF MONTANA

(406) 449-2942

CAPITOL STATION  
HELENA, MONTANA 59620

14 November 1986

Gary S. Marbut  
P.O. Box 4924  
Missoula, MT 59806

Dear Mr. Marbut:

This will acknowledge receipt of your letter regarding the activities of your local school district in the recent election, i.e., the possible distribution of materials regarding Constitutional Initiative 27.

Yours is not the only letter on the subject we have received so far and I doubt whether it will be the last. There were similar activities in five Montana counties that I know of, and probably others of which I have not yet heard.

Surprisingly, it is not yet clear whether and to what extent such activities violate Montana criminal law. Currently our office, the Attorney General, and a number of the state's County Attorneys are engaged in a discussion as to what can and should be done about the matter. If this were a matter of only a single case or situation, I think our course would be clear; but as widespread as the instances of distribution of materials was, and with such widely varying contents of information, it is going to be necessary to agree on some statewide policy to follow. Whatever action the State takes or the various counties take will not be immediate.

I appreciate very much your bringing this matter to my attention. If you know of other instances of the same nature and can provide examples of the materials that were distributed, I would be very interested to see them.

Again, thanks for your interest.

Sincerely,

A handwritten signature in cursive script that reads "Jack Lowe".

JACK LOWE  
Staff Attorney

STATE  
OF  
MONTANA  
**ATTORNEY GENERAL**  
**MIKE GREELY**

JUSTICE BUILDING, 215 N. SANDERS, HELENA, MONTANA 59620  
TELEPHONE (406) 444-2026

29 December 1986

Gary S. Marbut  
P.O. Box 4924  
Missoula MT 59806

Re: Complaints Concerning CI-27

Dear Mr. Marbut:

This is in response to your letter of November 13, 1986, concerning the above-captioned matter. You have asked me to exercise supervisory control over the various county attorneys to respond to what you have characterized as a "crime wave" involving public employees improperly attempting to influence the outcome in an election.

In the exercise of supervisory power over the various elected prosecutors through the state, it has been the consistent policy of this office to refrain from second-guessing the prosecutorial decisions of the county prosecutors unless there clearly appears an abuse of the discretion allowed these officials in any particular case. Since the office of county attorney is an elected one, the holder of that office is primarily accountable to the constituents of the county for actions taken or not taken in office. Each county attorney has the very considerable task of evaluating each case before him in light of the available evidence, the statutes in question, and an estimate of the likelihood of a successful prosecution. His is not a mechanical function but one involving considerable discretion entrusted to him by the people of the state and his constituents. I have never and will never substitute my judgment for that of the county attorney unless it appears that a clear abuse of that discretion has occurred.

The materials you submitted certainly present questions which deserve attention by the various county attorneys involved. However, you do not present facts upon which I intend to exercise supervisory power over all or any of them.

Gary S. Marbut  
Page 2  
29 December 1986

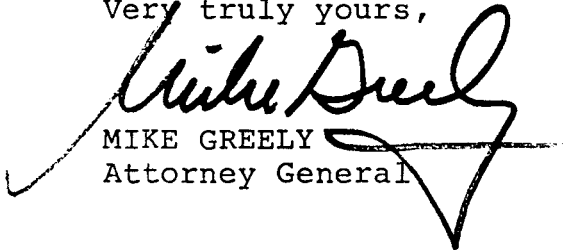
1  
2-19-87  
513 339

I have been in communication with several of the county attorneys and the counsel to the Commissioner of Political Practices regarding the election on CI-27 and will continue to monitor these matters and provide advice to the offices charged with the duty to act in appropriate cases.

While the criminal law may be an unsuitable remedy in most of the cases you cite, I believe that civil remedies and administrative action to curtail inappropriate attempts to influence the outcome of an election are a viable alternative. Such an approach would have the beneficial effect of ensuring that school officials and employees limit such activities to their own time and expense.

Since several of these cases are pending, it would be inappropriate for me to comment further on the merits of the claims.

Very truly yours,



MIKE GREELY  
Attorney General

# MISSOULA COUNTY

OFFICE OF THE ATTORNEY  
MISSOULA COUNTY COURTHOUSE  
MISSOULA, MONTANA 59802  
TELEPHONE: (406) 721-5700

**ROBERT L. DESCHAMPS III**

COUNTY ATTORNEY

2-19-87

SB 339

## MEMORANDUM

TO: ALL SCHOOL OFFICIALS  
FROM: ROBERT L. DESCHAMPS III, Missoula County Attorney  
DATE: OCTOBER 24, 1986  
RE: USE OF SCHOOL EMPLOYEES AND FACILITIES  
FOR POLITICAL PURPOSES

It has come to my attention that some schools have been allowing school personnel and property to be used to distribute information that tends to urge voters to vote against C.I. 27.

Section 13-35-226, MCA, makes it a misdemeanor for public employees to "solicit support for or opposition to ... the passage of a ballot issue while on the job or at his place of employment." The statute goes on to allow public employees to express their personal political views, but I believe prudence would dictate that you avoid even doing that while at work lest your intentions be misconstrued.

Of course you may release information regarding school budgets, levies and the like, but do so in a neutral fashion.

Your cooperation with this will avoid problems for all of us.

*Thanks for bringing this  
problem to my attention.*

*Dusty Deschamps*

## HOW CONSTITUTIONAL INITIATIVE 27 WOULD AFFECT SCHOOL DISTRICT ONE

CI-27

On the ballot for the Nov. 4 election is a state initiative--CI 27--  
that would abolish property taxes as of July 1, 1987 and prohibit the  
Legislature from imposing a sales tax or increasing income taxes  
without the approval of a majority of registered voters.

Property  
Taxes Fund  
Schools

Property taxes in Montana make up \$1 billion of the \$5 billion the  
state spends every two years. Although property taxes make up  
20 percent of the total, property taxes fund much more than 20  
percent of school budgets. Most of the property tax total goes  
directly to schools.

58% Loss

If property taxes were eliminated, School District One would lose  
about 58 percent of its funding. Schools in Montana are funded both  
from the state (Foundation Program) and through local property taxes.  
People who live within School District One have the chance every  
April to approve or disapprove funding approximately 30 percent of the  
District general fund budget. This is called the voted levy and is  
one part of property taxes that go to schools.

Here's a breakdown of the 1986-87 budget and what  
percent comes from property taxes:

Total District One budgets-----\$17,665,725  
Amount funded from property taxes-----\$10,279,873

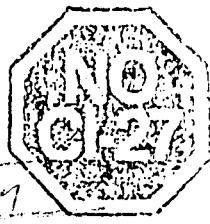
Percent of loss if property taxes are eliminated: 58.18%

What would a 58 percent loss of revenue do to Missoula's elementary  
schools?

1. Local people would lose control of 30 percent of the  
general fund (voted levy).
2. All "special" services would be eliminated: such as  
music, art, physical education, libraries, pre-school  
handicapped program, Project Excel, drug and alcohol  
abuse prevention program, electives in the middle schools.
3. There would be no more clerical or custodial help, equip-  
ment purchases, maintenance of schools, books and materials  
purchases, hot lunch, busing for less than three miles.
4. Schools would be closed. How many would depend on how  
many children could be put into the largest classrooms.
5. Class size would increase to at least 40 in a room.

The Effects

# VOTE 'NO' on CI-27 Tuesday, November 4



Constitutional Initiative 27 on the November 4 ballot would abolish all property taxes in Montana. It is a radical and extreme proposal. Property tax reform is one matter, abolishing property taxes and the destruction of essential public services is something else.

Local public schools and vital municipal and county services would fall victim to CI-27. The real victims are the people of Montana, including current and future generations of school children.

Across Montana, our public schools receive over 54% of their operating revenue from property taxes. For many districts in rural areas, the percentage is much higher. Without this income many of our schools will be forced to close and students will be left with — what?

Basic and essential classroom programs, not "frills," are at risk. Just as threatened are school district transportation systems, construction and repair of school buildings, and the pension system for Montana's teachers.

In our cities and towns, the axe will fall on police and fire protection, street maintenance, sanitation service, and all other services that make for a safe and decent community in which to live. Over 45% of the funds needed to operate our cities and towns comes from property taxes.

In our counties, the sheriff's department, roads, bridges, courts and our rural hospitals and libraries are all in the CI-27 bull's eye. Property taxes provide Montana's counties with over 47% of their general revenue.

Who gets the big tax break if CI-27 passes? Not you and your neighbors as individual homeowners. Not our farmers and ranchers. Together, residential and agricultural property is only 33.5% of the property tax base. The big winners are the utilities and big business. Railroads, utilities, mining companies, and the big corporations now pay 66.5% of all property taxes in Montana.

Local voter control is threatened by CI-27. Many property tax-based service decisions, including school operating levies, school transportation, construction, and improvement bonding issues, are controlled by local voters deciding local issues. If property taxes are abolished by CI-27, all financial decisions will be made by the state legislature.

Say 'Yes' to our public schools and the future of Montana on NOVEMBER 4 —

**Exhibit**

**4C-F**

**Page 1**

VOTE 'NO' ON CI-27

Please Note  
Superintendent's  
Comments  
Enclosed  
-Tanya

## PTA NEWSLETTER

OCTOBER HAS BEEN A BUSY MONTH FOR PTA. THANKS TO ALL OF YOU WHO ATTENDED OUR MEETING. BETTY PEARL DISCUSSED "BOOK IT", A READING INCENTIVE PROGRAM. MANY CLASSROOMS ARE PARTICIPATING AND WORKING FOR THAT PIZZA PARTY FROM PIZZA HUT. LET'S ALL KEEP READING! DON WALDRON PROVIDED INFORMATION CONCERNING CI-27.

T-SHIRTS HAVE ARRIVED! TEN SHORT SLEEVED YOUTH ARE ON BACK ORDER BUT SHOULD ARRIVE SOON. WE WILL SEND T-SHIRTS HOME ON FRIDAY, OCTOBER 24, 1986. ORDERS WILL BE SENT ON NOVEMBER 12 AND DECEMBER 3.

FINGERPRINTING IS SCHEDULED FOR OCTOBER 30, 1986. THE ATTACHED FORM MUST BE RETURNED BY OCTOBER 28 IF YOU WANT YOUR CHILD TO PARTICIPATE.

MISSOULA PTA COUNCIL, INC., VOTED TO OPPOSE I-27 AND I-105 AT ITS OCTOBER 7, 1986 MEETING. AS CONCERNED MISSOULIANS AGAINST I-27, WE CAN HELP BY SENDING OUR SIGNATURES FOR A PAID AD OF CITIZENS AGAINST I-27. IF YOU WANT YOUR NAME LISTED IN THE MISSOULIAN SEND \$1.00 AND YOUR SIGNATURE TO: RUTH KRAFT 1701 CYPRESS CT., MISSOULA 59801. CHECKS SHOULD BE PAYABLE TO MISSOULIANS AGAINST I-27.

THE CARNIVAL COMMITTEE HAS BEEN WORKING VERY HARD. WE NEED VOLUNTEERS TO HELP WITH SEVERAL BOOTHS. WE ALSO NEED CAKES DONATED FOR THE CAKE WALK AND FOOD AND CRAFTS DONATED FOR BINGO. WE NEED VOLUNTEERS TO HELP SET UP, STARTING AT 1:00 ON NOVEMBER 7, 1986. PLEASE CONTACT BONNIE CLIXBY OR SANDY KNUCHEL. WE WILL BE SERVING PIZZA, POLISH DOGS AND NACHOS SO COME HAVE DINNER WITH US AND JOIN THE FUN, NOVEMBER 7, 1986.

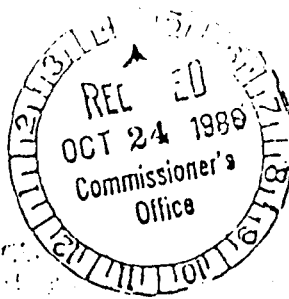
OUR NEXT MEETING WILL BE HELD NOVEMBER 5, 1986. SOME OF MRS. RAPPAS KINDERGARTEN STUDENTS WILL BE THERE TO SING, DANCE AND ENTERTAIN YOU. PLEASE TRY TO ATTEND, WE NEED YOUR SUPPORT! THANKS!

*Jodi Schuyler*

JODI SCHUYLER  
PTA PRESIDENT



MONTANA  
ASSOCIATION OF  
COUNTIES



1802 11th Avenue  
Helena, Montana 59601  
(406) 442-5209

TO: Board of County Commissioners - Cascade Co.

Flathead Co.

Gallatin Co.

Lewis & Clark Co.

Yellowstone Co.

FROM: Margale Prestipino, Secretary

RE: Attached CI-27 Fact Sheet

DATE: October 22, 1986

The attached is a copy of a "Fiction vs Fact" doorknocker being printed and distributed by a group called Missoulians Against Initiative 27. Gordon asked that I forward a copy to you so that you can consider using this same type format with your county's information in place of Missoula in releasing information to your local media or as handouts.

mcp

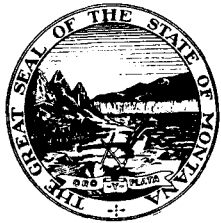
Attachment

cc: Ann Mary Dussault

STATE OF MONTANA

Office of the Legislative Auditor

STATE CAPITOL  
HELENA, MONTANA 59620  
406/444-3122



SCOTT A. SEACAT  
LEGISLATIVE AUDITOR

DATE 2-19-87  
BILL NO. SB 279  
DEPUTY LEGISLATIVE AUDITORS:

JAMES GILLET  
FINANCIAL-COMPLIANCE AUDITS

JIM PELLEGRINI  
PERFORMANCE AUDITS

LEGAL COUNSEL:

JOHN W. NORTHEY

February 13, 1987

Senator Jack Haffey  
Senator Tom Keating  
Senate Chambers  
Capitol Station  
Helena, Montana 59620

Dear Senators Haffey and Keating:

We have met with those agencies that were opposed to certain parts of Senate Bill 279. The attached amendments to the introduced bill represent our efforts in attempting to come up with a bill that maintains the intent of the Audit Committee and addresses the concerns of state agencies. The following explains the changes made by the amendments.

To better define the term "data and information technology resources" we have clarified the words service supplies by calling them special forms, and we added the phrase electronically stored data to emphasize the bill is also addressing security of information.

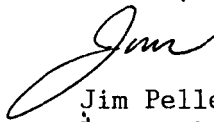
To address much of the concern expressed by the bill's requirement that annual risk analyses be conducted (and the associated costs of these analyses), we agreed on deleting the paragraph on risk analysis and references to annual updates. The intent of the bill was to make agencies responsible for assuring an adequate level of security. We believe other sections of the bill will provide for this responsibility and the Department of Administration through the establishing of standards and guidelines will provide an adequate level of assistance. Instead of requiring annual updates, the bill now calls for agencies to maintain a security plan and associated policies and procedures.

To address concerns expressed by the Department of Administration that the department was given a "watch dog" role by having agencies "certify" their security programs with the department, we struck the certifying requirements. The role of the department as a service agency is still maintained through the section on providing technical and managerial assistance upon request. The responsibility for data security remains with the each agency head.

The wording rules and regulations was replaced by standards and policies so as not to require the need for developing administrative rules, which was not the intent of the section.

The agency personnel who expressed their concerns at the hearing have seen these changes and agree the changes address their problems. The fiscal note attached to this bill will be greatly affected by the amendments since it was not the intent to require technical full-scale risk analysis. With the deletion of any reference to risk analysis we expect a large reduction in the cost of implementation. We believe that over a period of time current agency resources could handle the requirements of this bill since it only emphasizes good management practices.

Sincerely,



Jim Pellegrini  
Deputy Legislative Auditor  
Performance/EDP Audits

JP/ss

Attachment

cc: Sara Parker, State Librarian  
Mike Trevor, Department of Administration  
Paul Dunham, Office of the Commissioner  
of Higher Education

# STANDING COMMITTEE REPORT

FEBRUARY 19 19 87

MR. PRESIDENT

## SENATE STATE ADMINISTRATION

We, your committee on .....

having had under consideration..... SENATE BILL No. 339

first reading copy ( white )  
color

## REGULATE GOVERNMENT EMPLOYEE INVOLVEMENT IN POLITICS Boylan

SENATE BILL 339

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

XXXXXX  
DO PASS

~~DO NOT PASS~~

SENATOR JACK HAFPEY

Chairman.

ROLL CALL VOTE

STATE ADMINISTRATION

SENATE COMMITTEE

Date FEBRUARY 19, 1987 SENATE BILL Bill No. 354 Time 11:40 a.m.

NAME	YES	NO
		X
SENATOR JACK HAFHEY		
SENATOR WILLIAM FARRELL	X	
SENATOR LES HIRSCH	X	
SENATOR JOHN ANDERSON	X	
SENATOR ETHEL HARDING	X	
SENATOR ELEANOR VAUGHN	X	
SENATOR SAM HOFMAN	X	
SENATOR HUBERT ABRAMS		X
SENATOR TOM RASMUSSEN		X
SENATOR J. D. LYNCH	X	

Carol Duval  
Secretary

Senator Jack Haffey  
Chairman

Motion: MOTION BY SENATOR HOFMAN THAT SENATE BILL 354  
DO PASS.

# STANDING COMMITTEE REPORT

FEBRUARY 19..... 19.. 87.....

MR. PRESIDENT

We, your committee on..... **SENATE STATE ADMINISTRATION** .....

having had under consideration..... **SENATE BILL** ..... No..... **354** .....

**first** ..... reading copy ( **white** )  
color

**ABOLISH BOARD OF REGENTS AND REPLACE WITH ELECTED COMMISSIONER**  
**Stimatz**

**SENATE BILL** ..... **354**

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

DO PASS

~~XXXXXXXXXX~~  
~~DO NOT PASS~~

.....  
**SENATOR JACK HAPPEY**

Chairman.

# STANDING COMMITTEE REPORT

FEBRUARY 19

87

..... 19.....

MR. PRESIDENT

## SENATE STATE ADMINISTRATION

We, your committee on.....

having had under consideration..... **SENATE BILL** **355**  
No.....

**first** reading copy ( **white** )  
color

**LIMIT CONSTITUTIONAL AUTHORITY OF FIVE ELECTED MEMBERS OF BOARD OF  
REGENTS Walker**

Respectfully report as follows: That..... **SENATE BILL** **355**  
No.....

~~DO PASS~~

~~XXXXXXXXXX~~  
~~DO NOT PASS~~

~~SENATOR JACK HAFLEY~~.....

Chairman.

# STANDING COMMITTEE REPORT

FEBRUARY 19

87

..... 19.....

MR. PRESIDENT

We, your committee on SENATE STATE ADMINISTRATION.....

having had under consideration..... SENATE BILL..... No. 279

first reading copy ( white )  
color

**ENACT THE SECURITY OF DATA AND INFORMATION TECHNOLOGY RESOURCES  
ACT Keating**

**SENATE BILL 279**

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

**be amended as follows:**

1. Page 2, line 17.  
Following: "software,"  
Strike: "service supplies"  
Insert: "special forms"
2. Page 2, line 18.  
Following: "training,"  
Insert: "electronically stored data,"
3. Page 4, line 12.  
Following: "and"  
Strike: "annually update"  
Insert: "maintain"
4. Page 4, line 22 through line 2, page 5.  
Strike: subsection (3) in its entirety  
Renumber: subsequent subsections
5. Page 5, line 4.  
Following: "recover from"  
Strike: "the identified risks"  
Insert: "identified threats"

~~XXXXXX~~  
DO PASS

~~XXXXXXXXXX~~  
DO NOT PASS

Continued

.....  
Chairman.



6. Page 5, line 6.  
Strike: "that annual"

7. Page 5, line 16.  
Following: "resources;"  
Insert: "and"

8. Page 5, line 20.  
Following: "resources"  
Strike: "; and"  
Insert: "."

9. Page 5, line 21 through line 3, page 6.  
Strike: subsection (8) in its entirety

10. Page 6, line 10.  
Following: "standards"  
Strike: ", rules, and regulations"  
Insert: "and policies"

11. Page 6, line 17.  
Following: "establish"  
Strike: "rules and regulations"  
Insert: "standards and policies"

7049a/L:JEA\WP:jj

AND AS AMENDED  
DO PASS