

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIR JAN BROWN, on February 13, 1991, at 8:00 a.m.

ROLL CALL

Members Present:

Jan Brown, Chair (D)
Vicki Cocchiarella, Vice-Chair (D)
Beverly Barnhart (D)
Gary Beck (D)
Ernest Bergsagel (R)
Fred "Fritz" Daily (D)
Ervin Davis (D)
Jane DeBruycker (D)
Roger DeBruycker (R)
Gary Feland (R)
Gary Forrester (D)
Patrick Galvin (D)
Harriet Hayne (R)
Betty Lou Kasten (R)
John Phillips (R)
Richard Simpkins (R)
Jim Southworth (D)
Wilbur Spring (R)
Carolyn Squires (D)

Staff Present: Sheri Heffelfinger, Legislative Council
Judy Burggraff, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

CHAIR BROWN said HB 492 would be put in the Campaign/Election Reform Subcommittee because the Committee has other bills on term limits that also address this issue. The Subcommittee will meet within the next two days.

REP. GARY FORRESTER announced the Pay Plan Subcommittee would be meeting Friday, from 7 a.m. to 8 a.m. in Room 312-1.

REP. SIMPKINS asked if the Committee had an option on whether or not to put both HB 685 and HB 535 into the Subcommittee. **CHAIR BROWN** remarked that there are already several bills in the Subcommittee dealing with the same issues: the term limits,

extending legislative terms and a variety of campaign reform. Some of the bills coming to the Committee in the next few days also address these issues. REP. SQUIRES said she would like to put them into the Subcommittee. REP. PHILLIPS stated HB 685, with the statutory appropriation, would end up in Appropriations. He felt there were already a lot of bills in that committee, and he did not want the bill put in the Subcommittee. REP. SOUTHWORTH said he would like to deal with the bill now.

HEARING ON HB 585

Presentation and Opening Statement by Sponsor:

REP. JERRY NISBET, House District 35, Great Falls and Black Eagle, introduced HB 585 at the request of the Teachers' Retirement Board (TRB). He said it did two simple things: 1) on Pg. 2, Ln. 18, it increases the minimum amount of the lost or destroyed warrant not requiring an indemnity bond from \$100 to \$300; 2) on Pg. 3, Lns. 3 and 4, it provides for the issuance of a duplicate warrant without requiring an indemnity bond when the retiree's monthly benefit warrant is lost or destroyed.

Proponents' Testimony:

David Senn, Executive Secretary, TRB, said that HB 585 affects all systems under Title 19. One of the TRB retirees, who has moved to Baton Rouge, lost his state retirement benefit warrant in the process of his move. In order to issue a duplicate warrant, he had to get an indemnity bond signed. An indemnity bond requires two signatures from property holders within the state of Montana. It took him about two months to find friends in the state of Montana that would do this for him. Under the system of processing monthly retirement benefits, we have the means to recover any warrants if two are cashed. We'll simply withhold a future benefit. Since TRB controls the purse strings, an indemnity bond is really not required on the monthly annuities. Any lump sum payments that the TRB makes that are lost, stolen or destroyed will require an indemnity bond before the auditor's office will issue a duplicate warrant. HB 585 will provide a much easier and less cumbersome method of acquiring a replacement warrant.

Larry Nachtsheim, Administrator, Public Employees' Retirement Division (PERD), presented written testimony. EXHIBIT 1

Gene Huntington, Montana Retired Teachers' Association, said HB 585 will make it much more convenient for our members who lose their checks to replace them, and it doesn't appear to endanger the controls TRB has on issuing warrants.

Debbie VanVliet, Administrator, Fiscal Management Control Division, State Auditor's Office, said the State Auditor supports the bill and urges a Do Pass Recommendation.

Bill Lannan, Director, Guaranteed Student Loan Program (GSLP), said the GSLP issues checks in the name of students on behalf of lenders to provide for student loans under Title IV of the Higher Education Act of 1965. The Board of Regents guarantees those loans. He distributed an amendment that would allow checks drawn on the accounts administered by the state GSLP to be among those excluded from the indemnity bond requirement. **EXHIBIT 2** The checks are not large; they will vary in amounts from \$1 thousand to \$2 thousand. The checks are mailed to the financial aid directors at the educational institutions. GSLP has had difficulties with student borrowers whose checks were lost or misplaced. Before a duplicate check could be issued, the GSLP asked the borrower to file the indemnity bond. In many instances, these students are from families that do not own property. They find it very difficult to provide for the requirements of the bond. GSLP has considered on several occasions to seek a Legislative exemption from the indemnity bond requirement. Two to three checks are sometimes lost per year. The student then must wait for a very long time. Their financial aid is dependent on the loan. The payment to the educational institution is dependent upon the receipt of the money.

Opponents' Testimony: None

Closing by Sponsor:

REP. NISBET said he did not oppose the amendment; it is up to the Committee members to decide whether or not to include it in the bill. "I think it probably has some merit."

EXECUTIVE ACTION ON HB 585

Motion: REP. JIM SOUTHWORTH MOVED HB 585 DO PASS.

Discussion:

CHAIR BROWN asked if the amendment falls within the title of the bill. Sheri Heffelfinger said yes, but there may be some technical changes necessary. CHAIR BROWN asked the Committee to approve the intent of the amendment and Ms. Heffelfinger could make any technical clarifications that were necessary.

REP. ROGER DEBRUYCKER said he could see that there was a backup protection in place for a retired teacher's check as they would be receiving monthly checks. He questioned the backup safety of the replacement check issued to the student. REP. VICKI COCCHIARELLA said that she has worked "right next door" to the financial aid office and has also worked with students' registration. "The checks they are talking about from the GSLP are a one-check situation. If the student loses that check, they are out and cannot get other financial aid until that check comes in. There is no back-up or follow-up check in most cases."

Vote: HB 585 AMENDMENT. The motion carried unanimously.

Motion/Vote: REP. SOUTHWORTH MOVED HB 585 AS AMENDED DO PASS.
EXHIBIT 2A The motion carried unanimously.

HEARING ON HB 432

Presentation and Opening Statement by Sponsor:

REP. DOROTHY CODY, House District 20, Wolf Point and Poplar, introduced HB 432 at the request of the Montana Sheriffs' and Peace Officers' Association (MSPO). The bill reduces the vested time from ten years to five years for those people who are involuntarily discontinued from service. It also lowers the age limit from 55 to 50. The fiscal note is fairly positive; No. 4 says the present funding structure for this retirement system is sufficient to provide this increase without a statutory increase in either employer or employee contribution rates.

Proponents' Testimony:

Tom Harrison, MSPO, said the bill does two things: 1) there will be a reduction from 10 to 5 years, as Rep. Cody indicated. (This doesn't do anything as far as the actuarial fund or the benefits are concerned. This is the way almost all of the retirement funds are going -- so the rights are invested. If the person were to have 6 to 7 years vested in the retirement system, it would be desirable for that person to leave their money in the fund and let it accumulate for receipt upon retirement. The public policy now is to pull it out because they don't have a vested right so the contributions are withdrawn. The vesting is desirable even if it is small.) 2) there is a reduction from 55 to 50 years. (That does have a benefit. The fiscal note states there is a minimal impact on the MSPO system. The System is sound and has been as long as he has been involved with it.)

Rick Later, sheriff, Dillon, member, MSPO, reemphasized Mr. Harrison's testimony and said the MSPO is the only retirement system managed by PERS that has a zero unfunded liability.

Larry Nachtsheim, Administrator, PERD, presented written testimony. EXHIBIT 3

Opponents' Testimony: None

Questions From Committee Members:

REP. BETTY LOU KASTEN asked Rep. Cody to comment on the fiscal note where it states that the long-range effect on the proposed legislation will accrue on the MSPO which currently has no unfunded liability. The current statutory funding rate in this system is sufficient to amortize this new unfunded liability over a period of 40 years. REP. CODY said that you always have to

perceive as a possibility what might happen. On fiscal notes they have to give the negative as well as the positive. The positive part is these folks, who are involuntarily terminated from their jobs, would leave their money in the retirement fund. **REP. KASTEN** said isn't it a fact that the people who withdraw their money because they aren't vested are not able to withdraw the amount that was contributed by the employer. Is this one of the reasons the MSPO is fully vested? **Mr. Nachtsheim** said the reason the MSPO is in as good a shape as it is, is because at the time it was created, in 1972, MSPO received a large allocation of cash from the PERS, which created a very good investment portfolio. The relationship between the number of retirees versus the number of active members is also actuarially advantageous to the system. It is not a large system, but those funds play a very small part of the System.

REP. RICHARD SIMPKINS asked if it wasn't desirable to avoid an unfunded liability of the System. **Mr. Nachtsheim** said this is true. The comment on the fiscal note did say that in the long term it could create an unfunded situation. PERS is not anticipating that the passage of HB 432 will immediately create an unfunded liability. If for some reason in a very short period of time there were a great number of people retiring involuntarily, the System would have to make up the funding required to fund those benefits. The actuary calculated the benefit at .09 of 1 percent; the System has more funding than that. **REP. SIMPKINS** asked the age of the normal retiree disregarding involuntary separation. **Mr. Nachtsheim** said he thinks it is 20 years of service at age 50.

Closing by Sponsor:

REP. CODY said this fund was established in 1952. The System was formerly in PERS. Sheriff Leo Cody, Roosevelt County, worked very hard to start this retirement fund. "I would do absolutely nothing to jeopardize this fund."

HEARING ON HB 535

Presentation and Opening Statement by Sponsor:

REP. HOWARD TOOLE, House District 60, Missoula, introduced HB 535 that would allow citizen enforcement of penalties for violations of the election and campaign practices laws in the event a violation occurs and there is no official action taken. The bill adds a new Subsection (3) on Pg. 2, which is the "guts" of the bill. This subsection is taken almost word for word from a different provision of the code on lobbying where there is a similar penalty provision which enables a citizen to bring legal action to enforce the violation of the lobbying statutes. This concept is quite prevalent in the law in various areas -- notably environmental laws which allow private citizens to bring actions in the event there is a violation and it is not being enforced. The commissioner of political practices (CPP), the attorney

general and the county attorney must all be notified if a private individual intends to pursue a violation. There must be a statement that there is reason to believe that there has been a violation. The violator must then have 40 days in which to act, which will usually be the end of it. Usually the county attorney will make a determination as to whether a violation has occurred. If there is a violation, he will bring action. If the county attorney or attorney general fails to commence an action within 10 days after receipt of the notice stating that a citizen's action will be brought, it is permitted for the person bringing notice to file a case to proceed with enforcement. It is not likely that this will occur. The bill has an incentive provision where the attorney's fees and costs are awarded to the prevailing party. This is an unusual provision in the law. Most lawsuits do not award attorney fees to the winner. There is no way to make the bill work if the person filing the case has to be out the cost of the legal proceedings involved. If the party bringing an action is turned down by the court because it was brought without reasonable cause, the double-edged sword can go the other way and fees will be rewarded to the prevailing party and against the person who brought the harassment suit. It is a balanced approach.

Proponents' Testimony:

C. B. Pearson, Executive Director, Common Cause/Montana, presented written testimony. EXHIBIT 4

Opponents' Testimony: None

Questions From Committee Members:

REP. JOHN PHILLIPS referred to Subsection (c) regarding the attorneys' fees and asked, "Whose pocket (do the fees) come out of?" REP. TOOLE said he "guessed" it would be the General Fund, but that there might be a directive some place in the law. REP. PHILLIPS said there are citizens that "get on a vendetta" and want to get even. He questioned if the bill wouldn't "open up the door" for these citizens even if they don't have a good case since someone would pay for the suit. REP. TOOLE said it comes down to the CPP, the local county attorney and the attorney general concurring that there is no basis. If a person takes advantage of the statute anyway, "they've got a pretty long oar to pull to prevail in the face of the previous judgment by the elected officials in charge of the statutes." This should deter harassment suits, if not by the person, certainly by the lawyer being hired. This bill is for the rare case when the elected officials make a poor decision.

REP. PATRICK GALVIN asked if there was any recourse against the citizen who wrongfully brings action. REP. TOOLE said they "quite explicitly can go after the person if the person charged has not committed a violation." The court will enter judgment in favor of the candidate. Following the judgment, the candidate

would inform the court that he had been harassed, a groundless lawsuit had been brought and the candidate would request payment of his attorney's fees. The court would then determine whether and how much to award the candidate. If there is a groundless lawsuit, a person can bring a civil action for that malicious prosecution for general damages for the harassment plus attorney fees.

REP. WILBUR SPRING referred to Pg. 2, Ln. 22, where it states the "court may order." He said "may" is a real weak word and would prefer the word "shall" or "will." REP. TOOLE said he didn't see why "shall" or "must" couldn't be substituted, because if the court is prepared to make a determination that the case was brought without reasonable cause, he would have no objection to making the fees mandatory.

REP. VICKI COCCHIARELLA said she was curious about the need for the bill. She asked how many times situations would arise that this bill would be needed. Dolores Colburg, CPP, answered that it would be difficult for her to answer the question but she is the third commissioner and is in her fourth year of a six-year term, and she did not know of an occasion that would have required a citizen's action during her own term. Under Sections 13-37-111, RCM, which is not mentioned in HB 535, and 13-37-124, RCM, the investigative powers reside with the commissioner. The attorney general is not provided investigative powers under either of Sects. 13-37-111 and 13-37-124, RCM. "I think (the Committee) might have to look at that as well as there is no enforcement power currently in law with the attorney general. I am not sure that this bill, alone, would do it." The CPP would look at the complaint to see if it has been filed in an appropriate manner. If it hasn't, then the CPP would go back to the party and tell them what may be missing. The CPP can then dismiss the complaint if it looks frivolous on its face or is not specific enough. If the complaint is properly filed, then the CPP must investigate the complaint. If the investigation shows the facts appear that there is a real violation of statutes, then the CPP must, by law, send the complaint to the county attorney for prosecution. What has happened in the past sixteen years, is that county attorneys have been sending the complaint back to the CPP, which they have the right to do under the law. If the county attorney sits on the complaint for 30 days, it automatically reverts to the CPP to prosecute. "I see this bill as being a spur to agencies to move on a matter if indeed a citizen believes it needs to be moved on and if the CPP doesn't."

REP. GARY BERGSAGEL asked how many citizen complaints her office receives during an election year. Ms. Colburg said that in the 1990 election year, there were 27 complaints; in the 1988 election year, there were 18 to 19. More complaints came into the CPP office in 1988 than had occurred in the combined terms of Ms. Colburg's two predecessors.

REP. RICHARD SIMPKINS said isn't it true that the CPP's office sends out letters if candidates make errors in reporting requesting they rectify such errors as receiving too much money from a PAC. He asked if candidates respond saying they have corrected the error. MS. COLBURG said they do send letter and phone candidates when errors are made. However, this bill will go beyond "simply the reporting of campaign finances. It also deals with the way people conduct their campaigns."

REP. FRITZ DAILY asked if most of the 27 complaints were from private citizens or whether they were from candidates. Ms. Colburg said a couple were from private citizens, but most were from candidates complaining about their opponents. In 1988 there were ballot issue people complaining about the opposing ballot issue committee.

REP. PHILLIPS questioned what would happen if a citizen brought suit, against a candidate he did not want to see elected, because -- for instance -- he didn't have a donkey on his sign. The citizen could report this to the county attorney. He could say that didn't mean much to him. The citizen could bring suit and the article in the headlines would read PHILLIPS SUES GALVIN FOR CAMPAIGN PRACTICES. That would do a lot of damage to Pat Galvin. That would be a lot of good, free advertising. It could cost Pat Galvin the election. REP. TOOLE said the CPP would take the action necessary which would preclude the filing of the suit. REP. PHILLIPS responded that the bill does not say it would preclude the filing of a suit. REP. TOOLE said he did not think that was correct. It says an individual may bring an action only if the two conditions are satisfied on Lns. 9 and 12. REP. PHILLIPS said even if he has to pay the attorney's fees, the headlines would seriously hurt Pat Galvin's election. REP. TOOLE said that the individual doing this would face attorney's fees and possibly a malicious prosecution suit.

Closing by Sponsor:

REP. TOOLE stated the bill should be looked at in the Subcommittee. There are some very hard-fought fights in the matter of ballot issues; there should be interest in pursuing the problems in that area. Candidates don't generally have disputes that rise to that level. "I think that this is a backup bill. I don't think there is a crying need to have this addressed, but I think it has a role to fill for those very few cases where there isn't a satisfactory resolution through the CPP office or through the county attorney."

HEARING ON HB 685

Presentation and Opening Statement by Sponsor:

REP. HOWARD TOOLE, House District 60, Missoula, introduced HB 685 to revise the lobbyist disclosure, registration and accounting

laws. He said the bill reminds him of a bill that was carried in the 1975 Legislature on lobbying. He had attended the hearing when he was an aide to a senator and all the lobbyists that were working at that session filled the room. Lobbyists objected to the bill. Lobbying regulation really did not get established by Legislative action. There were some steps taken, but they were lobbied out. An initiative was enacted in 1980 that established the general parameters of the lobbying regulation. This bill explains the definition of lobbying and changing the lobbying fee. The practice of lobbyist for hire does not include individuals acting on their own behalf. An individual working as a licensed lobbyist would be someone assisting a lobbyist who has no personal contact. Everything underlined on Pgs. 5 through 9 are restated definitions. Fees are on Pg. 9 of the bill. Formerly fees for licensing were \$10 and the bill will raise them to \$25. If a lobbyist represents more than one principal, the licensing fee would be \$20 for each additional principal they represent. He stated fees should be higher and requested the Campaign Reform Subcommittee look at those fees. Some lobbyists can easily afford a fee of \$100. If the bill is passed there will be additional duties for the CPP and there needs to be a fee that will cover those costs. Lobbying should be considered a professional activity. If it is a professional activity, it should be subject to some regulation. We don't have very much money to enforce lobbying regulations. Page 10 of the bill states that the license fees will be deposited in an account of the state special revenue fund to be used by the CPP for auditing responsibilities. Section 3 and 4 cover reporting. At the end of the second month of a regular Legislative session and at the end of every other month after that, while the Legislature is in session, the CPP is to provide a summary report of lobbyist expenditures that have been filed. Lobbying dollars will be disclosed to a much greater extent with this bill. Lobbyists and principals are to account for the funds and payments made to them no later than the 15th day of the month. This bill will require a more full disclosure of the amounts of money paid for lobbying. We have always had this in effect and it is a matter of public record now how much certain entities spent. Some entities do not have to report until after the end of the Legislative session and the information is not very relevant at that point. This bill would require reporting during the Legislature. Lobbying that is directed at individuals who lobby outside the Legislature in the executive branch will report on a semiannual basis. If payments are made to influence any other official action by a public official, an accounting must be made no later than January 15 following the second half of the year or July 15 -- if it is in the first half of the year. There is a new concept of auditing on Pg. 15, Sect. 5. The CPP is directed to conduct random audits of 2 percent of the accountings filed by lobbyists. This should result in lobbyists disclosing more thoroughly and systematically. There is no provision in the law for audits now. Sometimes it is quite clear-cut what the relationship is between a lobbyist and a principal and their expenditures are relatively straightforward. However, there are examples where a broad-based

industry, such as insurance, may oppose or promote legislation in a much more diffuse manner and spread the lobbying responsibility out among many people. When this occurs, it is hard to determine how much money is being spent on an issue. The definition of lobbying leaves quite a bit to be desired in term of where it begins and ends. This bill attempts to do that.

Proponents' Testimony:

C. B. Pearson, Executive Director, Common Cause/Montana, presented written testimony. EXHIBIT 5

Opponents' Testimony:

REP. DAVE BROWN, House District 72, Butte/Silver Bow, said he strongly opposed the legislation. "It is a philosophical approach. If you want to push legislation like this you need to change the whole concept of the Montana Legislature -- starting with convincing the public and the state that you need a full-time Legislature that is adequately paid with a substantial staff to do the kind of work that needs to be done in order to assimilate and have some ability to understand the background and relationship of at least half of the legislation. The other half we can probably muddle through. . . . One of the first things he understood (when he worked as a lobbyist) was that (Legislators) don't have time to (research the bills). . . . Lobbyists become an extension of staff that you don't have. They provide you with information. You learn . . . who you can trust and who you can't trust (and their biases). That is an ingrained and an important piece of the way this system operates. Without that, and in the absence of a more stable and broader bureaucracy for the Legislature in terms of a supporting staff, this system of citizen legislature will not work."

John Alke, Montana Dakota Utilities (MDU), said that his fellow lawyers volunteered him to appear before the Committee because he litigated one of the first two cases involving lobbyist disclosure. The sense of the bill does two things: 1) it reiterates and tries to expand the definition of non-legislative lobbying; and 2) it tries, on a substantive basis, to expand on what activities are legislative lobbying. Non-legislative lobbying is essentially the 1991 lawyers' relief act. It is important the Committee understands that much of what goes on and is done by lawyers is in front of administrative boards instead of the court. This was what lead to litigation by the state bar in 1981 when there was a declaratory judgment action to define how lobbyists' disclosure fit in with the practice of law. He referred to Pg. 8 under the definition of public official where it defines anyone elected or appointed. The definition does not include those acting in a judicial, quasi-judicial capacity or performing ministerial acts. The Montana Supreme Court decided in the action instituted by the state bar that when a lawyer appears before a public official in regards to any act which involves discretion, that is the practice of law and is not

subject to lobbyist disclosure. The only (area of law) left is ministerial. A lawyer can go and practice before a board or an agency and do all the things this act says he can do without registering as a lobbyist. He can do all those things, and he is not lobbying. When you try to reiterate this non-legislative lobbying provision and try to expand it, you are essentially setting up two classes -- lawyers who are not in it and citizens who are. If the goal of the supporters of the bill is to expand and improve the rights of the individual citizen, the expansion of the concept of non-legislative lobbying is flat out wrong. You are creating a super class of people who do not have to comply -- the lawyers. "We do not have a true Lobbyist Disclosure Act in Montana. We have . . . an act that says certain lobbying is okay, we won't even talk about it. Lobbying by anybody who is an Inc. -- a corporation or business -- is bad." He gave the following example of why the Committee should not broadly expand the definition of even legislative lobbying: Assume he (Mr. Alke) owns a casino and he wants to sponsor a bill to legalize Blackjack. If he owns his own casino he is an individual and can go to the Legislature and do anything without registration or reporting because he is not an "Inc." All businesses and residents around his casino may not want Blackjack. They decide to organize an association because they are a bunch of "little folks." They send someone to the Legislature to undo the damage that the owner of the casino wants to do. The owner of the casino can turn on the computer and check the status of the bill he is following and it would not be considered lobbying under the new expanded definitions on Pg. 8 that cover the gathering of information relating to the status and political prospects for introduced legislation. But if the "little people's" executive director turns on the same computer, he is lobbying. If you run through the list, every one of them turns out the same way. It is important to consider that before expanding the definition of Legislative lobbying. On Pg. 6, (C), it (expands lobbying to) the practice of communicating directly or soliciting others to communicate with any public official in the Legislature. If you solicit others to communicate with you it is lobbying. If a right-to-life group went out and distributed handbills to the public regarding their position and in their handbill said please contact your Legislators on this issue, they would be lobbying. There was a very similar provision in the initial lobbyist initiative that was struck down by the Montana Supreme Court as an unconstitutional infringement on freedom of speech. "I think (this) will also be struck down if it is passed."

Roger Tippy, attorney, Helena, said he advises a number of small trade associations and professional societies with budgets typically between \$40 thousand to \$100 thousand a year to pay for their executive director, some travel and publications. "It seems the easiest way to comply with this bill is to dump the whole budget into (CPP's) office rather than try and come up with generally accepted accounting principles for allocating all of these portions of the time." The CPP's office has been working

on the problem of getting a handle on what occurs during the interim. There are four ways that lobbyists interact with Legislators during the interim: 1) campaign related matters; 2) purely social matters; 3) monitoring matters, or 4) lobbying -- depending on the nature of the communication. "We have all talked about discussing your campaigns with (Legislators)," (the time spent on these conversations) would then have to be reported on the C5 (the form the candidates and committees are required to fill out) so he would assume you would not have to (report the) same conversation on the L5 (the financial report that must be filed by lobbyists) as you do on the C5. There are purely social contacts, which under the bill, sound like lobbying. If a lobbyist starts reading the LC numbers when a bill goes in and they contact a member of the Legislature that has just been elected to inform the Legislator that they are working with a group that may be concerned with the bill the Legislator is having drafted and just request information concerning the bill, they would be lobbying according to HB 685. If an organization, such as the school of pharmacy, distributed a small gift to a group and ask for support for funding for the school, they would be lobbying. They have identified an issue and made a persuasive effort to have the Legislator think about the effort in a particular way. He believes the registered groups and the CPP's office can work together under existing law, and this legislation is unnecessary.

Ken Williams, Entech, mentioned that when he came to the capitol this morning, if he hadn't been attending this hearing, his only duty would have been to go and pick up the bills. Under HB 685, picking up the status sheet of the Legislature would be a reportable lobbying expense. This bill would expand lobbying to include "gossip time." This occurs when lobbyists ask one another or even the waitress what has been heard concerning a bill. Under this bill, that would be a reportable expense. If a Legislator requested information from a lobbyist, which was used to promote a position that the lobbyist opposed, this would be a reportable expense.

Gene Phillips, lawyer, Kalispell, appearing for himself, said he represents both corporate and trade associations. "I don't know where I am going to be under this proposed legislation." The Supreme Court has said we can't have a law that leaves a person in doubt as to whether their conduct would result in a penalty being imposed upon them. He gave the following examples: 1) Pacific Power operates in seven states. Last fall there was a meeting with the lobbyists from the various states where legislation that would affect them was discussed. Would information Mr. Phillips obtains, that was reportable in other states, concerning legislation in other states that will affect legislation in Montana, now be "reportable" in Montana? How would the cost be allocated? Would it be apportioned to each state? 2) The House Sergeant of Arms and several Legislators requested that he obtain telephone directories, which he did. This involves a cost. Under this act he gathered information at

the request of those Legislators and furnished it to them. The bill states the cost must be recorded if it will influence the official action by them. "How do I know who it is going to influence? If I didn't give (the directory) to them, it would probably influence them more than if I did," he said. Mr. Phillips had no way of knowing what impact his conduct would have on the Legislator's decision.

Mike Pichette, Montana Power Company, commented he wanted to point out that in addition to creating a class of lawyers who are not subject to this, the bill leans towards Helena lobbyists generally. "If I take five Legislators to breakfast and spend \$10 on each of them, my time -- from 7 a.m. to 8 a.m. -- would be treated equally as a lobbyist driving in from Sidney dodging deer in the dawn's early light because that is traveling as defined on Pg. 7, Ln. 10."

Questions From Committee Members:

REP. PHILLIPS said he has been on the Committee for six years and that he "thought he has seen it all in campaign practices bills, but C. B. (Pearson) has really out-done himself this time." The Montana Education Association is probably one of the most powerful lobbyists up here. They assign a lobbyist to each Legislator. They are not working as individuals; they are part of the Association and have a mission. Would they all have to pay CPP \$25? REP. TOOLE said that anyone paid to lobby on a regular and recurrent basis ought to be registered as a lobbyist. "If they are not being compensated separately from their own employment, that is a fact that is worth noting. People who are lobbying on a regular basis during the Legislature and that don't do any lobbying outside the Legislature and are just being paid their regular wages during that time are performing a valuable service for the principal." There is an exemption for lobbying done by members of state agencies -- a public official acting in his official capacity. Teachers may be considered to be a lobbyist under that definition. REP. PHILLIPS asked for Rep. Toole to comment on the "whole new hierarchy with the funding mechanism in the bill." REP. TOOLE said the funding for the increase of responsibilities entailed by the bill has to come from increased fees.

REP. WILBUR SPRING referred to Mr. Pearson's testimony on Pg. 3, Par. 2, the last sentence, where it says, "In the 1985 study, Montana Common Cause estimated that only \$1 in \$5 spent in lobbying was reported." He asked what facts Mr. Pearson had to substantiate the statement. Mr. Pearson referred to the example in the following paragraph where they talk about the contrast between the Coal Council and MontCo Thermal. They evaluated the definitions that the lobbyists gave in 22 different organizations and how comprehensive their reporting was to the law and based an estimate on what the current lobbyists did and put a multiplier on that. He volunteered to obtain a copy of the 1985 study which would show exactly how that was done.

REP. JANE DEBRUYCKER asked if the Committee could obtain a fiscal note to see what impact there would be on the General Fund if the bill was adopted. Ms. Colburg said the fiscal note was given to her office on Friday to be drafted. It was due on Monday. She handed it in Monday morning. She does have some figures on it with her. Ms. Colburg said it was calculated that given the current number of lobbyists and principals that are registered, this bill would generate 5,070 reports over the two-year period. Two percent of those constitutes 101 audits to be done randomly by lot. CPP thought that the chances of out of the 101 that 5 would be out of state. That would add out-of-state travel expenses. Since an audit cannot be done without going out into the field to examine the source documents, the CPP calculated it would take another full-time equivalent person in the office hired at, at least, a grade level 12. With travel costs and the one-time cost for equipment and continuing operating costs, the fiscal note would be approximately \$86 thousand for the biennium. The increased fees from lobbyists, and with the assumption that state people, who must register as lobbyists, would still be exempt from the payment of the fee, would raise approximately \$13,780.

REP. CAROLYN SQUIRES asked if there would be repeat audits since they would be selected randomly. People would be upset and say they are being "picked on." REP. TOOLE said he did not think that there would be too much repetition if a computer generated random process were used.

Closing by Sponsor:

REP. TOOLE stated 16 years ago the room was fuller and everyone testified against the bill for a three-hour hearing. The testimony then was much angrier. "Maybe we've come some distance since then and the idea is more open. Maybe the length of the hearing is just not a function of careful planning." There are some real merits to the bill. Those that react to the bill viscerally and not on the basis of well-reasoned approach have a hard time with the idea that this is a matter of public responsibility. There ought to be disclosure of the fees. If they come after the session they are not "truly" useful. The issue Mr. Alke presented regarding the Lawyer's Relief Bill concept that it doesn't apply to lawyers, is a problem. He said he didn't know how to deal with that. "This bill simply continues a definition imposed by the Supreme Court ten years ago. It doesn't do much to affect that. We have had the exemption for an individual acting on his own behalf; it has been part of the existing lobbying law and is also not essentially changed by the bill. Those exemptions are not ideal. If an individual wants to come to the Legislature and lobby on their own behalf, they ought to be able to do that. There aren't going to be many who are owners of huge businesses lobbying for a clear and obvious economic gain. I think we ought to tighten up the area of social contact that Mr. Tippy mentioned. I don't think lobbying includes a friendly chat."

HEARING ON HB 492Presentation and Opening Statement by Sponsor:

REP. LINDA NELSON, House District 19, Great Falls, introduced HB 492 to increase House members' terms from two year to four years and elect one-half of the House every two years. She stated this bill may seem self-serving to those outside the Legislature, but Legislators know better. Representatives would be elected for four years and the enactment of the bill would require a Constitutional amendment. It would take a two-thirds vote of the total House and Senate to pass. Upon passage of HB 492, it would be placed on the ballot in the general election in 1992 for the people to decide. If the bill were to pass the public's scrutiny, half of the Representatives elected in 1994 would be elected to four-year terms and the other half would be elected to two-year terms to launch the method of having half of the house elected every two years. The bill would require a Representative to resign his or her seat in order to run for the Senate. Rep. Nelson believes in four-year terms for the following reasons: 1) Representatives are constantly running for reelection when not in session. (This prevents their working on any good legislation requiring a lot of research because they don't know if they will return to see it through.) 2) Montanans are the losers. Instead of getting good legislation, they are subject to political rhetoric that sickens them. 3) Printers and the media are the only people benefiting from the two-year term.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members:

REP. SQUIRES asked how she anticipated dealing with the Senate since they would not allow the Representatives and Senators to both serve four years. REP. NELSON said she did not address the Senate terms because she "is not excited about the Senators serving six-year terms." They will probably amend that into the bill. If they do, she said she would go along with it because it would help the passage of the bill. REP. SQUIRES said she would be concerned about having the Representative resign to run for a Senate seat. The people elected them, why could they not complete their term? There are benefits acquired through the Legislative process. If an individual resigned and a person was appointed for four months, what would happen during a special session as that individual would not be knowledgeable of the Legislative process? REP. NELSON said she believes a person should not be running for office while holding another one. Another reason she included this was because it would make the bill more palatable to the Senators.

REP. SPRING said he has a bill very similar that addresses six-year terms in the Senate. Two years ago this bill was heard and

defeated. He asked if there would be an objection to amending the six-year term in the Senate. REP. NELSON said no.

CHAIR BROWN said that those Representatives that were able to serve the first four-year term would have an advantage over those serving the two-year term from the start. She asked how the decision was reached to have the odd-numbered district Representatives serve the four-year term. Rep. Nelson said the Legislative Council decided this. CHAIR BROWN asked if a provision should be included stating that a Senator would have to resign before running for the House. REP. NELSON said she didn't address that as she didn't think it was very apt to happen.

REP. ROGER DEBRUYCKER asked if reapportionment would have any effect on the effective date of the bill. REP. NELSON said she did not think that would have any bearing on the bill. It could change the numbers but not the intent.

Closing by Sponsor:

REP. NELSON said she hoped the Committee would pass the bill and help her get it through the Senate and convince the public that "indeed we will be better Representatives if we're here for two terms and not constantly running for reelection."

EXECUTIVE ACTION ON HB 432

Motion: REP. FRITZ DAILY MOVED HB 432 DO PASS.

Discussion:

REP. SIMPKINS said he has no personal objections to decreasing the term to five years, but he did not agree with decreasing the age from 55 to 50. If a person is involuntarily discontinued and takes a job out of the field of law enforcement, there would be no benefit.

REP. PHILLIPS said we are "merely making it consistent." This was an oversight to not change that when it was lowered in a previous session. Everyone else is at 50; there is no problem there.

Vote: HB 432 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 562

Motion: REP. DAILY MOVED HB 562 DO PASS.

Discussion: Ms. Heffelfinger distributed amendments. EXHIBIT 6

Motion: REP. DAILY moved the amendments.

Discussion: Ms. Heffelfinger stated the new set of amendments includes both sets that were distributed during the hearing and are essentially the same. The only difference is that Doug Mitchell's amendment regarding expenses incurred by the agency as a result of main-frame processing charges or other out-of-pocket expenses directly associated with the request for information is now on Ln. 25 right after "media." There is a grammatical change on Ln. 19. Amendment No. 5 is new. It clarifies the definition of agency as defined in 2-3-102, RCM, includes local and state agencies. It also includes Legislative, judicial and state military agencies. This provides the broadest definition of agency. Public agency is not defined anywhere else.

Vote: HB 562 amendments. Motion carried unanimously.

Motion/Vote: REP DAILY MOVED HB 562 DO PASS AS AMENDED.

Discussion:

REP. GARY BERGSAGEL asked if he would have to pay for information transferred from an agency via a modem during the interim. Ms. Heffelfinger said yes, you would have to pay if there are expenses incurred by the agency. You have one-half hour, but sometimes it can cost up to \$50 to run a certain type of program to obtain that information. You would be charged the expense of running that program rather than charging \$.50 a page.

REP. DAILY referred to Pg. 3, Lns. 9 - 13, where that question is answered. It says no member of the Legislature or state or county officer may be charged.

Vote: HB 562 DO PASS AS AMENDED. Motion carried 18 - 1 with Rep. Roger DeBruycker voting no. EXHIBIT 6A

EXECUTIVE ACTION ON HB 685

Motion: REP. PHILLIPS MOVED HB 685 BE TABLED. The motion carried 18 to 1 with Rep. Beverly Barnhart voting no.

HEARING ON HB 634

Presentation and Opening Statement by Sponsor:

REP. BEN COHEN, House District 3, Whitefish, introduced HB 634 at the request of Common Cause/Montana to restrict contributions between candidates and Political Action Committees (PACS). He stated it also restricts the timing of contributions by lobbyists of PACS and limits the amounts persons can contribute to PACS. Some amendments were necessary, and he distributed them to the Committee. EXHIBIT 7 The amendments he presented were in error. He explained what they wish the amendments to read striking (5) on Ln. 13, "A political candidate or a lobbyist as defined in

5-7-1102, may not make a contribution to a Legislator or Legislator elect within 30 days before and 30 days after any regular session of the Legislature or within 10 days before or 30 days after any special session of the Legislature. The purpose of the amendment is to try to prevent any undue influence by lobbyists or lobbying groups over Legislators. He would like to exempt ballot issue committees from the \$300 restriction. Rep. Cohen gave the following examples of why the bill should become law: 1) A California assemblyman, Willie Brown, noted for being an excellent Democratic fund raiser distributed funds to various Democratic candidates. Through his use of campaign funds, he had a tremendous amount of influence over the member of his caucus. (This bill would protect each Legislator from being unduly influenced by other members of the caucus who start "throwing" money at you during your campaign.) 2) Congressman Tony Cahill, who recently resigned from Congress and his position of Chair of the U.S. House of Representatives' Democratic caucus, had accomplished the same fund raising on the national level. By controlling the contributions he made to various candidates, he was able to secure candidates' allegiance when running for office within his caucus.

Proponents' Testimony:

Marguerite Burns, lobbyist, Common Cause/Montana, presented written testimony. EXHIBIT 8

Opponents' Testimony: None

Questions From Committee Members:

REP. ERVIN DAVIS referred to Pg. 3, (4) and questioned how CPP would identify and track the money deposited into a candidate's account and then deposited in another candidate's account. Ms. Burns said you wouldn't actually be tracking the funds, you would be restricting the transfer of that fund. REP. DAVIS questioned if a candidate had \$1,000 in his account and received \$1,500, and is unopposed, and chooses to send \$50 to another candidate, how do you track that? Ms. Burns said that it would be pretty difficult to track. "I don't have a good answer for you."

REP. RICHARD SIMPKINS said we are citizen Legislators without an expense account, but you are authorized to have a newspaper account. If I want to obtain an opinion from constituents regarding issues by mail, I would have to pay \$300 out-of-pocket for postage. Is there something wrong with having a political organization pay the \$300 in postage? This bill would prohibit that during the Legislative session. REP. COHEN said it would restrict you from raising that money from lobbyists or from a PAC. It would not forbid you from accepting individual contributions. REP. SIMPKINS said he had talked to CPP who told him that a newsletter account has no restrictions on contributions received as long as it goes into a special account and cannot be used for campaign purposes. "The way I look at

HOUSE STATE ADMINISTRATION COMMITTEE

February 13, 1991

Page 19 of 19

this bill I cannot accept a \$200 check from Montana Power, for example, to go into my newsletter account while I'm in the Legislature or for 30 days afterward." REP. COHEN requested CPP respond. Ms. Colburg said her understanding of reading the language in HB 634 is that you would not be permitted to take any money from any lobbyist or any political committee, save a political party committee, for any purpose whatsoever either within 30 days before or 30 days after regular session whether that money were to go into a campaign account for future campaigns or to do a newsletter to constituents . . . it would be prohibited.

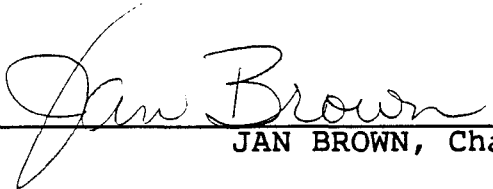
REP. SIMPKINS asked if the CPP had identified a problem with money being donated during this period of the Legislative session. Ms. Colburg said she is not aware of Legislators receiving contributions while you're sitting as a Legislator. Some candidates start accepting money well in advance of the election year in which they are going to run for office. "I have not seen that this is a circumstance among Legislators. I don't see any evidence that Legislators are collecting any money at all from any sources until the election year, which . . . is not the Legislative year."

Closing by Sponsor:


REP. COHEN said there are some great gaps in our campaign financing laws. He suggested the Committee take the bill under advisement and put it in the Subcommittee to "seriously consider what you can do to tighten up our laws to keep all of us a little more honest and to keep those big money outside influences from coming in and having undue influences on Legislative processes."

ADJOURNMENT

Adjournment: 10:45 a.m.



JAN BROWN, Chair



JUDY BURGGRAFF, Secretary

JB/jb

SA021391.HM1

HOUSE OF REPRESENTATIVES
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE 2/13/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JAN BROWN, CHAIR	✓		
REP. VICKI COCCHIARELLA, VICE-CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. GARY BECK	✓		
REP. ERNEST BERGSAGEL	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ERVIN DAVIS	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. GARY FELAND	✓		
REP. GARY FORRESTER	✓		
REP. PATRICK GALVIN	✓		
REP. HARRIET HAYNE	✓		
REP. BETTY LOU KASTEN	✓		
REP. JOHN PHILLIPS	✓		
REP. RICHARD SIMPKINS	✓		
REP. JIM SOUTHWORTH	✓		
REP. WILBUR SPRING	✓		
REP. CAROLYN SQUIRES	✓		

HOUSE STANDING COMMITTEE REPORT

February 13, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 585 (first reading copy -- white) do pass as amended .

Signed: Jan Brown
Jan Brown, Chairman

And, that such amendments read:

1. Title, line 8.

Following: "RETIREEES"

Insert: "AND STUDENT FINANCIAL AID RECIPIENTS"

2. Page 3, line 2.

Following: "1"

Strike: "or"

3. Page 3, line 4.

Following: "19"

Insert: "; or

(k) the payee is a recipient of student financial assistance administered or insured by the guaranteed student loan program pursuant to Title 20, chapter 26"

4. Page 3, line 7.

Following: "(2) (i),"

Strike: "or"

Following: "(2) (j),"

Insert: "or (2) (k),"

5. Page 3, line 11.

Following: "(2) (i),"

Strike: "or"

Following: "(2) (j),"

Insert: "or (2) (k),"

1:15
2-14-91
TDR

HOUSE STANDING COMMITTEE REPORT

February 13, 1991

Page 1 of 2

Mr. Speaker: We, the committee on State Administration report that House Bill 562 (first reading copy -- white) do pass as amended .

Signed: Jan Brown
Jan Brown, Chairman

And, that such amendments read:

1. Page 1, line 14.

Strike: "Every"

Insert: "Except as provided by law, each"

2. Page 1, line 16.

Following: "format"

Insert: ", "

Following: "subject"

Insert: "to"

3. Page 1, line 19.

Following: "copyright"

Strike: "is"

Insert: "are"

4. Page 1, line 21.

Following: "provided"

Strike: "in 1-11-301"

Insert: "by law"

5. Page 1, line 22.

Following: "exceed"

Insert: ": (a)"

115
2-14-91
JDB

February 13, 1991
Page 2 of 2

6. Page 1, line 25.

Following: "media"

Strike: "."

Insert: "; or,

(b) expenses incurred by the agency as a result of
mainframe processing charges or other out-of-pocket expenses
directly associated with the request for information.

(3) "

7. Page 2, line 5.

Following: line 4

Insert: "(4) For the purposes of this section, the term "agency"
has the meaning provided in 2-3-102 but includes
legislative, judicial, and state military agencies."

1125
2-13-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 13, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report
that House Bill 432 (first reading copy -- white) do pass .

Signed: Jan Brown
Jan Brown, Chairman

EXHIBIT 1
DATE 2/13/91
HB 585

TESTIMONY

HB 585

Larry Nachtsheim, Administrator
Public Employees' Retirement Div.

The Public Employees' Retirement Board supports this bill. It will make it easier for retirees to secure a duplicate warrant when their monthly retirement allowance is lost or destroyed.

Since the issuance of a duplicate warrant is limited to individuals receiving monthly allowances, any prospect of loss to the retirement funds through this proposal is almost nil.

The Board solicits your approval of HB 585.

Amend H.B. 585 as follows:

EXHIBIT 2
DATE 2 / 13 / 91
HB 585

Page 1, Line 8, amend the title as follows: after "RETIREEES"
insert "AND STUDENT AID RECIPIENTS"

Page 3, line 2, strike "or"

Page 3, line 4, after "Title 19-" insert "or

(k) the payee is a recipient of student financial
assistance administered or insured by the Guaranteed Student
Loan Program pursuant to Title 20, Chapter 26."

Page 3, line 7 strike "or"

Page 3, line 7 after "(2)(j)" insert "or (2)(k)"

Page 3, line 11 strike "or"

Page 3, line 11 after "(2)(j)" insert "or (2)(k)"

Explanation:

This amendment merely includes student loan checks, drawn on the account administered by the state Guaranteed Student Loan Program, among those checks excluded from the indemnity bond requirement for duplicate warrants.

Amendments to House Bill No. 585
First Reading Copy

For the Committee on State Administration

Prepared by Sheri S. Heffelfinger
February 13, 1991

1. Title, line 8.

Following: "RETIREEES"

Insert: "AND STUDENT FINANCIAL AID RECIPIENTS"

2. Page 3, line 2.

Following: "i"

Strike: "or"

3. Page 3, line 4.

Following: "19"

Insert: "; or

(k) the payee is a recipient of student financial assistance administered or insured by the guaranteed student loan program pursuant to Title 20, chapter 26"

4. Page 3, line 7.

Following: "(2)(i),"

Strike: "or"

Following: "(2)(j),"

Insert: "or (2)(k),"

5. Page 3, line 11.

Following: "(2)(i),"

Strike: "or"

Following: "(2)(j),"

Insert: "or (2)(k),"

EXHIBIT 3
DATE 2/13/91
HB 432

TESTIMONY

HB 432

Larry Nachtsheim, Administrator
Public Employees' Retirement Div.

The Public Employees' Retirement Board has no position on this bill. The proposed change has a minimal cost which can be absorbed by the Sheriffs' Retirement System without any additional funding. It changes the vesting period of the Sheriffs' Retirement System to five years which is in keeping with the majority of systems administered by the state. The Sheriffs' system will continue to be 100% funded.

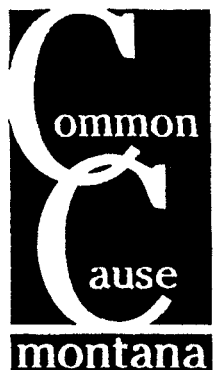


EXHIBIT 4
DATE 2/13/91
HB 535

COMMON CAUSE TESTIMONY IN SUPPORT
OF HOUSE BILL 535
13 FEBRUARY 1991

P.O. Box 623
Helena, MT
59624
406/442-9251

Madame Chairwoman, members of the House State Administration Committee. For the record my name is C.B. Pearson, Executive Director of Common Cause/Montana. On behalf of our members, I am here today to speak in support of HB 535.

The complaint and enforcement process exists to benefit all citizens, candidates, constituents and private interests alike. It is one way to ensure fair and honest campaign practices in Montana. A provision for a "citizen action" or allowing a citizen to have standing to enforce Montana's campaign laws is clearly consistent with this goal and sorely lacking in current law.

Presently, as you may know, only the Commissioner of Political Practices or the county attorney may take action on a complaint regarding a violation of Montana's campaign law. Unlike so many areas of American government, there is no safety valve, no check, on the authorized activities of these officials in this area. Citizen enforcement is a natural extension of the theory of checks and balances upon which our political system rests. The construct of checks and balances was intended to assure the American people

that mandated duties would be fulfilled with the public interest foremost in the minds of our elected officials. In this case public interest can be defined as timely resolution of citizen concerns with violations of Montana's campaign laws.

While Common Cause/Montana believes a majority of complaints are addressed in a timely manner there are, however, no assurances. More and more in a variety of government sectors, we empower citizens to enforce compliance with laws.

As a part of the Lobbying Disclosure Act, a citizen enforcement provision called a "citizen action" was passed by initiative in 1980 by a margin of three to one. Clearly this shows the interest of the people of Montana in securing a voice in the enforcement of campaign related laws. It is also a provision that has neither been used nor abused during this ten year period. Rather it is a "check" that exists for use only in cases of neglect or abuse of official responsibilities. Fortunately the political climate today in Montana has not required such action.

Nine other states currently provide standing for citizens to enforce campaign laws. Those states include Utah, Nebraska, Pennsylvania, Wisconsin, Hawaii, Massachusetts, Missouri, North Carolina and California. While the process varies from state to state the intent of these provisions remains constant. The legislators in each of these states have, in enacting this piece of legislation, demonstrated their confidence in the judgement of their constituents. In the final analysis, under this provision,

EXHIBIT 4
DATE 2/13/91
HB 535

the citizen may be held as accountable as his/her elected or appointed official in assuring fair campaign practices.

The concern probably arises that this provision may encourage reckless or frivolous civil suits. However, this will not be the case. A citizen must in fact file twice before commencing legal action including a clear statement of his/her intent to do so. In addition, trial fees and attorney costs shall be borne by the citizen should the case either be dismissed or found to have been brought without reasonable cause, if the court chooses.

The role of the citizen in Montana politics is considerable as evidenced by the very make up of this legislature. By supporting this citizen action bill, we can assure the rest of Montana's citizens that their concerns are a priority, that they will be addressed, and that they will be resolved. As many of you know Montanans are fiercely independent and engaged voters; it seems to go without saying that they want the enforcement of our campaign laws in a fair and timely fashion.

We urge a do pass for HB 535.

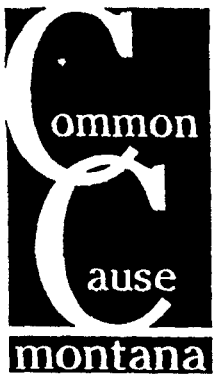


EXHIBIT 5
DATE 2/13/91
HB 685

COMMON CAUSE TESTIMONY IN SUPPORT OF
HOUSE BILL 685
13 FEBRUARY 1991

P.O. Box 623
Helena, MT
59624
406/442-9251

Madame Chairwoman, members of the House State Administration Committee, for the record my name is C.B. Pearson, Executive Director for Common Cause/Montana. I am here today on behalf of the members of Common Cause to speak in support of HB 685.

The right of citizens to petition government is fundamental to a democracy. Such lobbying provides important information to policy-makers. It is critical, however, that powerful and wealthy interests do not dominate the policy-making process. Such activity distorts the process by overpowering the voice of the average citizen and by creating the potential for private interests to be placed above the public good.

Lobbyist registration legislation was first enacted in Montana in 1959. Minor revisions followed in 1965 and 1977. These laws did not require reporting of expenditures used to influence government decisions. Between 1975 and 1980, six major reform bills were introduced. Each was soundly defeated despite strong public support indicated by a 1972 survey in which 92% of the respondents favored lobbyist expenditure disclosure. The defeat of the bills was largely due to professional

and corporate lobbying. The large discrepancy between the people's desire and the Legislature's action intensified the debate and lead to Initiative 85 which passed in 1980 with 77% support from the voters participating.

Special interest groups, or principals, have an undeniable economic interest in the allocation of funds, the outcome of legislation, and its implementation and administration. Lobbying decision-makers presents a significant opportunity to economic benefit. This potential benefit is often worth extensive effort and expenditures.

The only way to guard against distortion of the process by powerful principals is to require full public disclosure of lobbying expenditures and activities and to limit gift-giving and campaign contributions to decision-makers. The public and media can then be aware of the principals, the special interests they represent, and the amount and type of influence they exercise.

In recent times lobbying practices have come under increasing public scrutiny. As more power has been delegated from the federal government to the state and local governments, lobbyist and PAC groups have turned their attention towards shaping public policy at the state level. Along with this attention has come a greater flow of special interest money.

What House Bill 685 will do, by strengthening the definition of lobbying, requiring timely disclosure of lobbying expenditures, and conducting random audits of principals, is give the general population of Montana a clear picture of those special interests trying to influence governmental decisions.

The current definition of lobbying appears to be open to varying interpretations. A 1985 study by Common Cause/Montana revealed that some principals included all time spent "on the hill" by their lobbyists, interns, and bill monitors in their definition of lobbying. Others included only face-to-face conversations with legislators. Some included all time spent researching issues and talking with coalition members in their definition; others did not.

From our perspective, some powerful special interests take advantage of the vagueness of the Lobbying Disclosure Act and largely disregard its requirements. In the 1985 study, Montana Common Cause estimated that only \$1 in \$5 spent in lobbying was reported.

The severe discrepancy between reporting groups was evident in 1983 when the Montana Coal Council, who had an active lobby presence, registered two lobbyists and reported a total of \$3,348. In contrast, MontCo Thermal registered one lobbyist and reported a total of \$11,900 in expenditures.

Inconsistency in report filing now is a major factor in the need to pass this legislation. House Bill 685 will clarify for all players what is expected to be reported and will give a more realistic look of what is being spent to influence legislation, and executive action to the constituents of Montana. Mandated audits of two percent of the principal's reports by the office of the Commissioner of Political Practices helps ensure compre-

hensive disclosure. Such audits are good democratic practice. From our estimates the cost of these audits will run between \$7,000 and \$10,000 a biennium, but it is important to note who will be carrying this fiscal responsibility. House Bill 685 provides for the lobbyist themselves to foot this expenditure and not the citizens of Montana.

Timely reporting on the part of the lobbyist would guarantee that this information, in a consistent form, would be available to the public. Currently the information provided is irrelevant because the action of the legislature has already taken place. Monthly disclosure of expenditures by lobbyists and a final report by principals for the legislative session ensures timely and accurate reporting for the benefit of the public.

Finally, lobbying of the executive branch has gone largely unnoticed. This legislation, if passed, remedies this problem. It is important that executive branch lobbying not only be recognized but also have a clear definition as to what should be included and reported in Montana lobbying reports to the office of the Commissioner of Political Practices.

Amendments to House Bill No. 562
First Reading Copy

For the Committee on State Administration

Prepared by Sheri S. Heffelfinger
February 12, 1991

1. Page 1, line 18.

Following: "form"

Insert: ", except as provided by law"

2. Page 1, line 19.

Following: "copyright"

Strike: "is"

Insert: "are"

3. Page 1, line 21.

Following: "provided"

Strike: "in 1-11-301"

Insert: "by law"

4. Page 1, line 25.

Following: "media"

Insert: "or expenses incurred by the agency as a result of
mainframe processing charges or other out-of-pocket expenses
directly associated with the request for information"

5. Page 2, line 5.

Following: line 4

Insert: "(3) For the purposes of this section, the term "agency"
means agency as defined in 2-3-102 but includes legislative,
judicial, and state military agencies."

Amendments to House Bill No. 562
First Reading Copy

For the Committee on State Administration

Prepared by Sheri S. Heffelfinger
February 12, 1991

1. Page 1, line 14.

Strike: "Every"

Insert: "Except as provided by law, each"

2. Page 1, line 16.

Following: "format"

Insert: ", "

Following: "subject"

Insert: "to"

3. Page 1, line 19.

Following: "copyright"

Strike: "is"

Insert: "are"

4. Page 1, line 21.

Following: "provided"

Strike: "in 1-11-301"

Insert: "by law"

5. Page 1, line 22.

Following: "exceed"

Insert: ": (a)"

6. Page 1, line 25.

Following: "media"

Strike: "."

Insert: "; or,

(b) expenses incurred by the agency as a result of
mainframe processing charges or other out-of-pocket expenses
directly associated with the request for information.

(3)"

7. Page 2, line 5.

Following: line 4

Insert: "(4) For the purposes of this section, the term "agency"
has the meaning provided in 2-3-102 but includes
legislative, judicial, and state military agencies."

EXHIBIT 7
DATE 2/13/91
HB 634

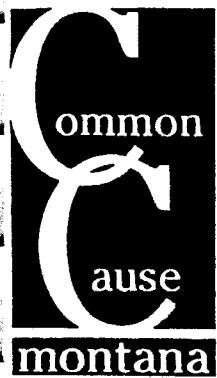
Amendments to House Bill 634

Insert subsection (3) line 5 after "part 2,"
except ballot issue committees,

Strike subsection (5) line 2,
candidate for the legislature

Insert subsection (5) line 2 after "contribution to a"
legislator or legislator elect

EXHIBIT 8
DATE 2/13/91
HB 634



COMMON CAUSE TESTIMONY IN SUPPORT OF
HOUSE BILL 634
13 FEBRUARY 1991

P.O. Box 623
Helena, MT
59624
406/442-9251

Madame Chairwoman, members of the House State Administration, for the record my name is Marguerite Burns, Lobbyist for Common Cause/Montana. I am here today on behalf of the members of Common Cause to speak in support of HB 634.

HB 634 addresses three areas of concern. The primary issue involves the transfer of funds from one candidate's campaign treasury to another or to a PAC. In our opinion this is a potential avenue for money laundering that needs to be closed. Currently there is no means to track funds deposited in a candidate's account. For example, a PAC contribution could go to a candidate who has not yet reached the aggregate PAC limit. That candidate could then give that money to a candidate who has already reached his or her PAC limit. In addition to the indirect increase of PAC influence through this means, other candidates may also attempt to increase their power in the legislature by using money as a way to influence the process. Past examples of this do exist in the 1990 campaign for example where one Democrat redistributed \$1,605 from his campaign fund and one Republican redistributed \$2,300 in campaign funds.

This bill is a preventative measure. Before candidate to candidate contributions becomes a large problem as it has in other states and at the federal level, we have an

opportunity to stop potential damage to the healthy environment that pervades in Montana politics and campaign practices.

Additionally, this bill alters the timing of PAC and lobbyist contributions to legislators in order to further distance campaign financing from the legislative process. It is important to the fair representation of all the people affected by legislation, that special interest groups do not have undue influence over legislators. Simply put there should be a window during which no contribution can be given by or received from those parties active in the legislative arena. Eight states, Connecticut, Georgia, Kansas, Maryland, Minnesota, Oregon, Texas and Wisconsin prohibit contributions from registered lobbyists during the legislative session.

The final objective of this bill, limiting individual contributions to PACs, is to insure equal representation and influence in the campaign process of citizens regardless of income. In every other area of campaign finances, the individual is limited as to the amount she may contribute for this same reason. It closes a loophole in Montana law. What we are trying to avoid is the establishment of a PAC funded by a handful of people thereby doubling or tripling the political influence of the few over the many.

As previously stated HB 634 is largely a preventative bill. It is important to consider however, that today's relatively healthy political climate in Montana is due to the insight and concern of past legislators and their enactment of similar measures. With that in mind, we urge a do pass for HB 634.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

STATE ADMINISTRATION

COMMITTEE

BILL NO.

HB 585

DATE 2/13/91

SPONSOR(S) REP. NISBET

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Sebbie VanVleet	State Auditor's Office	HB 585		✓
Bill Lannan	Mont. Guaranteed SLP	HB 585		✓
Arlene Hannawalt	Mont. Guaranteed SLP	HB 585		✓
Larry Mackintosh	PERT	HB 585		✓
David Smith	TPS	HB 585		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

STATE ADMINISTRATION COMMITTEE BILL NO. HB 432
 DATE 2/13/91 SPONSOR(S) REP. CODY

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Rick LATER	MT. Sheriff			X
Laur Nachtman	PERP			

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STATE ADMINISTRATION

COMMITTEE

BILL NO. HB 535

DATE 2/13/91

SPONSOR(S) REP. TOOLE

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
C.B. Pearson	Common Cause/Montana	535		✓

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**HOUSE OF REPRESENTATIVES
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STATE ADMINISTRATION

COMMITTEE

BILL NO. HB 685

DATE 2/13/91

SPONSOR(S) REP. TOOLE

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
C.B. STANSON	Common Cause/Montana	✓	
F.H. Boles	MONT. CHAMBER		✓
Roger Tipton	Self & MSAE as court client		✓
Ken Williams	Entech		✓
John Allen	HB 685		✓
Dave Brown	HD #72		✓
GENE PHILLIPS	SELF		X

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HOUSE OF REPRESENTATIVES

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STATE ADMINISTRATION

COMMITTEE

BILL NO.

HB 492

DATE 2/13/91

SPONSOR(S) REP. LINDA NELSON

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT

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**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

STATE ADMINISTRATION

COMMITTEE

BILL NO. HB 634

DATE 2/13/91 SPONSOR(S) REP. COHEN

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Marguerite Burns	Common Cause / MT	X	
L. P. Burns / L.	MONTCEL		X
Riley Johnson	NFIB	x	

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