

MINUTES OF THE MEETING  
STATE ADMINISTRATION COMMITTEE  
MONTANA STATE SENATE

March 3, 1987

The thirtieth meeting of the State Administration Committee was called to order by Chairman Jack Haffey on March 3, 1987 at 10:07 a.m. in Room 331 of the State Capitol.

ROLL CALL: All committee members were present except for Senator Anderson who was excused.

The hearing was opened on House Bill 508.

CONSIDERATION OF HOUSE BILL 508: Representative Bud Campbell, House District 48, Deer Lodge, was sponsor for this bill entitled, "AN ACT ALLOWING THE DEPARTMENT OF ADMINISTRATION TO WAIVE THE REQUIREMENT TO FORFEIT BID SECURITY WHEN A SUCCESSFUL BIDDER REFUSES TO EXECUTE PROPOSED CONTRACTS FOR BIDS FOR CONSTRUCTION OF PUBLIC BUILDINGS OR FACILITIES UNDER TITLE 18, CHAPTER 2; AMENDING SECTION 18-1-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." The bill was at the request of the Department of Administration. It would allow the Department to not require the forfeit of a bid bond in case of a mistake on the bid. The Department does this now anyway and this would just put it into statute.

PROPOSERS: Tom O'Connell, Administrator of the Architect and Engineering Division, stated it would allow the Department to have the opportunity to waive the bid security. Present law says a bid must be kept but in actual practice they do not follow this policy because they feel it is not right to force a contractor into a contract when they can prove an honest error was made. He noted the courts have also upheld the rights of a contractor to withdraw their bids if they can prove an honest error was made. It would just make the law more consistent with the actual operating procedures. (EXHIBIT 1)

OPPOSERS: There were none.

QUESTIONS ON HOUSE BILL 508: Senator Farrell wondered when the errors are discovered and was told they are noted before the state enters into a contract on a public bid. Sometimes errors are discovered right after a bid and the contractor usually asks to be permitted to withdraw his bid and the contract is then awarded to the next low bidder.

Rep. Campbell stated in CLOSING that this applied to bid bonds only. The hearing was CLOSED on House Bill 508.

EXECUTIVE ACTION ON HOUSE BILL 508: Senator Lynch MOVED THAT HOUSE BILL 508 BE CONCURRED IN. Senator Farrell seconded the motion. The motion passed unanimously. Senator Beck will carry the bill on the Senate floor.

Senate State Administration  
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The hearing was opened on House Bill 504.

CONSIDERATION ON HOUSE BILL 504: Representative Mike Kadas, House District 55, Missoula, was sponsor for this bill entitled, "AN ACT LIMITING CHALLENGES TO INITIATIVES AND REFERENDUMS PRIOR TO ELECTIONS TO THOSE ALLEGING PROCEDURAL DEFECTS IN COMPLYING WITH THE ELECTION LAWS; AND AMENDING SECTIONS 3-2-202 AND 3-5-302, MCA." This bill would limit the ability of someone to challenge an initiative that is before the public until after it is voted on. He felt the initiative process is very important and should be protected. During the last few elections there have been challenges before elections and he felt this had unfairly influenced people's minds. He felt people were concerned about how the courts were going to react. If there was a constitutional problem he felt it could be addressed after an election.

PROPOSERS: Larry Akey, Chief Deputy to the Secretary of State, supported the bill with some reservations. He noted there has been a problem in the past few elections where initiatives have been challenged prior to the time an election was held. He believed the initiative process was very important and should be protected. He then distributed some amendments which would define more clearly what a procedural defect was. It would also set a time limit on when pre-election challenge defects could be brought before the courts. They were concerned that the challenges be brought forth in a timely manner. He felt the amendments proposed would improve the bill and urged its passage. (EXHIBIT 2)

Kim Wilson, representing Common Cause, stated they too were concerned about the initiative process and supported the bill with some reservations. He felt it might be restricting the people's powers too much if the people are not allowed to bring forth a constitutional challenge to an initiative prior to an election. He wondered if it was valid to limit a challenge. He was concerned if you did not allow a constitutional challenge before an election, there might be a lot of pressure on the courts to vote the way the people had voted on the initiative. If an initiative was self-executing he wondered if there might be a problem raising a constitutional challenge after an election. He felt the amendments proposed by Larry Akey would help give some clarification to procedural defects but wondered if it was appropriate to set a 20-day time limit.

OPPOSERS: There were none.

QUESTIONS ON HOUSE BILL 504: Senator Haffey asked if these amendments had been proposed in the House. Rep. Kadas stated the House did not address defining the procedural defects but there had been discussion on a time limit which had been turned down. Rep. Kadas stated he preferred there be no time limit because it takes a long period of time to detect fraud sometimes. If the procedural defects were abused it could be changed at a later date. Senator Lynch had a lukewarm reaction to the measure. Senator Farrell asked Rep. Kadas if this would limit challenges in city elections and was told it applies to statewide initiatives only. Senator Haffey wondered what would happen if it were a constitutional initiative which went into effect immediately upon passage of the issue if there could be a challenge. Larry Akey responded the present court is now split on how this would be handled. Senator Hofman wondered if part of the concern was the amount of money that is involved in defending a lawsuit and Rep. Kadas stated this was not his concern but the whole process of the initiatives was. Senator Harding wondered about changing the time limit to 30 days instead of 20. Rep. Kadas stated he preferred no time limit at all.

Rep. Kadas then CLOSED on House Bill 504 by stating he felt it was a significant piece of legislation. He felt setting a time limit might be tightening up the measure too much.

EXECUTIVE ACTION ON HOUSE BILL 504: Senator Lynch MOVED TO ADOPT THE AMENDMENTS PROPOSED BUT STRIKING THE LAST SENTENCE REFERRING TO TIME LIMITS. He felt 20 days was just not a long enough time period. The motion passed unanimously.

Senator Hofman then MOVED THAT HOUSE BILL 504 AS AMENDED BE CONCURRED IN. Senator Rasmussen seconded the motion. Senator Lynch was concerned this might be taking away some due process and limited people from challenging. He was also concerned about a constitutional amendment that was effective upon passage. Senator Harding noted CI-27 Initiative got quite muddled before the last election and felt it was a good bill. Senator Lynch responded that the very fact that CI-27 did make it on the ballot proved that the system does work. Senator Farrell noted that it only takes 15% of the people to get an initiative on the ballot but one person can challenge and he felt this was unfair too. Senator Haffey asked Rep. Kadas if there were lawyers involved in discussions on the House floor and was told there were not. Rep. Bardanoue objected because he feared unconstitutional initiatives might be put on the ballot without challenges. Senator Haffey felt a lot of information is put before the public and if there is something wrong it should be noticed. On a vote of Senator Hofman's MOTION, the motion passed with Senators Lynch and Hirsch voting "no."

The meeting was adjourned at 10:40 a.m.

ROLL CALL

SENATE STATE ADMINISTRATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/3/87

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NAME	PRESENT	ABSENT	EXCUSED
SENATOR JACK HAFFEY	X		
SENATOR WILLIAM FARRELL	X		
SENATOR LES HIRSCH	X		
SENATOR JOHN ANDERSON			E
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.

MARCH 3, 1987

DATE

SENATE STATE ADMINISTRATION

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
Tara Bennett	Administration A.E	HB 503	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ken Wilk	Comm. Law	HR 20	<input checked="" type="checkbox"/>	<input type="checkbox"/>

(Please leave prepared statement with Secretary)

11/86

SENATE STATE ADMIN.

ENRUSH NO. 1

DATE 3-3-87

BILL NO. HB 508

BILL NO. \_\_\_\_\_

TESTIMONY

TITLE:

"AN ACT TO ALLOW THE DEPARTMENT OF ADMINISTRATION TO WAIVE THE REQUIREMENT THAT ALL BID SECURITY BE FORFEITED IF THE SUCCESSFUL BIDDER REFUSES TO ENTER INTO AND EXECUTE THE PROPOSED CONTRACTS FOR BIDS ACCEPTED UNDER TITLE 18, CHAPTER 2; AMENDING SECTION 18-1-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

PURPOSE:

This bill is proposed to you for the purpose of amending the law relating to the forfeiture of bid security to be more compatible with accepted bidding practices and past court decisions. Instances where Courts have granted relief in cases where a Contractor has committed a significant bid mistake are:

Kenneth E. Curran v. State,  
215 A.2d 702 (N.H. 1965);

and,

Anco Constr. Co. v. City of Wichita,  
660 P.2d 560 (Kan. 1983).

Occasionally bidders make honest mistakes and it is in the best interests of the State of Montana not to force those bidders to enter into a contract. To do so will increase the likelihood of poor workmanship, late completion schedules, unsafe worksite conditions, claims for extra costs and arbitration or litigation between the Contractor and the State. In extreme cases, forcing a successful bidder to enter into a contract or forfeiting the bid bond could bankrupt the bidder.

DESCRIPTION OF BILL:

Section 18-1-204, Subsection (1), is amended to include reference to a new Subsection (3).

New Subsection (3) allows the Department of Administration the discretion to waive forfeiture of bid security if the successful bidder refuses to enter into and execute the proposed contract.

A New Section provides an immediate effective date.

BILLNO1/C:

EFFECT OF THE BILL:

The Department of Administration may waive the requirement that bid security be forfeited if the Department deems this action to be in the best interests of the State of Montana.

SUMMARY:

The bill will permit the Department of Administration to waive forfeiture of bid bonds when it is in their best interest and at the same time comply with State bid security laws.

2  
2-3-87  
HB 504

AMENDMENTS TO  
HB504

- 1. Page 2, line 10.  
Following: "laws"  
Insert:

" , but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, for example, but not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures or an erroneous or fraudulent count of petition signatures. Pre-election challenges must be filed and served within 20 days after the issue was certified to the governor as provided in 13-27-308."

- 2. Page 4, line 1.  
Following: "13-27-316"  
Insert:

" , but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, for example, but not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures or an erroneous or fraudulent count of petition signatures. Pre-election challenges must be filed and served within 20 days after the issue was certified to the governor as provided in 13-27-308."



# STANDING COMMITTEE REPORT

MARCH 3

87

..... 19.....

MR. PRESIDENT

## SENATE STATE ADMINISTRATION

We, your committee on .....

HOUSE BILL

508

having had under consideration..... No.....

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### ALLOW WAIVER OF BID SECURITY FORFEITURE

Campbell (Beck)

HOUSE BILL

508

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

BE CONCURRED IN

~~XXXXXX~~

~~DO PASS~~

~~XXXXXXXXX~~

~~DO NOT PASS~~

.....  
SENATOR JACK HAPPEY

Chairman.

# STANDING COMMITTEE REPORT

MARCH 3

37

19.....

MR. PRESIDENT

## SENATE STATE ADMINISTRATION

We, your committee on.....

having had under consideration..... HOUSE BILL No. 504

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color

### LIMIT CHALLENGES TO INITIATIVES PRIOR TO ELECTION Kadas (Hoffman)

Respectfully report as follows: That..... HOUSE BILL No. 504

be amended as follows:

1. Page 2, line 10.  
Following: "laws"  
Strike: ". "  
Insert: "., but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, but are not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures, or an erroneous or fraudulent count of petition signatures."
2. Page 4, line 1.  
Following: "13-27-316"  
Strike: ". "  
Insert: "., but no action may be brought challenging constitutional defects in the substance of a proposed ballot issue until after the election. Procedural defects include serious and material violation of any provision of the election laws, but are not limited to laws relating to qualification for inclusion on the ballot, illegal petition signatures, or an erroneous or fraudulent count of petition signatures."

AND AS AMENDED  
BE CONCURRED IN

XXXXXX

XXXXXXXXXX

.....  
SENATOR JACK HAFPEY

Chairman.