

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman William E. Farrell, on March 14, 1989, at 9:00 a.m., Room 331, Capitol

ROLL CALL

Members Present: Senator Hubert Abrams, Senator John Anderson, Jr., Senator Esther Bengtson, Senator William E. Farrell, Senator Ethel Harding, Senator Sam Hofman, Senator Paul Rapp-Svrcek, Senator Tom Rasmussen, Senator Eleanor Vaughn

Members Excused: None

Members Absent: None

Staff Present: Eddy McClure

HEARING ON HB 254

Presentation and Opening Statement by Sponsor:

Representative Bob Thoft indicated this bill requires the pledge of allegiance, on a daily basis, in our public schools.

Representative Thoft stated he wants to make it clear at the onset that he does not support the bill, in its present form. He reported that the House Education Committee turned it into a very poor resolution, and indicated he hopes this committee will put it back into its original form, as it was introduced, except for one minor change. He indicated the bill requires the pledge, daily, in our public schools, but is written so that it does not require the students or the teachers to participate, if they have personal reasons for not wishing to do so. He added there are no penalties involved in non-participation. He reported there are 11 states that have this kind of legislation, already, on the books, noting that he thinks the State of Washington was the last state that passed it, in 1981.

Representative Thoft indicated he thinks the pledge of allegiance is one way that our young people can learn to understand and respect our great country. He further indicated he thinks it will be a benefit to education, in general,

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to start the day with the pledge, and he thinks that, if the instructors will take a little bit of time to teach the meaning of the pledge, and what it stands for, it will be good for our young people, and should not be that big of an issue. He noted they made it a big issue, in the House, that he does not know why, and does not think it should be.

List of Testifying Proponents and What Group they Represent:

George Poston, United Veterans Committee of Montana
Valerie Larson, Montana Farm Bureau Federation
Senator Bob Williams
Hal Manson, American Legion of Montana
John DenHerder, Department of Montana Disabled American Veterans
Tony Campeau, Board of Public Education

Testimony:

Mr. Poston stated they are definitely in favor of this bill. He indicated it starts the young people off with a certain amount of respect at an early age, and continues on through their life. He stated that some of the most respected people, in his life, were the school teachers, noting that, after hearing some of them testify on these pledge bills, he does not have as much respect for the school teachers as he used to. He indicated he thinks this is one of the places where young people start their respect for our country, and what it believes in.

Testimony:

Ms. Larson's written testimony is attached as Exhibit 1. She distributed copies of a pamphlet that the Farm Bureau sends to the schools, a copy of which is attached as Exhibit 2.

Testimony:

Senator Williams stated he really appreciates the fact that Representative Thoft has put in a bill like this, indicating it has bothered him, for a long time, that it seems like, every year, there is a little less respect shown for our flag.

Senator Williams reported that, 20 years ago, he was the state commander of the American Legion, during the time of the Viet Nam War, and, because of being involved in veterans groups, he ended up in parades, noting they could be in local towns or districts, state conventions, or national conventions. He added that, when there is a war going, it seems people have

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a little more respect for the flag, and he could tell that, when he was in the parades, from the way the people stood at attention, or at least respect the thing. He indicated he has noticed that, now, even in his own home town, in the homecoming parade, noting they always lead the parade with the flag, the American Flag and the Montana Flag, there are people standing around, just kind of lily-gogging around. He stated he thinks a lack of education causes them to have a lack of respect for the flag, and further indicated he thinks, if they can, through a little bit of legislation, get our schools to come back and teach a little more respect for the flag, just through the pledge to the flag, it is a hell of a lot better than having another war to try to get that respect back.

Senator Williams stated he would appreciate the committee's support on HB254.

Testimony:

Mr. Manson reported he was one of the people who grew up in a good time, because this was done in the schools where he went, noting he was always glad that it was, because the people he went to school with, and he, came up with a little better appreciation of what the flag means. He indicated he has talked to some young people presently in high school, and immediately out of school, who do not even know the pledge of allegiance, noting it is hard to believe they can get that far through school, and never have learned the pledge of allegiance.

Mr. Manson stated it is his belief that, if this bill were passed, in its original form, and it was made mandatory, other than for those who have reservations, it would teach our young people something they are not being taught today. He indicated our young people do not seem, at this time, to have the respect for the flag, or even for the country, that they should have, and stated they believe this will be a very good start to get them believing, and acknowledge what they stand for, and what the flag is. Mr. Manson then stated that, at this time, the American Legion is very proud to request that the committee consider the bill, in its original form.

Testimony:

Mr. DenHerder stated that, again, he amplifies and endorses the sentiments the committee has heard, and indicated he would like to ask for an amendment to be put in to Representative Thoft's bill, which is to put the flag into each classroom of the schools throughout Montana. He noted he knows the

American Legion has this program, but he thinks it should be a mandate of the state to make sure there is a flag in all classrooms and general assemblies.

Testimony:

Mr. Campeau reported that Claudette Morton, the executive secretary for the Board, had hoped to be here, but she had a meeting come up suddenly. Mr. Campeau distributed copies of Ms. Morton's written statement, and then read the statement, a copy of which is attached as Exhibit 3. The statement referred to two documents, copies of which are attached as Exhibits 4 and 5, respectively.

List of Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

Q. Senator Harding indicated that Representative Thoft mentioned he would like to have the committee put it back in its original form, noting she agrees with him, but asked if it would do any good to put it back in its original form, and if he thinks the House would accept it.

A. Representative Thoft responded that it hasn't any value, the way it is now, and he will just take a shot at it. He reported they caucused against the bill, as originally written, and supported it, as amended. He indicated that, how this can be divided down party lines, he will never understand, but that is the way it went.

Closing by Sponsor:

Representative Thoft stated he appreciates having a chance to bring this bill before the committee, and indicated he thinks that article 10 of the constitution gives the legislature the right to determine some programs. He noted that, as a matter of fact, in the House, they made kindergarten mandatory in all schools in Montana.

Representative Thoft stated it has been an experience, carrying this bill, and seeing the politics develop. He indicated that, in the hearing in the House Education Committee, the bill would have passed unanimously, in its original form, if the vote had been taken while all the people were there testifying for it, noting he had Eagle Scouts, student

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school teachers, sheriffs, peace officers, and all the veterans groups. He indicated that the Board of Education and MEA then got involved and, apparently, dictated what the content of the bill would be. He stated he hopes the committee will put it back in its original form, except for religious exemptions, noting he thinks that needs to be broadened a little, and that the House amendment may be adequate to cover it. He indicated he supposes the committee will have a discussion on the constitutionality of it, noting he is very comfortable that it will stand the constitutional test. He added that he talked with the Attorney General, who feels it would, as well as Greg Petesch, who also felt it will stand a constitutional test, and noted he does not think that needs to be an issue. He stated it is a matter of does the committee want the pledge recited in the schools, on a daily basis.

Chairman Farrell announced the hearing on HB254 as closed.

DISPOSITION OF HB 254

Discussion:

Chairman Farrell proposed HB254 be amended, on line 17, by striking "may", inserting "shall" and, on line 19, striking "if required". He explained that he is proposing to make it mandatory for the school trustees to tell the schools that they have to start the morning, but leave in all the exceptions that, if the student or the teacher has a personal conviction, and does not want to say it, that is fine, noting he would like to see the schools start it and, if they do not want to say it, there is no prosecution, that if the teachers do not want to say it, that is up to them. He then pointed out that the title has to be amended to read "The trustees of school districts of the state shall require recitation of the pledge of allegiance to the flag of the United States of America, and recitation must be conducted by the classroom teacher or the teacher's surrogate at the beginning of the first class of each school day."

Senator Rasmussen asked Chairman Farrell if he is putting it back to, essentially, the form that it started out in. Chairman Farrell responded, basically, yes, that the original exemption was only for religious. Senator Rasmussen indicated he has broadened it, but, hopefully, he will not lose the bill. Senator Bengtson asked if it meets all the requirements of the Board of Public Education, and the court cases. Chairman Farrell responded that Ms. McClure has read the court cases. Ms. McClure indicated the two raised by the Attorney

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General's office, in the original form, were the references to religious, and that the original bill had no exception to allow the teachers to be excluded, noting his reaction was that they had to have those things in, noting the original bill said they must be included. Senator Bengtson asked what about the title, and Ms. McClure responded they are not allowing the school district, they are requiring the school district, noting she will have to play around with the title.

Senator Rasmussen asked if, in the title, they would put "and allowing exceptions", or something like that, noting that is an integral part of the bill. Chairman Farrell responded that it is his understanding they simply wanted the school to require that the pledge of allegiance start each day, but the people who did not want to participate would not be forced to. He indicated that, as it originally came in, it would require that the teachers had to, and only had the religious exemption. Chairman Farrell said, if someone does not want to say the pledge of allegiance, leave them alone. Senator Bengtson noted that, when she was a teacher, the schools had an intercom, and they let the Student Council do it over the intercom.

Senator Harding offered a motion that the amendments to HB254 be adopted.

Senator Vaughn indicated someone suggested an amendment to put flags in each classroom, and asked if that would be added to this. Chairman Farrell responded that it was suggested, but he does not know if there is a cost to have a flag in each classroom. Senator Bengtson asked how they could say the pledge if there is no flag, noting the American Legion furnishes every classroom in the state. Chairman Farrell asked if they do, and Senator Vaughn indicated they do furnish a lot of them. Senator Hofman suggested the words "to the flag" could be added to line 23, after "allegiance". Senator Rasmussen stated he thinks that should be left out, that he thinks that will just muddy it, noting they are talking about the pledge, and they should let them get a flag, without putting it into law. He indicated he would like to focus on the pledge. Senator Bengtson asked can't they put, on line 23, "to the flag", noting they can not stand there and say the pledge of allegiance to the wall. Senator Rasmussen responded he is willing to rely on the judgement of the people to put a flag up. Chairman Farrell indicated he thought there used to be a flag in every classroom, and asked what happened to them. Senator Bengtson indicated that they are stored, during the summer, and never get put back up, or they get old. Chairman Farrell pointed out that, on line 18, it says

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"recitation of the pledge of allegiance to the flag of the United States of America."

Senator Harding offered a motion that HB254 be concurred in as amended.

Amendments and Votes:

Motion passed by the committee that the amendments to HB254 be adopted.

Recommendation and Vote:

Motion passed by the committee that HB254 be concurred in as amended.

HEARING ON HB 610

Presentation and Opening Statement by Sponsor:

Representative John Cobb indicated that most bills have an extension of rule-making authority, which provides that any existing authority to make rules on the provisions of the act extends to the provisions of the act, noting that is on almost every bill passed since October 1, 1983. He stated they are doing away with this extension of rule-making authority because, almost all the time, it is being rubber-stamped on every bill. He noted that no one really knows what it means, that they are just stamping it on there.

Representative Cobb explained that, basically, it means that rules can be made on a bill, if an extension of rule-making authority is given, which refers back to some other rule. He gave the example of the magpie bill, indicating it had an extension of rule-making authority which said they could make rules on magpies. He noted it was a Fish and Game bill, and reflects back to a Fish and Game statute which says that Fish and Game has the right to protect the magpies, or wildlife, or something. He stated that all the extension of rule-making authority says is, before they can make any rules on the magpie bill, they have to have some authority in Fish and Game law, noting that Fish and Game has some rule-making authority on regulating birds. He added that, if they do not have that extension, they can not make rules up.

Representative Cobb indicated the reason for these extensions is that, several years ago, one of the Representatives made

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a law up but, when they went to make rules, he indicated they did not need to make rules up. Representative Cobb reported that he got mad at the Board of Barbers, and put a statute in saying that, before rules can be made up, there has to be an extension of authority. Representative Cobb reported there are about 100 statutes for which rules were made, but there was no authority to make rules up. He noted that, last session, the voluntary mediation bill for farmers and ranchers went through, and it was amended so that the Department of Agriculture would set reasonable fees for this mediation. He indicated there was no extension of rule-making authority given for that bill, but that it told the Department to set reasonable fees. He further indicated they made rules up which set reasonable fees, but that, technically, none of those fees are legal. He noted this has happened to quite a few bills, over the last three sessions, where something is amended in, but there was no extension of rule-making authority, and, technically, those rules can not be made up.

Representative Cobb stated they are just going back to existing law, that they are taking the extension of rule-making authority out. He indicated that, before any rules can be made, some kind of authority is required, noting that Fish and Game already has general rule-making authority, and all this extension did was say they had to cite back to those rules. He noted that, if there is not any rule-making authority, rules can not be made up.

Representative Cobb indicated they are trying, in this bill, to go back to the old way, and also to make this law retroactive, to take care of those laws that passed, for which rules were made up, but were not supposed to be. He stated they are going back to the old way, which provides that, if there is rule-making authority, they can go ahead and make rules up, and do not have to have an extension. He indicated they are also trying to say that they do not want them making rules up, noting that, right now, they are getting around it.

Representative Cobb stated there has to be rule-making authority, first, that this was a second test to go through. He indicated the Department of Agriculture was told to set rules up for fees on how to keep the parasites away, but were not given rule-making authority. He noted they had to make rules up but that, technically, all those rules are in violation. He indicated they were first trying to keep people from making rules up, but that they ended up complicating the matter. He stated there are a lot of good laws out there that they wanted rules made up for, but, because that extension was not there, technically, they are in violation of law. He

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again stated they are trying to go back to the old way, which is, if we don't want them doing something, we just say we do not want them doing it, which is much clearer than what we are doing right now.

Representative Cobb indicated that Greg Petesch will be able to explain what has been going on, in more detail.

List of Testifying Proponents and What Group they Represent:

Greg Petesch, Legislative Council

Testimony:

Mr. Petesch reported that one of the functions the Council's legal division performs is a review of all rules for compliance with the administrative procedures act. He noted they perform that function for the administrative code committee, and for the revenue oversight committee, on revenue bills. He indicated that, in 1983, when this law was adopted, as Representative Cobb properly characterized, there was one representative who was mad at the Board of Barbers for some rules they adopted implementing his bill. He stated this law requires that, in order to adopt a valid rule, they need a statute which specifically grants rule-making authority, which are the types of bills that will require a statement of intent, now, granting new rule-making authority to an agency. He further indicated it will require that the rule cite to a statute being implemented by the rule, noting there has to be an existing law which is being implemented.

Mr. Petesch stated that the law providing for an extension, which was passed in 1983, provided that, in addition, it had to cite to the session law, which extended the existing authority of that agency to adopt rules, noting that one of the problems they are experiencing with this law is that these are only found in the session laws. He indicated some agencies do not have session laws and, when they go to adopt rules, they run to the law library to see if there is an extension of rule-making authority.

Mr. Petesch reported that, when he was looking around for a good example of the problems this is causing, he happened to have an issue of revenue rules on his desk that he was supposed to be reviewing. He indicated these are rules that he does not know have ever been objected to, in the Department of Revenue, but they updated the inflation and appreciation tables for property assessment, because, statutorily, the department is mandated to assess property at 100% of market

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value, and they have depreciation tables and trending tables, in order to arrive at those. He noted there are 14 statutes which are cited as implemented by these rules, and there are 10 rules in the notice by the Department of Revenue. He stated those 14 statutes have been amended by 27 different chapters, since this requirement went into effect, which means, in order to have valid rules, the department has to have, first of all, a cite to the grant of rule-making authority, they have to have a cite for the statute implemented, and they have to have a cite to the section that extended that authority in each of those 27 chapters. He indicated the department did not review those 27 chapters, to see if the authority was extended, but he did, because that is part of his job, adding that, when he writes up his notice, he looks, and tells them their rules are technically invalid because they have not cited these 27 extensions of authority. He noted that, as a matter of fact, they can not have valid rules to do this because 3 of those 27 chapters did not contain that extension of rule-making authority. He stated that, technically, the Department of Revenue can not validly adopt trending and depreciation tables, adding that their old tables are out of date, so they are invalid, and he does not know what they do with this law in place, as it is, because they can not go back and put those extensions in those bills, because the statute, as written, requires that it be a contemporaneous accompaniment of that extension of authority.

Mr. Petesch indicated they point these out to the agencies, when they review their rules, and they either include them in the notice of adoption, as a mere technical oversight in the notice of proposal, or, if they do not have them, they ignore them. He further indicated they report that fact to the administrative code committee and the revenue oversight committee, and they have never objected to any rule, based on this lack of extension of authority. He stated the reason is there are existing statutes on the books which mandate that these rules be adopted, in most instances, and this extension of rule-making authority is serving no real purpose, it does not appear to the staff, at least, other than requiring them to put a sticker on almost every bill that comes through, which is how they handle it.

Mr. Petesch stated that, if you do not want the agency to adopt rules, he thinks Representative Cobb has the precise solution to it, noting there should be a statement in the bill that an act may not be adopted or be implemented by administrative rules, which would solve the problem. He indicated that, currently, when they have objected to an agency's rules, in reviewing them, the agency has been put in an extremely

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hard place. He noted there may be rules on the books that conflict with the statute, as amended, and, technically, the agency can not change those rules to properly reflect the statute, and, even when a statute has been repealed, and that extension of rule-making authority does not accompany it, the agency can not get those rules off the books, if that extension of authority was not in the bill. He indicated he hopes the committee would see fit to solve what is becoming an enormous headache for the staff, and for the departments, and will look favorably on Representative Cobb's bill.

List of Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

- Q. Senator Rapp-Svrcek noted that, this session, there were a couple of bills that did nothing but grant rule-making authority, and asked Mr. Petesch how they would be affected by passage of this bill.
- A. Me. Petesch responded they would not be affected at all, that a bill granting new rule-making authority to an agency is the contemporaneous grant, and is the new grant of authority for the agency to adopt rules. He indicated those types of bills, which grant new rule-making authority, are the bills that are required to be accompanied by a statement of legislative intent, outlining for the agency the type of rules they are to adopt. He noted that the extension of authority says they do not even look to see if there is rule-making authority, that, if there is existing rule-making authority, it is extended to this bill.
- Q. Chairman Farrell asked Mr. Petesch how many rules, in the State of Montana, could be thrown out.
- A. Mr. Petesch responded that they have not counted the number of proposals, noting he knows Representative Cobb had one of his aides goes through some of the notices to find out many rules are technically invalid because they do not have this extension of authority. He indicated there are a couple of hundred rules that could be invalidated, noting the problem they would have, if they do that, is there are statutes which require the agency to do something, under delegated authority, and, if they do it by some methodology other than rule, the courts invalidate them, because a rule is the only proper

methodology for an agency to use to require someone to do something.

- Q. Chairman Farrell indicated a tremendous amount of bills go through this legislature from the auditors over technicalities that they are not following a rule, or something, and asked if this will eliminate some of that.
- A. Mr. Petesch responded this would validate some of those rules that are technically invalid, without this, and it could help.
- Q. Chairman Farrell noted that was a non-committal answer.
- A. Mr. Petesch responded he would have to see the bills in order to give him a specific response.

Closing by Sponsor:

Representative Cobb indicated there is a can of worms, out there, that is getting worse, and there are a lot of good rules which are supposed to be mandated, but there is no extension and, if it is not there, they have a mess. He stated they still have to have rule-making authority, that somewhere in the statutes, they have to have the rules, but that little test, at the bottom, is messing everything up, right now. He indicated that, when they are not supposed to make rules up, they are getting around that, anyway, and they are also on the spot, when they are supposed to be doing things, and that extension is not there. He further indicated they are opening a can of worms by bringing this to everyone's attention, because someone may say they want their money back, that, even though it was a good idea, they can not do what they did to them. He stated we are heading for a wreck out there.

Chairman Farrell announced the hearing on HB610 as closed.

DISPOSITION OF HB 610

Discussion:

Senator Bengtson offered a motion that HB610 be concurred in.

Recommendation and Vote:

Motion passed by the committee that HB610 be concurred in.

HEARING ON HB 412

Presentation and Opening Statement by Sponsor:

Representative Dorothy Bradley stated this bill came out of the legislative audit committee, that it was discovered, in one of the audits, that both the law and administrative rules are unclear regarding what the capitol complex is, over which the Department of Administration and Fish, Wildlife and Parks have authority to maintain. She noted that some of the rules talk about the capitol complex, that they sometimes talk about the Helena area and, as a result, it is a confusing state of affairs, with the lines of authority not clear, at all. She indicated this clarifies that the authority is a 10-mile radius, and that the Department of Administration's authority is to provide or approve all custodial or security work done within that 10-mile radius. She added that the same holds for the Department of Fish, Wildlife and Parks, which is to provide for or approve the maintenance of the grounds in that area.

List of Testifying Proponents and What Group they Represent:

None.

List of Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

- Q. Chairman Farrell indicated the Highway Department is not considered in the capitol complex, and asked Representative Bradley if that would bring them into the Department of Administration.
- A. Representative Bradley responded that is correct, that it would include anything within the 10-mile radius, which it definitely is, noting it will be funneled through the Department of Administration. She indicated that there was a question, before, regarding the privatization issue, and this has nothing to do with that, that it just says whatever arrangement is decided upon, will be decided from the Department of Administration and Fish, Wildlife and Parks.

Closing by Sponsor:

Representative Bradley thanked the committee.

DISPOSITION OF HB 412

Discussion:

Chairman Farrell explained the bill for those committee members who did not hear the bill. Senator Bengtson offered a motion that HB412 be concurred in.

Recommendation and Vote:

Motion passed by the committee that HB412 be concurred in.

HEARING ON HB 670

Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody indicated that HB670 is an act revising the qualifications required for a master plumber's license, noting she serves on the administrative code committee, which oversees the rules. She reported she was contacted by one of her constituents who had worked for a plumbing contractor in Wolf Point for about 9 years, and had served his journeyman's time. She indicated it was required that the master plumber sign the application for him to take the master's test, but that the contractor refused to sign his application, noting his basis for not signing the application was that he had not had three years of supervisory experience. She stated that, however, the contractor was also the chairman of the Board of Plumbers, and there was bit of what might be called a conflict of interest. She indicated some of the rules the board developed seemed rather restrictive, and the committee did not feel they were addressed properly, according to the statutes. She reported that, as a result, the individual went to the Board of Plumbers, which gave him permission to continue working in the area of maintenance, although he could not get into new construction, unless he had the master plumber over him. She noted there was another gentleman in the community who agreed to do so. She indicated the individual left the employment of the contractor he had been working for, and that he was so busy, during Christmas, that, when she called him for a plumbing repair, she could not get him because he had 50 calls backed up. She indicated this

shows the community was 100% behind this individual, noting he was very upset about the situation. She stated the contractor also has, she thinks, a self-help corporation of family members, and has a son and a son-in-law for whom he signed for their master's test, and both had taken it.

Representative Cody stated she decided she just could not see this happening to some young couple, again, in this state, and she thought it was a bad deal for them, noting they have a nice family. She indicated that, in a two-man shop, there is no way he could get three years of supervisory experience, which was a problem, so they changed the law a little bit. She reported the Board of Plumbers considered 2,080 hours as one year's experience, which is entirely too long because, in this particular field or profession, they do not work on a 40-hour basis, and indicated they changed the hours to agree with the union contracts, which are, for their pension purposes, 1,500 hours. She reported she met with the plumbers, before the bill was presented in the House, and there were some amendments they worked out, which they were all agreeable with.

List of Testifying Proponents and What Group they Represent:

John Forkan, President, Montana Association of Plumbers and Pipefitters

Eugene Fenderson, Montana State Building Construction Trades Union

Testimony:

Mr. Forkan stated they would like to go on record in support of HB670. He reported they met with Representative Cody, that they came to an agreement regarding the amendments, and would like to urge passage of this bill.

Testimony:

Mr. Fenderson stated they, too, rise in support of the bill that the Representative and the plumbing industry have worked on, that it is a well-drafted bill, and they urge the committee's support.

List of Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

None.

Closing by Sponsor:

Representative Cody stated it is a simple piece of legislation, and she strongly urges consideration of it.

Chairman Farrell announced the hearing on HB670 as closed.

DISPOSITION OF HB 670

Discussion:

Senator Bengtson offered a motion that HB670 be concurred in.

Recommendation and Vote:

Motion passed by the committee that HB670 be concurred in.

HEARING ON HJR 20

Presentation and Opening Statement by Sponsor:

Representative Gary Spaeth indicated that HB254 is somewhat of a companion resolution, although it is not really a companion resolution. He reported that, in the House, he had several supporters for the resolution, although he has done nothing to round up supporters, and indicated he can not imagine there being any opponents to HJR20. He stated that, because he helped draft it, he thinks it is a nice piece of work, and would urge the members of the committee to read it.

Representative Spaeth indicated that, because of the whole situation with the flag, and the salute to the flag, and citizenship, he thinks the whereases are extremely important and indicative of what, really, we stand for in this country, that the underlying values of what we have are found in the Bill of Rights, and what we've done in over 200 years of our existence. He noted that he wants to emphasize that the salute to the flag is not something to become involved in, that it means much more than that, and he wanted the House Joint Resolution to be a statement of the depth of what we stand for, in this country, noting he feels that is what the

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whereases stand for. Representative Spaeth indicated he wanted to go further than the discussion on HB254 went, because he thinks the salute, and what it stands for, and what we stand for as a people, goes beyond whether we do the pledge in a school setting, or not. He stated he thinks it is important we send a message, in this Centennial year, that the pledge, the flag, patriotism, is something that we still highly regard in this country, that the 200 years of the nation's existence, and the 100 years of our state's existence are important. He added that he wanted to introduce this as something that could go beyond the schools, and could be used in local organizations, wherever they may be, at different functions, indicating that is why he appears as the sponsor of HJR20, and urged the committee to pass it.

List of Testifying Proponents and What Group they Represent:

None.

List of Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

Q. Senator Vaughn referred to page 3, line 4, and asked Representative Spaeth why the cities and towns were not included.

A. Representative Spaeth responded he would have no problem with that.

Closing by Sponsor:

Representative Spaeth thanked the committee.

Chairman Farrell announced the hearing on HJR20 as closed.

DISPOSITION OF HJR 20

Discussion:

Senator Harding offered a motion that HJR 20 be concurred in.

Recommendation and Vote:

Motion passed by the committee that HJR 20 be concurred in.

HEARING ON HB 708

Presentation and Opening Statement by Sponsor:

Representative Bruce Simon stated that HB708 is a very simple bill. He indicated we all get inundated with reports, and that a lot of the reports seem to be stacking up. He noted he had to search for reports which, by law, are required to be sent to the Governor, every year. He indicated they are trying to eliminate the statutory requirement that a report be prepared and presented to the Governor every year, and allow for reports to be sent to the Governor, as necessary and appropriate, but not require, under statute, that an annual report be prepared. He noted that is all the bill does, that it eliminates unnecessary paperwork, and provides that reports, which must go to the Governor, can be sent on a timely basis. He urged the committee's support.

List of Testifying Proponents and What Group they Represent:

None.

List of Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

- Q. Senator Rapp-Svrcek asked if the only agency that this requirement is being removed from is the Worker's Compensation Division.
- A. Representative Simon responded that there is more than one department involved, noting the ones that are published are the Workers' Compensation Division, but there are other divisions involved. He stated it seems like the Workers' Compensation Division is the one that was specifically called out, but that he believes this is dealing with, for instance, the silicosis area. He indicated that requiring an annual report be presented to the Governor on silicosis seems a little silly, but that, on a timely basis, it would be fine.
- Q. Senator Rapp-Svrcek pointed out that, the way the bill is written, the only annual report that is being removed from all of state government is the one from the Workers' Compensation Division to the Governor.

- A. Representative Simon referred Senator Rapp-Svrcek to Section 3, which repeals other statutes that also call for annual reports. He indicated those were specific sections that they could repeal the entire section, and the ones that are published in the bill are only repealing a portion of a section. He again stated the others are straight-out repealing the section.

Closing by Sponsor:

Representative Simon thanked the committee for their courtesy and indicated he appreciates the time.

Chairman Farrell announced the hearing on HB708 as closed.

DISPOSITION OF HB 708

Discussion:

Senator Bengtson offered a motion that HB708 be concurred in. Senator Rapp-Svrcek asked, if they delete that, does it mean they are not going to be required to make a report at all, or will it be at the agency's discretion as to when they report. Chairman Farrell responded he does not think they report, each year, to the legislature, but they do to the Governor. Ms. McClure indicated that every agency has an audit report done, and a lot of those annual reports are the same thing. She noted they were getting all this information, that they did this about 5 years ago, but these did not get deleted. She reported that Representative Simon indicated he does not want any of these reports to the Governor or the Legislature, because they are getting the audit reports. Ms. McClure added that the agencies still do internal reports to their own directors or department heads, but they do not automatically have to send another one of those reports to the Governor or the legislature. She noted these were the statutes, that were left, that required annual reports.

Senator Rapp-Svrcek asked Ms. McClure, if this bill passes, if the legislature will not receive the reports they get each year from the Board of Investments. Ms. McClure responded no, that they will still get the audit reports, and things like that. She noted they repealed the law, that they are still getting a lot of reports, but are not getting them in masses, indicating they are just trying to reduce it. Chairman Farrell asked Senator Rapp-Svrcek if they get one, yearly, from the Board of Investments, or if they get one every two years. Senator Rapp-Svrcek responded it is an annual report,

that it is not an audit of performance, or anything like that. Ms. McClure indicated they are still getting that, that what is left on the repealer is the Department of Labor, which does some on silicosis, and SRS gives some kind of internal report which goes to the Governor, noting the others are in the Department of Labor. She noted these are the only ones left so, obviously, they are still getting the one from the Board of Investments, and will get it.

Recommendation and Vote:

Motion passed by the committee that HB708 be concurred in.

HEARING ON HB 211

Presentation and Opening Statement by Sponsor:

Representative Kelly Addy indicated he thought he was going to ask the committee to change the bill into some other form, but he talked with the Department of Commerce and the Montana Health Care Association, and that everyone seems to like the bill just the way it is. He reported that the Department of Commerce was unable to require any education, beyond high school, of applicants for a license to become a nursing home administrator and that, in the House, it was changed to provide that they will have sufficient education, training, experience, or a combination. He noted it gives the department the ability to base admission to the examination, not simply on education, but on education, and something else. He added that they can raise the education requirement, as one component of the qualifications to be eligible to take the examination to become a licensed nursing home administrator. Representative Addy noted this is, literally, housekeeping, and indicated he hopes it will not take too long, that he thinks it is a pretty easy bill.

List of Testifying Proponents and What Group they Represent:

Linda Smith, Member, State Board of Nursing Home Administrators
Rose Hughes, Executive Director, Montana Health Care Association
James F. Ahrens, President, Montana Hospital Association

Testimony:

Ms. Smith stated she had prepared a rather lengthy text of the changes that have gone on to bring them to the Legislature asking for these changes, indicating she thinks that everybody is pretty much in agreement with the bill, as it is now, and she will not go through all of those things.

Ms. Smith reported the main problem they were having was the language, which stated a person could have either education or experience, to be licensed as a nursing home administrator, noting that Montana does not have a college or university program for long-term or health care administration, and they need to include both some education and experience. She indicated the rules they are currently using are two years of education, plus one year of experience, either in a nursing home, or a hospital, as an assistant or administrator, before the person is qualified to take the nursing home administrator exam. She stated they do not intend to change that ruling, indicating there was some confusion in the House about a requirement for a baccalaureate degree, which is written in to the bill, as a possibility in the future. She indicated the intent of the board is only to put that possibility in, if it is required by the federal government in order for the institutions to receive Medicaid monies.

Testimony:

Ms. Hughes stated they support this bill, indicating it allows the board to set a stand-alone educational requirement, a stand-alone experience requirement, or a combination of the two, depending on what they see before them in an applicant, noting it is very appropriate for them to be able to do that.

Ms. Hughes indicated they have no problem with the bill, but that they do have an amendment, which has been shown to the sponsor, and the department, noting she thinks they both concur. She noted the amendment is, basically, to bring the title and the grandfather clause back into compliance with the changes that were made in the body of the bill, that there were some references to two years, which were put in and then taken out, but were not taken out every place. She stated that, basically, it brings those two parts in conformity with what has been done to the body of the bill. Ms. Hughes distributed copies of the proposed amendments, a copy of which is attached as Exhibit 6.

Testimony:

Mr. Ahrens indicated that, if all the parties appear to be happy with the bill, they are happy with it, too, and support the bill.

List of Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

None.

Closing by Sponsor:

Representative Addy stated the amendment which has been offered is a clean-up amendment, and he thinks it will help the bill.

Chairman Farrell announced the hearing on HB211 as closed.

DISPOSITION OF HB 211

Discussion:

Senator Bengtson offered a motion that the amendments to HB211 be adopted.

Senator Bengtson offered a motion that HB211 be concurred in as amended.

Amendments and Votes:

Motion passed by the committee that the amendments to HB211 be adopted.

Recommendation and Vote:

Motion passed by the committee that HB211 be concurred in as amended.

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HEARING ON HB 691

Presentation and Opening Statement by Sponsor:

Representative Dick Simpkins indicated he will try to be very brief on this, and will be up-front, and straight-forward. He stated this is a stop-gap measure bill, and deals with the federal surplus property program in the State of Montana. He indicated the federal surplus property program, by law, under GSA administration, must be assigned to a state department and, therefore, cities and towns can not go to the federal government, that the state must go to the federal government.

Representative Simpkins reported there is a tremendous amount of surplus property available, free for the asking, and that, in FY87, \$408.9 million worth of property was handed out. He indicated he wants the committee to know how Montana stacks up with the rest of the region, in participation, and reported that Colorado obtained 124% of the amount of property the federal government thought they could use, noting that is how they allocate it; "We think you can use this amount of property in your state", that it is by geographic location, density, and things like this. He further reported that North Dakota did 257%, South Dakota 661%, Utah 330%, Wyoming 310%, and Montana 25%. He reported there really is not a program in the state, that we are sort of bogged down, noting the history goes back that, at one time, there was a decent program in warehousing, but the individual who ran it was caught taking money and misappropriating funds, therefore, the program was de-emphasized, the last governor decided not to continue the out-of-state screening, and the program went down to nothing. He indicated they are trying to re-activate the program.

Representative Simpkins noted there are two types of programs set up, which the state does take advantage of, and one is excess, noting that is a higher level than surplus. He indicated there is a federal government excess program, under the Department of Lands, which is administered out of the fire fighting section in Missoula, and this is where all the fire equipment comes from. He stated the advantage to that is they go in as the second screening, and he is talking one level below that, where the state can get into it on the third screening, where they get the third choice on equipment. He added that the first choice is federal military and government agencies.

Representative Simpkins reported that the Department of Administration has no interest, at the present time, in

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expanding this program, and getting back into the warehousing operation. He noted that, at first, he did not have that much interest in it, until he talked with the people in North Dakota, South Dakota, Kansas, and indicated these people have large-time warehouse operations. He pointed out that, although the state has to pay the transportation cost, it is self-funding, explaining that the property is obtained free, but is sold to a city, school district or county at 10% to 15% of the value of the property. He gave the example of property worth \$100,000, which would be sold for around \$10,000, noting that takes care of the personnel costs, that it should take care of the rent for the building, and the phone and screening costs. He indicated the State of North Dakota figures they need \$20,000 in sales, per month, noting it takes an aggressive procurer, a person who will go out and get the property, and a salesman who will be able to sell the property, as well. He noted the program does not just sit, that they have to go out and let the counties and cities know what they have.

Representative Simpkins reported that Doug Johnson, who is probably one of the most active procurers in the state for this federal surplus property program, has coughed up his own money in order to join the western states organization in order to screen property. He further reported that Mr. Johnson recently obtained some musical instruments for School District #1. He explained that the school district only needed 2 tubas, but there were 4 available, which were in almost brand-new condition. He pointed out that Mr. Johnson was contracted to pick up only 2 by the school district but, if there was a warehouse operation, he could have picked up all 4, and the cost would have been \$100 to any school district that wanted a tuba, noting that is pretty cheap.

Representative Simpkins reported there is a lot of different equipment available, including musical instruments, filing cabinets, desks, road graders, and also including a helicopter, noting that Cascade County picked up a helicopter, a few years back. He indicated the advantage, and the reason he is pushing it at this time, is that Congress is going to close military bases throughout the world and, within the next year or two, he thinks they will see a tremendous amount of surplus property being placed on the market, which will be available to the states through the surplus property program. He stated that, therefore, he thinks we should start thinking seriously about getting back into it.

Representative Simpkins reported he has another bill which will set aside an appropriation for a \$150,000 loan, to be

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paid back in 5 years, adding that they should be able to run strictly on a profit basis, in order to keep themselves above water. He stated he will propose that a warehouse operation be re-established, with 4 FTEs, noting the problem is the department. He indicated this program has failed in the past, because, from the information he has from the auditor, they had a total of 1.55 FTEs for managing the program. He explained that .8 FTEs were spread among 7 clerks, and .25 FTEs for management, noting all they had was parts of FTEs managing the whole program, which is why it did not work. He indicated their proposal is undesirable to him, because they would start gearing up, that they might consider out-of-state screening, but they do not want to go into warehouse operations. He asked the committee to also keep in mind that they are in competition with the state surplus program, which operates a different type of program than what this program would be.

He indicated that he is from Great Falls, and his recommendation will be to establish this outside of Malmstrom Air Force Base, because Malmstrom Air Force Base is the government supply disposal system for the State of Montana. He noted that it would be right outside their gate, and they can turn around and dump right back into the system again, when they get the equipment, if they have a good manager. He gave the example of a vehicle they had, which was rolled over, and totally damaged. He reported they took the engine out, put it in a good vehicle that had a bad engine, and then turned in the rolled vehicle, the damaged equipment, to Malmstrom. He noted it cost zero, that time was the only cost for a new engine for a new truck, which is running on the road today. He stated there are a lot of advantages that they can work and play with on this.

Representative Simpkins indicated that, as he mentioned before, fire departments throughout the state can get fire equipment through the forestry service in Missoula, through the Department of State Lands, but, at the same time, they would be able to come to the warehouse and get other things they need, under the surplus property program. He noted their program is the best, and they do not want it to merge. He indicated they are looking at two other departments, and the Department of Lands is one of the best that they could put it under. He stated it would be on an equal level with their current program, but not merged with it, because there are different accountability standards which must be maintained, but that it would fall under the same director. He indicated he hopes the committee understands what they are trying to propose, overall. He again stated they do not want to merge

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the programs, and do not want to merge funds. He indicated they have a super-efficient program, and they want to leave it as it is because there are two different accountability standards, but they want it under one manager, that they would have two bureaus working under one division manager, noting that, at least they can work together that way. He added that, if this does not work, the other department under consideration is the Department of Commerce, under local government.

Representative Simpkins stated that, going back to his original opening, this is a stop-gap bill because, at present, it will leave a little flexibility until final negotiations are done. He added that he is working with the Governor's office and, if it looks like they can go to either one of those two departments, they will have the Governor sign off on this bill, and immediately make an assignment to the Department of Lands or the Department of Commerce. He noted that will keep the laws compatible with the federal government regulations. He indicated there is one amendment he must ask the committee to put on this bill, that he forgot the effective date, which should be July 1, noting they can not wait until October, that it should be effective upon the change of the fiscal year for funding purposes. He asked that the committee straighten out his error, and put an effective date of July 1 on the bill. He indicated he appreciates the committee's time, and would appreciate their favorable consideration of the bill.

List of Testifying Proponents and What Group they Represent:

Lyle Nagel, Montana State Volunteer Fire Fighters Association
Henry E. Leht, Montana State Volunteer Fire Fighters
Association
Joe Pratt, City of Missoula

Testimony:

Mr. Nagel reported they have had many opportunities to use the federal surplus property program and, when they lost the program in the state, it was quite a hinderance to them. He gave the example that there were two trucks which were sitting in Great Falls. He indicated applications were made for those trucks, but they had to be cleared through San Francisco, that they had to clear with every government agency and then, at the state level, with every state agency, noting the fire service comes in at the bottom of the screening, so they had to wait. He pointed out that, if these could have been put in to the state program, as is being proposed, similar to what

they had before, and if that truck was there, they could apply for it, and get it. He then reported that, to give the committee some idea of the savings, a truck, which was sitting on a lot in town, and was almost identical to a truck they got, cost \$8,000, and that they got their's for \$150. He noted the \$150 was what they figured for the paperwork.

Mr. Nagel stated there is a big advantage to using this surplus property, and there is no end to the things, noting the committee would be surprised at some of the things that come up. He indicated they get supplies for their emergency medical units, and things you would not think they would ever have to have, or would be able to get in surplus property, but they are there. He urged that the committee support this.

Testimony:

Mr. Leht stated it was very essential that they get this equipment, in the past, and that their department thrived on this surplus equipment, noting it dried up, and made a big difference. He indicated they could sure use this equipment, and urged the committee's support.

Testimony:

Mr. Pratt stated his main reason for being here is to give the committee a perspective on what Representative Simpkins said. He reported he is one of the guys out on the road screening, and that he has been screening for 5 years. He stated that, 5 years ago, when he started out, he was paying 3% of the allocated cost of what the government paid for the vehicles, but, today, he is paying 6.5%. Mr. Pratt indicated Representative Simpkins is right on the amount of equipment out there, and gave the committee an example. He reported that they have an employee, in the City of Missoula, who has been working 18 years in the vehicle maintenance shop. He indicated that budgets have been bad, and they have been trying to get a wrecker. He reported he was in Great Falls, one day, at the right time, and purchased a 5 ton, 6 wheel drive wrecker, which cost the city \$1,160. He then reported he brought it back home, that the employee got it in the shop and went through it, and found there was nothing basically wrong with it. He indicated the Mayor asked him how much it would go for on the market, and, since he really did not know, he called a couple of wrecking companies. He reported that one just traded in a vehicle just like that, only quite a few years newer, but it does the same job, and he got \$50,000 trade-in on the new vehicle, for his old one.

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Mr. Pratt stated the dollars are out there, the savings are there, noting he does not spend as much as Cascade County, that he thinks he spends about second in the state, for dollars. He indicated they have a surplus property budget established for his account, as superintendent, and they also have a budget established for all the city departments. He reported that he also screens for Missoula County, who has a surplus property budget set up. He stated the system is good. He indicated that GSA, a few years ago, had a meeting in Washington. He reported they come back and talked to him, after the meeting, and said Montana is just ridiculous. He noted he got the same figures that Mr. Simpkins gave the committee, and that, two years ago, Montana was on the bottom of the list.

Mr. Pratt reported that the state property bureau does what they can, but are limited in what they can do, because the Department of Administration does not want anything to do with warehousing, after the ruckus caused down there. He indicated it is a self-supporting budget, and he is in favor of this bill. He stated that they need to change, one way or the other, and, whether it goes there, or to the State Lands Department, wherever, Montana needs a change, because the people need to get this property.

Mr. Pratt reported they have classes for screeners, that they have to go through a training program, and the state sends people to train people to screen. He indicated that he would guess there are probably between 40 and 60 people who carry a screener's card, like he does, which is authorized by the GSA and the State of Montana. He reported that he just came from Great Falls, where he picked up a load and screened some more. He indicated there were two other people in the State of Montana who had tags, last month, noting that people just are not using it, because they just can not take the time to go look. He indicated he screens in Great Falls, at Fairchild Air Force Base, and that he has also screened in Idaho. He noted that it takes a lot of time to get out there, that he does not get paid for his extra time on the road to do this, but he does it because we need to develop a good program, because we are getting left in the dust.

List of Testifying Opponents and What Group They Represent:

None.

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Questions From Committee Members:

- Q. Senator Rapp-Svrcek indicated he is not following this very well, and asked Representative Simpkins, if this bill is adopted, will there be three different agencies handling surplus property.
- A. Representative Simpkins thanked Senator Rapp-Svrcek for asking that question, and responded it will give the Governor the choice to pick one of the three. He indicated that, if they were here, the Department of Administration would probably be an opponent, rather than an proponent, because he is proposing to take away one of their subdivisions, and move it.
- Q. Senator Rapp-Svrcek asked why can't they fold this into one of the other agencies that already deals with surplus property.
- A. Representative Simpkins thanked Senator Rapp-Svrcek for asking that question, too, and responded that they are taking the agency out of the Department of Administration, and moving it to either the Department of Lands, noting he is hoping that will be the case, that there will not be two agencies handling this. He stated the reason they can not merge it with the Department of Lands program, right now, is because the Department of Lands is in what they call a federal excess property program, versus a surplus property program, and the difference is accountability. He indicated they must be more stringent on their accountability for this equipment, almost forever. He continued that, whereas, in the surplus property program, they are only accountable for it until they put it into someone's hands, that then they only have to account for it being put into use in one year and, after 18 months, they can drop it from the books, noting they can not do that, in the excess program.
- Q. Senator Hofman asked Representative Simpkins if he knows anything about a problem with the property and supply bureau in the Department of Administration, and asked if there is a problem in that area.
- A. Representative Simpkins responded that his analysis is attitude.
- Q. Senator Hofman indicated he has been on the receiving end of that attitude, which is why he asked the question, and he is wondering if more people are having problems with

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that particular bureau. He indicated he perceives that Representative Simpkins thinks there is a problem there, and asked if that is why the program fell apart in the first place, or if that is not the case.

- A. Representative Simpkins responded he feels that is correct. He stated the Governor stopped emphasizing the program on screening, that he flat stopped out-of-state screening, period. He noted that is the explanation which was given to him, but indicated that, at the same time, he would like to point out who is really running the surplus property program in this state. He noted the committee just heard from one, Joe Pratt, and that he just told them about another, Doug Johnson.

Representative Simpkins indicated that it boils down to the state is saying, if the counties want the property, they should send one of their people to check it out, and pay the state the 6 1/4% for processing the paperwork. He added that, if the state gets into the business of screening, and works with Mr. Pratt, they should give him a shopping list. If he is going to Fairchild, they should pay his expenses, food and lodging, and give him a shopping list of what all the counties want. Mr. Pratt could take a look at the items, give a condition report, and come back with the items for Missoula, but he may also have something for Glendive, and other counties, that it will take one person to screen for many different organizations. He indicated the items they want would be transported into the state, put it in a warehouse, and distributed.

Representative Simpkins indicated he wants to defend the Department of Administration, and pointed out that they are under a temporary management, at the present time, because they have not had a permanent head appointed, noting he understands there will be a change.

Closing by Sponsor:

Representative Simpkins reported that Colorado does about \$6 million worth of business, South Dakota does about \$6.6 million, Utah about \$6.5 million, Wyoming \$1.7 million, North Dakota \$1.7 million, and Montana \$442,000. He indicated he can not say this will be a magic solution, that it will solve all the problems. He noted they will have problems getting this program off the ground again, but indicated the reason he likes the Department of Lands, and is hoping they will go with it, is that he likes what their division chief said,

which was "If it is under me, I am going to have my thumb on top of that program". Representative Simpkins stated he could not ask for anything better than for somebody to really manage this program, and watch it, to keep it under control. He thanked the committee for their time, and indicated he would appreciate a favorable consideration.

Chairman Farrell announced the hearing on HB691 as closed.

DISPOSITION OF HB 691

Discussion:

Senator Harding offered a motion that HB691 be amended to include an effective date of July 1st.

Senator Harding offered a motion that HB691 be concurred in as amended.

Amendments and Votes:

Motion passed by the committee that HB691 be amended to include an effective date of July 1st.

Recommendation and Vote:

Motion passed by the committee that HB691 be concurred in as amended.

HEARING ON HB 620

Presentation and Opening Statement by Sponsor:

Representative John Vincent reported there are other people here to testify and indicated that, since the committee has had a long morning, he would like to go through this as quickly as possible. He stated HB620 is a simple measure that attempts to protect the sanctity of the election process. He indicated all the bill does is prohibit a person from distributing mis-information about the electoral process, and further precludes misrepresentation of an official position, or the authority of an official election officer giving out information. He reported that the bill was prompted by the publication and distribution of a specific piece of campaign literature in the last election, noting the pamphlet was produced by the Republican Party, although he does not under

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the precise auspices, but it was criticized on a bi-partisan basis. He noted he would be more comfortable if he was up here with a Democratic pamphlet, rather than a Republican, but indicated the House looked at it in a bi-partisan way, and passed it with, he believes, 88 votes. He added he thinks the politics have been effectively taken out of it by the House. Representative Vincent distributed copies of the pamphlet, a copy of which is attached as Exhibit 8.

Representative Vincent explained that the pamphlet was presented encouraging people to send a form in requesting an absentee ballot, and indicated one of the things he wants to emphasize is that this bill does not preclude the Republican Party, or the Democratic Party, from doing a pamphlet like this, in the future, offering people the opportunity to make application for an absentee ballot. He stated it has to be done in a way that does not pretend, does not purport that it is an official registration document from an official election source, like a clerk and recorder. He indicated this technique is alright, but the way it is presented is not; "official voter document enclosed", it is not an official voter document. He noted that most of the time, most of us believe something is official because it is verified by a specific official election authority, like a clerk and recorder, so that, in essence, is, in some way, misleading.

Representative Vincent then pointed out that, at the bottom, it says "this document contains an official application to vote in the privacy of your home", and indicated absentee ballot provisions were not designed to allow individuals the luxury of voting in the privacy of their home, that it is not the intention. He added that, if this comes under official auspices, noting it says "please read, sign and return within 48 hours", and if someone believes this is an official document, and they have a 48 hour time-line, someone could believe that, if they did not submit this within 48 hours, they would be in trouble, and might be precluded from voting absentee. He further pointed out that, on the inside, noting this is the one that bothered him the most after looking at the statute on absentee voting, it says "The general election will be held on Tuesday, November 8th. If for some reason you might not be able to vote on election day, apply for an official absentee ballot." He reported the statute does not say a person can vote absentee just for any reason, that it is very clear that a person has to be gone, sick, or in the hospital, and this is the reason for absentee balloting. He added that his own personal preference is they would make a big step in the right direction, if they allowed absentee voting for any reason, and allowed it for up to a month ahead

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of the election, because he thinks they might put a damper on some of the more unsavory campaign tactics that are used in the last few days. He noted that is not what the statute says, that the statute says if a person is sick, ill, has an emergency, or they are gone, they can vote absentee. He indicated it is not the technique, noting it is a pretty good campaign technique, he thinks, but it is putting the material out purportedly or ostensibly under an official proclamation, rather than doing it in a more up-front way, that they are trying to get to here.

Representative Vincent reported the House amended the bill to read "knowingly or purposely disseminated", to make sure that something an individual candidate or an organization did, by accident, would be precluded from coverage in the document. He indicated there are other people here to testify, and one is a clerk and recorder who can give the committee first-hand experience on some of the problems this actually caused an election official, by coming out in the manner that it did.

List of Testifying Proponents and What Group they Represent:

Garth Jacobson, Secretary of State's office
Sue Bartlett, Clerk and Recorder, Lewis & Clark County
Dolores Colburg, Commissioner of Political Practices
C. B. Pearson, Common Cause of Montana

Testimony:

Mr. Jacobson stated he is here today to testify in support of HB620. He indicated that HB620 is a simple bill that protects the integrity of the electoral process from the mischief that can occur when someone intentionally tries to misinform the public, or present information in such a way as to lead the public to believe it is official election information, when it is not. He stated that, specifically, HB620 prohibits the dissemination of incorrect or misleading information about election procedures, and this bill would preclude people from using this information to disrupt the election process. He reported that, during the 1988 election, the Secretary of State's office received many complaints about a pamphlet distributed to certain voters indicating they could vote in the privacy of their homes. He further reported the item was stamped "official voter document enclosed", as the committee heard earlier, and that some people believed they had to submit their absentee ballots in order to be able to vote. He indicated it was not spelled out that absentee voting is only for those people who can not vote, in the normal manner, because of absence from the precinct or county due to physical

incapacity or illness. He stated that absentee voting is not merely for the convenience of a person to vote in the privacy of their home.

Mr. Jacobson reported the mailing resulted in a flood of absentee voter applications being sent to the clerk and recorders, that election officials spent a lot of time trying to explain to people about the absentee voter process, and it caused a lot of unnecessary work, and expense, to the election officials. He indicated that HB620 would prevent this from happening.

Mr. Jacobson noted that, even though it may be a little snowy outside, it is almost baseball season. He indicated he would end his testimony with a short baseball story, to best illustrate what HB620 is going to do. He said that, a few years ago, a catcher in the minor leagues tried to perform an interesting trick play. There was a base runner on third base, and the catcher, at home plate, threw a potato over the head of the third baseman. The base runner, on third base, thinking there was an error on the play, went running into home plate. The catcher, then, pulled out the real baseball, and tagged the base runner out. During the argument that followed the play, the catcher argued that, because there was no rule that said you can't do this, the play must be legal. Mr. Jacobson indicated to the members of the committee that what they have here is an opportunity to correct the situation, that they can prevent a situation that clearly is not within the spirit of fair play. He stated that HB620 prevents the potato play type event from happening in the electoral process, and indicated he, therefore, urges the committee to give HB620 a be concurred in recommendation.

Testimony:

Ms. Bartlett's written testimony is attached as Exhibit 10.

Testimony:

Ms. Colburg reported that her office also received phone calls and complaints from people wondering what this was all about, and what she was going to do about it. She indicated she pointed out that, like Secretary of State Verner Bertleson, she agreed the mailing was misleading but, as a matter of fact, there was nothing in the language of the law that would allow her to do anything. She stated this bill, if passed, noting it certainly deserves the committee's favorable consideration, would put the responsibility with the Commissioner of Political Practices for enforcement of the bill,

SENATE COMMITTEE ON STATE ADMINISTRATION

March 14, 1989

Page 35 of 36

adding that she would certainly support that. She indicated she thinks it is in keeping with good and responsible government, and making sure that campaign practices remain as open and honest, and unconfusing as possible.

Testimony:

Mr. Pearson's written testimony is attached as Exhibit 11.

List of Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

None.

Closing by Sponsor:

Representative Simpkins stated, again, this bill is designed to make sure that mailings like this are clearly identified that they are a political technique, or are an official document, but not both. He indicated he would suggest the confusion that Ms. Bartlett addressed would not serve the best interests of those people who were sending it out, very well, that, if they are generating long distance phone calls, confusion, and misunderstanding like that, the source of that confusion is going to come into some criticism, and might not result in the increased number of votes that were intended, when the mailing was sent out in the first place.

Representative Simpkins noted he can not resist telling his baseball story, adding that Mr. Jacobson's was a minor league story, and his is a major league story. He related that Walter Johnson, who was a Hall of Fame pitcher, and maybe one of the hardest throwers in major league history, played before there were lighted stadiums, and games would start early in the afternoon. If they were any length, they would get into dusk, and it would become darker and darker. This game was going on and on, and Walter, a very hard thrower, had worked up to a two strike count on the last batter in the bottom of the ninth inning, and he wound up, and he whirled, and he threw, and the batter just stood there. The ump yelled "strike three", and the game was over. The only problem was that the ball was still in Walter Johnson's glove, he never threw it. It was the only game to end like that in the history of baseball, but it was not fair, although the result probably would have been the same.

Chairman Farrell announced the hearing on HB620 as closed.

DISPOSITION OF HB 620

Discussion:

Senator Bengtson offered a motion that HB620 be concurred in.

Recommendation and Vote:

Motion passed by the committee that HB620 be concurred in.

ADJOURNMENT

Adjournment At: 11:20 a.m.


WILLIAM E. FARRELL, Chairman

WEF/mhu
HB254.314

ROLL CALL

STATE ADMINISTRATION COMMITTEE

51ST LEGISLATIVE SESSION

DATE: March 14, 1989

NAME	PRESENT	ABSENT	EXCUSED
HUBERT ABRAMS	✓		
JOHN ANDERSON, JR.	✓		
ESTHER BENGTON	✓		
WILLIAM E. FARRELL	✓		
ETHEL HARDING	✓		
SAM HOFMAN	✓		
PAUL RAPP-SVRCEK	✓		
TOM RASMUSSEN	✓		
ELEANOR VAUGHN	✓		

SENATE STANDING COMMITTEE REPORT

March 14, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 254 (third reading copy -- blue), respectfully report that HB 254 be amended and as so amended be concurred in:

Sponsor: Thoft (Williams)

1. Title, line 10

Following: "TO"

Strike: "ALLOW"

Insert: "REQUIRE"

2. Title, line 12.

Following: "DISTRICT"

Insert: ";AND TO PROVIDE EXCEPTIONS TO REQUIRED PLEDGE RECITATION"

3. Page 1, line 17.

Following: "include"

Strike: "HAY"

Insert: "shall"

4. Page 1, line 19.

Following: "The"

Strike: "IF REQUIRED, THE"

Insert: "The"

AND AS AMENDED BE CONCURRED IN

Signed: _____
William E. Farrell, Chairman

*H.C. 11
3/14/89
7:00 p.m.*

SENATE STANDING COMMITTEE REPORT

March 17, 1929

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 610 (third reading copy -- blue), respectfully report that HB 610 be concurred in.

Sponsor: Cobb (Balligan)

BE CONCURRED IN

Signed: William E. Farrell
William E. Farrell, Chairman

W. E. Farrell
3/17/29

SENATE STANDING COMMITTEE REPORT

March 14, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 412 (third reading copy -- blue), respectfully report that HB 412 be concurred in.

Sponsor: Bradley (Keating)

BE CONCURRED IN

Signed: _____

Farrell
William E. Farrell, Chairman

*W.C. 3/14/89
2:50
P.*

SENATE STANDING COMMITTEE REPORT

March 14, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 670 (third reading copy -- blue), respectfully report that HB 670 be concurred in.

Sponsor: Cody (Story)

BE CONCURRED IN

Signed: William H. Farrell
William H. Farrell, Chairman

W.C.
3/14/89
J. S.
P.M.

SENATE STANDING COMMITTEE REPORT

March 14, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HJR 20 (third reading copy -- blue), respectfully report that HJR 20 be concurred in.

Sponsor: Spaeth (Farrell)

BE CONCURRED IN

Signed: _____

Farrell
William R. Farrell, Chairman

SENATE STANDING COMMITTEE REPORT

March 14, 1907


MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 708 (third reading copy -- Blue), respectfully report that HB 708 be concurred in.

Sponsor: Simon (Houghton)

BE CONCURRED IN

Signed: _____
William E. Parrish, Chairman



SENATE STANDING COMMITTEE REPORT

March 17, 1959

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 211 (third reading copy - Blue), respectfully report that HB 211 be amended and as so amended be concurred in:

Sponsor: Addy (Bangston)

1. Title, lines 8 and 9.

Following: "DEGREE"

Strike: remainder of line 8 through "EXPERIENCE" on line 9

Insert: "SUFFICIENT EDUCATION, TRAINING, OR EXPERIENCE, OR A COMBINATION OF EDUCATION, TRAINING, AND EXPERIENCE"

2. Page 4, line 4.

Following: "BOARD OF"

Strike: "7 YEARS OF"

Insert: "sufficient"

AND AS AMENDED BE CONCURRED IN

Signed: William E. Farrell
William E. Farrell, Chairman

4/10/59
3/10/59
2/10/59
1

SENATE STANDING COMMITTEE REPORT

March 14, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 691 (third reading copy - blue), respectfully report that HB 691 be amended and as so amended be concurred in:

Sponsor: Simpkins (Hoyer)

1. Title, lines 6.
Following: "PROPERTY;"
Strike: "AND"

2. Title, line 7.
Following: "BCA"
Insert: ". AND PROVIDING AN EFFECTIVE DATE"

3. Page 3.
Following: line 3
Insert: "NEW SECTION. Section 5. Effective date [This act] is effective July 1, 1989."

AND AS AMENDED BE CONCURRED IN

Signed: _____
WILLIAM R. PATTON, Chairman

4.0
3.1
3.5
1.0

SENATE STANDING COMMITTEE REPORT

March 14, 1939

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 620 (third reading copy - blue), respectfully report that HB 620 be concurred in.

Sponsor: Vincent (Vaughn)

BE CONCURRED IN

Signed: _____
William E. Farrell, Chairman

Handwritten notes:
H.C. 186
2/1/39
3/1/39



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 3/14/89

BILL NO. HB254

BILL # HB254 ; TESTIMONY BY: Valerie Larson

DATE 3/14/89 ; SUPPORT yes ; OPPOSE _____

Mr. Chairman, members of the Committee, for the record, my name is Valerie Larson, representing over 3500 Farm Bureau members from across Montana.

Mr. Chairman, the foundation of a strong, unified America is based on respect, pride, and love of country by its' citizens. In our education today we teach the "Three Rs", Reading, 'Riting, and "Rithmetic. We have almost forgotten that we must also include the "Two Rs" of Citizenship. These most important "Rs" are Rights and Responsibilities. In order to have a "right", our children should be taught by example that they must also accept the "responsibility" that goes with the "right". You have a right to read, you also have a responsibility to read; you have a right to vote, you also have a responsibility to vote. In citizenship, every right also has an accompanying responsibility. Our teachers must be encouraged to set an example which will help instill the qualities of good citizenship in our youth.

Farm Bureau favors teaching and practicing the Flag Code in our schools. We also encourage everyone to fly the flag of our country according to the code.

By adoping House Bill 254, as originally proposed, or even watered down, we will be taking a very small step toward insuring that our children have the basics in the required course of citizenship. Our schools are established to educate our youth. How can a person be considered educated if he has not been taught this most basic element in love of country?

Mr. Chairman, Farm Bureau urges passage of House Bill 254.

Thank you for your attention.

SIGNED: Valerie Larson

What does

“PLEDGE

ALLEGIANCE”

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 3/14/87

BILL NO. HB 254

mean, teacher?





Board of Public Education

March 14, 1989

SENATE STATE ADMIN.

EXHIBIT NO. 3DATE 3/14/89BILL NO. HB 254Claudette Morton
Executive Secretary

TO: Senate State Administration Committee

FROM: Claudette Morton *CM* Executive Secretary

RE: HB 254 Pledge of Allegiance in Public Schools

The Board of Public Education supports HB 254 as amended by the House. Last fall the Board of Public Education was asked by then Superintendent Argenbright to add the Pledge of Allegiance to the recommended column of the Accreditation Standards; that is that the Board would recommend the Pledge be recited, but not required. Due to a change in format of the Accreditation Standards, which removed the recommended column, this was not possible. The Board worked with its legal council, Chris Tweeten, of the Attorney General's office to come up with an alternative and appropriate language. Here is the memo which the Board received from Attorney Tweeten. (Handout #1) It provided the Board good background information on this issue. As a result of this communication, the Board of Public Education enacted a resolution (Handout #2) at its January Board meeting. That resolution we believe addressed the issues very well and encourages the schools to recite the Pledge. It will be shared with all the public schools in Montana. As you can see, the resolution closely parallels this bill as amended. The Board believes it is important for students to learn the traditions which reference our citizenship, but it is equally important for the students to learn the true meaning of citizenship in this country, which includes the right to choice and to not be forced into blind obedience in the name of patriotism. Therefore, the Board hopes you will concur in support of HB 254 as ammended.

Thank you.

MEMORANDUM
Agency Legal Services Bureau
Department of Justice
444-4582

SENATE STATE ADMIN.

EXHIBIT NO. 4

DATE 3/14/89

BILL NO. HB 254 (12)

To: Claudette Morton, Executive Secretary
Board of Public Education

From: Chris D. Tweeten, Assistant Attorney General *Chris*

Re: Proposed Pledge of Allegiance policy

Date: 19 December 1988

You have referred for my review a proposed policy submitted for the Board's consideration which would "recommend" that teachers in every classroom in Montana begin each day with the Pledge of Allegiance. The policy as drafted contains a prologue regarding the benefits of this practice and provides that "[s]tudents who have a religious belief contrary to this practice would be excused from the exercise." I have reviewed the policy and researched the law in this area. I find two significant flaws in the policy as drafted, but conclude that a properly drafted policy could be adopted in this area.

The United States Supreme Court has visited this area in a pair of cases decided three years apart. In Minersville School District v. Gobitis, 310 U.S. 586(1940), the Court held that a school district could enforce a requirement that students recite the Pledge. The Court reversed itself three years later in West Virginia State Board of Education v. Barnette, 319 U.S. 524 (1943), holding a State policy compelling students to salute the flag as a condition of allowing attendance in the public schools violated the First Amendment rights of the students. The Court recognized in Barnette that fostering patriotism was a legitimate State objective. However, the Court rejected the compulsory Pledge requirement because students have the right under the First Amendment to revere the flag or not, and the State may not, consistent with that right, require the students to recite the Pledge. See also Sheldon v. Fannin, 221 F. Supp. 766,775(D.Ariz. 1963)("[All who live under the protection of our Flag are free to believe whatever they may choose to believe" and accordingly schools may not enforce requirement that students stand for national anthem.) The ruling in Barnette did not turn on the fact that the plaintiffs had religious objections to the Pledge ceremony. Rather, the Court relied on the absence of power on the part of the State to create a legal duty to participate in the Pledge at all, in light of the constitutional freedom of conscience embodied in the First Amendment. State v. Lundquist, 278 A.2d 263, 267-73(1971).

The present proposal, of course, differs from the policy at issue in Barnette in at least two important respects. First, unlike the West Virginia policy, the proposal before the Board is permis-

HB254
P22

sive, not mandatory. The Board in our case would on ~~the~~ "No commend" the recitation of the Pledge, where in Barnette the recital was required. Second, the policy at issue in Barnette did not provide exceptions. The proposed policy at issue here would allow students with religious objections to be excused from reciting the Pledge. These provisions go a long way toward correcting the deficiencies which gave rise to the Barnette decision. However, two significant problems remain.

First, as the court explicitly observed in Barnette, the First Amendment right not to salute the flag does not necessarily rest on a religious foundation. A student may wish to decline to participate in the Pledge for reasons of conscience which have a purely secular basis. For example, in Frain v. Baron, 307 F.Supp. 27(E.D.N.Y. 1969), students who objected to the Pledge filed suit alleging that a requirement that they leave the classroom while the Pledge ceremony was in progress was unconstitutional. The Court recognized their objections as legitimate even though they were secular in nature, and in fact in the case of one student prompted by her atheism. Likewise, in Russo v. Central School District No.1, 469 F.2d 623(2nd Cir. 1972), the Court accepted a teacher's conscientious objection to the Pledge ceremony despite the absence of any religious objective.

The proposed policy before the Board recognizes an exception for students with religious objections, but not for those students with objections based on non-religious matters of conscience. The Frain and Russo decisions hold that a non-disruptive refusal to participate in the Pledge ceremony for reasons of conscience is protected speech under the First Amendment, and that students may not be punished for engaging in such behavior. Cf. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)(Silent protest by wearing of black armbands is constitutionally protected speech.) The proposed policy should therefore be amended to extend the same protected status to non-religious objectors as to those whose objections are religiously based.

Second, the proposed policy recognizes religious objections on the part of students, but says nothing about teachers who may harbor similar objections. The Russo case is directly in point. The plaintiff in that case was a teacher who elected to stand silently with her hands at her side while the Pledge was recited, based on her sincerely held belief that the phrase "liberty and justice for all" was not an accurate reflection of American life. She was discharged after one year for her refusal to lead the Pledge. The Court held that Mrs. Russo's refusal to lead the Pledge was constitutionally protected, and that the School District could not discharge her or otherwise discipline her for her actions. Accord, Palmer v. Board of Education, 466 F.Supp. 600(N.D.Ill.1979); Hanover v. Northrup, 325 F.Supp. 170(D.Conn. 1970); Opinion of the Justices, 372 Mass.874, 363 N.E.2d 251 (1977).

The proposed policy before the Board makes no provision for

teachers who have religious or conscientious objections to leading the Pledge. Since teachers are protected in their rights as well as students are, the proposed policy must be amended to extend the right to teachers to refuse to participate.

The Board should keep in mind that in recognizing the rights of students and teachers to refuse to participate in the Pledge ceremony the courts have also explicitly recognized that the schools have the right to enforce order in the classroom. Neither students nor teachers have the right to engage in disorderly or disruptive conduct on school property during the school day in protest to the Pledge. In many of the Pledge cases the school districts defended on the ground that allowing non-participation would be disruptive of the classroom atmosphere. The courts universally recognized the right of the schools to maintain order while finding no evidence in the cases before them to show that a student's non-participation would be disruptive in any way. See, e.g., Frain, 307 F.Supp. at 32; see also Tinker, 393 U.S. at 513(silent Vietnam war protest could not be prohibited absent showing "that the students' activities would materially and substantially disrupt the work and discipline of the school.") The State may not require that students or teachers who decline to participate in the Pledge engage in any particular alternative form of conduct, such as standing at silent attention. Lipp v. Morris, 579 F.2d 834, 836(3rd Cir. 1978); Goetz v. Ansell, 477 F.2d 636(2nd Cir. 1973); Banks v. Board of Public Instruction, 314 F.Supp. 285, 294-96(S.D.Fla.1970). However, the State clearly may require that any conduct by non-participating persons be non-disruptive.

Attached hereto is a proposed amended policy which conforms to the concerns discussed above. By drafting this amended policy it is not my intention to advocate for or against the adoption of a policy in this area. It is my opinion, however, that if the Board should decide to adopt a policy in this area, the amendments discussed above should be included. My proposed amendments do not alter the preambulatory material in the first paragraph of the proposed policy. The factual recitations in the first paragraph are matters for the Board to consider, and it is free to modify them as it sees fit if a policy is to be adopted. The underlined material in the proposed amended policy represents new material I have inserted. The policy choice whether to adopt a statewide policy on the Pledge is a difficult one, for the reasons expressed by the courts in many of the cases cited above. I would be happy to respond to any legal questions the Board has about the matters discussed in this memo.

Proposed Policy, As Amended

The Board of Public Education believes that Montana schools should increase their efforts to educate students in the American values of patriotism and love of country. As the American home changes, the American education system must increase its efforts to nurture the values that have been held precious by generations of Americans during the last two hundred years. We must make a conscious effort to pass on feelings of civic pride and commitment to America that are critical to our country's future.

As one small step in the process of increasing Montana students' awareness of their heritage as Americans, the Board of Public Education recommends that teachers in every public school classroom in Montana begin the day with the Pledge of Allegiance. Participation in the Pledge of Allegiance may not be made mandatory. Students or teachers who object for any reason to participation in the exercise shall be excused from participation.



Board of Public Education

SENATE STATE ADMIN.

EXHIBIT NO. 5

DATE 3/14/89

BILL NO. HB254

Claudette Morton
Executive Secretary

RESOLUTION

WHEREAS the Board of Public Education believes that Montana schools should increase their efforts to educate students in the American values of patriotism and love of country, and

WHEREAS the American home has changed and the American education system must increase its efforts to nurture the values that have been held precious by generations of Americans during the last two hundred years, and

WHEREAS schools should make a conscious effort to pass on feelings of civic pride and commitment to America that are critical to our country's future,

THEREFORE, BE IT RESOLVED that, as one small step in the process of increasing Montana students' awareness of their heritage as Americans, the Board of Public Education recommends that teachers in every public school classroom in Montana begin the day with the Pledge of Allegiance. Participation in the Pledge of Allegiance may not be made mandatory. Students or teachers who object for any reason to participation in the exercise shall be excused from participation.

RESOLVED BY THE MONTANA BOARD OF PUBLIC EDUCATION ON JANUARY 26, 1989.

ALAN NICHOLSON, CHAIRPERSON

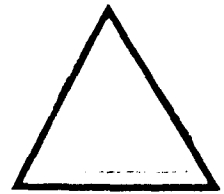
MONTANA
HEALTH
CARE
ASSOCIATION

SENATE STATE ADMIN.

EXHIBIT NO. 6

DATE 3/14/89

BILL NO. HB211



SENATE STATE ADMINISTRATION COMMITTEE
March 14, 1989

36 South Last Chance Gulch, Suite A
Helena, Montana 59601
406-443-2876

PROPOSED AMENDMENT TO HOUSE BILL 211

Move to amend House Bill No. 211 as follows:

1. Amend the title, page 1, lines 8 through 9,

Following: "DEGREE"

Delete: "2 YEARS OF EDUCATION AND FIELD EXPERIENCE;"

Insert: "sufficient education, training, or experience, or
a combination of education, training, and experience;"

2. Amend page 4, line 4,

Following: "BOARD OF"

Delete: "2 YEARS OF"

Insert: "SUFFICIENT"

Explanation of amendments. These amendments are required to conform the title and grandfather clause in the bill to the body of the bill which allows a person applying to take the nursing home administrator exam to present evidence to the board of sufficient education, training, or experience, or a combination of education, training and experience to administer a long term care facility. The applicant would still have to take and pass the examination.

An Affiliate of

ahca

American Health Care Association

EXHIBIT NO. 7

DATE 3/14/89

BILL NO. HB691

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

JOE PRATT

DATE:

3-14-89

Address:

1820 Rodgers St

MISSOULA MT 59801

Phone:

721-2435

Representing whom?

CITY OF MISSOULA

Appearing on which proposal?

H.B. 691

Do you: SUPPORT? AMEND? OPPOSE?

Comments:

The state needs a change in the surplus property program. In comparison to other states utilization of surplus federal property Montana is on the bottom of the barrel.

The property system need an upgrade and whether it is operated by property & surplus. State lands or others it needs direction and purpose from the Governor & Legislators.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

FROM:

Did you sign your application?

SUE BARTLETT
ELECTION ADMINISTRATOR
LEWIS & CLARK COUNTY
BOX 1721
HELENA, MT 59624

FROM:

Did you sign your application?

SUE BARTLETT
ELECTION ADMINISTRATOR
LEWIS & CLARK COUNTY
BOX 1721
HELENA, MT 59624

PLACE
STAMP
HERE

Montana Republican
State Central Committee
1425 Helena Ave.
Helena, MT 59601

SENATE STATE ADMIN.
EXHIBIT NO. 8
DATE 3/14/89
BILL NO. HB620

Non-Profit Org.
U.S. Postage
PAID
Permit No. 186
Billings, MT

Postmaster — Please deliver promptly to:

CAR-RT SORT ** CR 19
Donna M. Francis
731 Orange
Helena, MT 59601

PLACE
STAMP
HERE

OFFICIAL VOTER DOCUMENT
ENCLOSED

NOTICE:

This document contains an official application to vote in the privacy of your home. Please read, sign and return within 48 hours.

WITNESS STATEMENT

EXHIBIT NO. 9
DATE 3/14/89
BILL NO. HB620

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

Jue Battelle

DATE:

3/15/89

Address:

P.O. Box 1721
Helena, MT 59624

Phone:

443-1010, ext. 334

Representing whom?

MT Assoc. of Clerks & Records

Appearing on which proposal?

HB 620

Do you:

SUPPORT?

AMEND?

OPPOSE?

Comments:

attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

EXHIBIT NO. 10DATE 3/14/89BILL NO. HB620 PA
City-County Building
P.O. Box 1721
Helena, Montana 59624
Telephone 406/443-1010

Sue Bartlett

LEWIS AND CLARK COUNTY

Office of Clerk and Recorder

House Bill 620, Senate State Administration Committee, March 14, 1989

TESTIMONY OF SUE BARTLETT FOR THE MONTANA ASSOCIATION OF COUNTY CLERKS
AND RECORDERS

Mr. Chairman and members of the committee, I am Sue Bartlett, the Clerk and Recorder of Lewis and Clark County. I am speaking in support of House Bill 620 on behalf of the Clerk and Recorders Association.

We recognize and support the right of candidates and political parties to develop campaign methods which encourage and assist people to vote. That is, after all, the name of the game.

But it is essential for campaign materials to give accurate information on registration and voting procedures and to be clearly identified as campaign materials, not as official election documents.

We support House Bill 620 because we believe it will help to prevent a recurrence of the voter confusion which resulted from the misleading material on absentee voting mailed to thousands of voters across Montana in October 1988. Here are some examples of the confusion created when that mailing reached voters:

- . On October 18, 1988, Lewis and Clark County received 63 absentee ballot requests which used the card included in the mass mailing. I attempted to call all 63 voters and was successful in reaching 56 of them. Of those 56, four had already received their absentee ballots. They had sent in a second request because they thought that card was the official document they had to use. Another six were able and planning to go to the polls to vote. So 18% of the 56 people I reached had no need to use the card from the mass

mailing but did so because they believed it was the official document that entitled them to vote. On another day, we received two cards from an older woman in a nursing home. Clearly, she believed she was to send both the cards that were included in the mass mailing.

- . Yellowstone County received 603 requests from the mass mailing. Only eight of those voters specified that the ballot was to be sent to an address different from their home address. The Election Administrator of Yellowstone County believes that many of these voters could and should have voted at the polls. She estimates that staff time, supplies and postage to process these 600 requests cost \$1600.

Despite checking for duplicate requests, the Yellowstone County Election Administrator found after the election that one voter had voted twice as a direct result of the mass mailing. In addition, the mailing caused confusion among election judges who received it. (Election judges may be assigned to work in a polling place that is different from the one in which they vote and, by law, they cannot leave the polling place during the election. In these cases, the judges are permitted by law to vote absentee.) When the mailing arrived, some judges, believing it came from the election administrator, thought that the polling place in which they were assigned to work had been changed and would necessitate their voting absentee. That was not, of course, the case.

- . In Missoula County, many people who received the mailing called the election office to ask if they had to sign that card in order to vote. Others who received absentee ballots as a result of the mailing called to ask why; they had planned and wanted to vote at the polls. These people then had to return the absentee ballot to the Election Administrator to be voided and had to sign an affidavit that they would only vote once. Also in Missoula County, an individual candidate sent an accurately worded and clearly identified mailing on absentee voting. That mailing caused no confusion among the voters who received it.
- . In Jefferson County, some voters thought they were being told to vote absentee because they believed the mailing had come from the Election Administrator.
- . In at least five counties, the wrong county name and the address for the wrong county Election Administrator were printed on some of the absentee request cards. In all of these counties, angry voters called the Election Administrator demanding to know why they were registered to vote in another

county and not the county they lived in. Less irate but equally confused voters called simply to ask if they were really registered in the other county and, if so, where they should go to vote.

In Jefferson County, the error was made on the cards mailed to Whitehall. Adding injury to insult, those voters incurred the cost of long-distance charges when they called the Election Administrator in Boulder to see just where they were registered.

In Hill County, the error was made on all cards sent to Havre residents. The flood of phone calls that resulted caused one elections staff person to spend an entire day simply answering those calls and directly delayed the mailing of the voter information pamphlet in that county.

Members of the committee, neither Montana's voters nor the election process is well served by election materials which create this kind of confusion. We would appreciate your support for House Bill 620. Thank you.



COMMON CAUSE/MONTANA

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SENATE STATE ADMIN.

EXHIBIT NO. 11

DATE 3/14/89

BILL NO. HB 620

TESTIMONY OF COMMON CAUSE IN SUPPORT OF

HOUSE BILL 620

14 MARCH 1989

Mr. Chairman and members of the Senate State Administration Committee, for the record, my name is C.B. Pearson, Executive Director of Common Cause/Montana. I am here today on behalf of the members of Common Cause.

Common Cause would like to go on record in support of House Bill 620.

We believe that HB 620 is a valuable reform consistent with clean campaigns in Montana. While this bill is directed at a problem that occurred as the result of the actions of a political party we are concerned that this technique could go beyond a particular party. This technique could be used by political committees in a hotly contested ballot issue.

Targeted mailings are becoming more and more the technique used by campaigns. This bill would help prevent any future abuses or misinformation.

Passage of this bill would also serve to limit confusion on the part of voters about the electoral process as the result of a targeted mailing.

We, therefore, urge the committee's support of HB 620.

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

DATE: March 14, 1989

NAME	REPRESENTING	BILL #	Support	Oppose
Shery Peters	Leg. Council	610	X	
Valerie Larson	Farm Bureau	HB 254	X	
Patricia Blodgett	State Bar	HB 254	X	
Lisa Blanford	Leg. Auditor	HB 412		
HAL MANSON	AMERICAN LEGION	HB-254	X	
John DEN HERDER	DEPT MT DAY	HB 254	✓	
Len Burt Wallis		HB 254	X	
George Poston	United Veterans	HB 254	X	
Sony CAMPBELL	Board Pub Ed	HB 254	X	
Jo Trrazier		HB 211	X	
Linda Smith	Board of Nursing Home Admin.	HB 211	X	
Rep. Wesley Cady	HD. 20	HD 670	✓	
Gene [unclear]	MT Assoc. of Doctors & Surgeons	HB 620	X	
L. K. H. Gilman	Mt. Unio. Sys	HD 412		
John Forban	MONTANA ASSN. OF PLUMBERS & FITTERS	HB 670	✓	
John [unclear]	city of [unclear]	HB 261	X	X
Ernie [unclear]	Mt. St. [unclear]	HB 670	✓	
Lyle Naper	mt. st. vol. fire fighters	HB 670 691		
Rose Hughes	Mt. Health Care Assn	HB 211	✓	
Shirley E. Zehl	Mt. State [unclear]	HB 691	X	
Garth Jackson	Sec. of State	HB 620	X	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

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VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

DATE: March 14, 1989

NAME	REPRESENTING	BILL #	Support	Oppose
Eric Duver	NEA	HB 254 HR 20	✓	
C.B. Peterson	Common Cause	HB 620	✓	
Dolores Colburg	Commissioner of Political Practices	HB 620	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY