

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By CHAIR JAN BROWN, on February 21, 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.

#### **HEARING ON HB 892**

##### **Presentation and Opening Statement by Sponsor:**

REP. VIVIAN BROOKE, House District 56, Missoula, introduced HB 892 to revise ballot issue campaign laws which would cover initiatives and referendums on the state and local or regional level issues. There is a bill in this Legislature to set up the procedures for "mega-landfill siting," with a provision for a local referendum to be held for the siting. If that bill were to pass, HB 892 could regulate the type of campaigning that could happen on that particular ballot issue. She gave the following background on HB 892: The main purpose is to reclaim the

initiative process to Montanans for Montanans. When the 1972 Constitution was written regarding how to address the initiative and referendum process, it was well noted that Montanans are a populist people who like to say their piece and have government respond. If government doesn't respond, the initiative process allows for the public to speak. We have seen this process take place in the last 20 years. The public has been able to influence the government through this process. In the beginning, we all thought Montanans were expressing themselves as Montanans, in the last few years we have noted there have been many outside interests. HB 892 would allow Montanans to gain that ground once again for Montanans.

Rep. Brooke explained her bill as follows:

1. Section 1: There is a new section in the first section of the bill. It would establish a penalty of 30 days in jail or \$500, a simple type of misdemeanor fine, for a false publication related to a ballot issue.
2. Section 2: Relates to election materials not being anonymous. We have already debated Rep. Nelson's bill regarding the issue of the name and address of the printer required to be on political material. If that bill passes along with this bill, that bill would need a coordinating clause instruction so that portion would be deleted; the portion that would be retained would be the name and address of the political committee -- which is already in existing law. This section would require that if there is a mailing of 50 pieces or more, the political action campaign would have to send to the Commissioner of Political Practices (CPP), not later than the day of the mailing, one of those pieces. The CPP would review the material and see if it was in compliance by including the proper statements. Reason for the section: An individual really does not have control over mailings that are delivered to our homes. When we don't like advertising on television, we don't have to watch it. We don't have to read what comes in the mail, but it does invade our homes. Those mailings do not ever seem to be scrutinized by the public for their advertising content like those on radio and television and in the newspapers.
3. Sections 3 and 4. Candidates are all given the option to sign the Code of Fair Campaign Practices. These sections just state that the ballot issue political action committees (PACs) would only have to sign voluntarily.
4. Section 5. This is the area that will probably cause the most controversy. It is an addition to the limitations on contributions that are now in statute. New language has been added on Pg. 7, Lns. 15 - 20 that

would address the situation of out-of-state influence in many ballot-issue campaigns. There is a limitation on the aggregate contributions that could be accepted from persons residing, or political committees organized, outside of the state of Montana by a political committee organized in Montana to support or oppose a Montana ballot issue, which may not exceed 49 percent of total contributions. This would balance proponents and opponents. When there are local issues, the debate should center on the local people who will be living there. This is an important concept to make both sides even. There are already set limitations in the law, those limitations aren't unconstitutional. Limiting these contributions should not be unconstitutional either.

### Proponents' Testimony:

Neva Hassanein, Northern Plain Resource Council (NPRC), a grass-roots organization made up of 6,000 members across the state interested in preserving family farms and the natural resources dependent upon those farms, said NPRC has become very involved in the issue of the bringing in of garbage from out of state. Sen. Weeding's, SB 114, provides for a local referendum process -- if that is what the people in the community want -- on the siting of a mega landfill in their community. Proponents and opponents of the siting of mega landfills have repeatedly said, "We want to vote. We have got to have the right to say something about what happens in our community." She applauded Rep. Brooke for bringing HB 892 before the Committee as it will encourage fair hearings of referendum issues in communities by limiting the amount of money that can come from out-of-state interests. Some states are facing "tipping fees" of as high as \$150 a ton to tip garbage. Legislation is pending for a \$5 "tipping fee" in Montana. It could be cost effective for out-of-state sources to dump money into a referendum in Montana to try to sway local votes. She urged the Committee's support.

Jonathan Motl, Attorney, Law Firm of Reynolds, Motl, Sherwood and Wright, appearing for himself, and as a member of the Board of Directors of Common Cause/Montana, said he has been a member of Common Cause/Montana for five years. His experience with the initiative process was when he was a proponent of the 1988 Bottle Bill where proponents were heavily outspent by opponents, with about 80 percent of the money coming from out of state. He worked very hard on the bill which limits the total amount of money that a special interest may give to legislative candidates in the state of Montana. The intent of the bill was to make sure that legislative candidates' campaigns were funded at least 75 percent or more by people -- rather than by special interests. That is a very effective bill, and it withstood all of the constitutionality arguments that were levied against it. He said those same arguments will be heard about HB 892. He has looked at the bill carefully in respect to the law; it is his judgment,

as an attorney who has worked in this area for many years, that it is constitutional. In 1978, broad-spectrum limit legislation was passed which limited the amount of money that could be spent on an initiative to \$250 thousand. This legislation placed a blanket limitation on spending that infringed on speech, and that made it unconstitutional. HB 892 does not place a blanket limitation. It just says you can spend whatever you want, but the bulk of it must come from the state of Montana. HB 892 follows the money back to its source. "When you do that, it enters into the area of constitutionality, and is considered acceptable in the area of regulating contributions to campaigns and such. That is a constitutional way to deal with this particular issue that has been of long-standing concern to the Legislature."

Dr. Robert Shepard, Helena, said he was associated with the cigarette tax, that was on the ballot in the last election. There were several things that occurred during the tobacco tax initiative which were an education for him as a political neophyte such as: how far you can go, what claims you can make during an election, and the kinds of honesty and truthfulness you would be held to. The tobacco lobby made several claims during the initiative that: 1) It would do nothing to pay for Montana's \$100 million deficit. No responsible person at that time projected a \$100 million deficit. This was a figure picked to play on the fears of Montanans. 2) It would create hundreds of new state and local jobs even though there was nothing to that fact in the bill. 3) It would create a \$4.7 million bureaucratic hodgepodge, not recognizing that a substantial percentage -- in excess of 90 percent -- of the \$4.7 million would, in fact, go into programs. 4) It would cause "rampant illegal bootlegging." He was initially willing to disregard most of the above as campaign rhetoric until he began to better understand campaigning and what the tobacco companies were doing. They did extensive polling throughout the state in the fall and asked the voters if they would vote against this initiative if "we told you that Montana would have the highest cigarette tax in the nation." No one was concerned about that. So they asked the voters if they would be concerned about this happening to beer. The voters again were not concerned. Then they asked about how the voters would feel if a "huge bureaucracy were formed" as a result of the initiative. They found that voters were against this, which gave them their argument. They had extensive finances to conduct polls to find an argument to play on the fears of Montanans. Dr. Shepard questioned the attorney general about the campaign to find out if any "truth and honesty laws could be used against the out-of-state interests." There are no such laws, and the attorney general could not respond to the request of an individual citizen, only to the request of another government employee. He then questioned CPP. The bottom line is, unless you slander or libel somebody, there are no rules or regulations concerning the honesty, integrity or accuracy of statements made in a campaign in Montana. "Not since the graves voted in Butte . . . has the political process been so distorted as it was this

fall." We had the situation where corporate America was able to come in and buy off a political process. Less than \$5 thousand was contributed by local and state in-kind contributions in a campaign that exceeded \$1.3 million, a 35 plus to 1 ratio. Under the current situation, voters do not have the opportunity to hear both sides of an issue; instead they are manipulated by emotional appeal to their personal fears.

Michael Sherwood, Montana Trial Lawyers' Association (MTLA), testified that the MTLA supports HB 892 for the following specific reasons: In Arizona, the Arizona state Trial Lawyers' Association and a consumer group opposing no-fault insurance spent in excess of \$3 million opposing a bill for a ballot initiative that was estimated to have cost in excess of \$5 million by the insurance industry. Initially, the bill was disclaimed by the insurance industry as not being their bill and not being financed by them. Three weeks before the bill was voted on, the polls indicated that it would pass. The no-fault portion of the bill was being denied and labeled as "pro-choice" by the insurance industry. The bill was not "pro-choice" as it only allowed no fault. The disclosure provided the information that the bill was being funded by the insurance industry. The ballot initiative failed 80 to 20 percent in Arizona. "It is self-serving for me to stand here and say we want (HB 892) because . . . MTLA does not have the ability to fight ballot initiatives on . . . vast levels." The vast amount of money in the Arizona initiative came from out-of-state insurance funds.

C. B. Pearson, Executive Director, Common Cause/Montana, presented written testimony. EXHIBIT 1

Kristin Page, MontPIRG, the Montana Public Interest Research Group, encouraged a DO PASS of HB 892 because MontPIRG believes in equality in the initiative process.

Mark Good, Montana Senior Citizens' Association (MSCA), said the MSCA wanted to go on record in support of HB 892.

#### Opponents' Testimony:

Jerome Anderson, Tobacco Institute, presented written testimony. EXHIBIT 2 He also distributed a photocopy of an article from the INDEPENDENT RECORD entitled, "Free Speech Under Attack." EXHIBIT 2A

Chuck Walk, Executive Director, Montana Newspaper Association, presented written testimony. EXHIBIT 3

James Tutwiler, Montana Chamber of Commerce, said they work with individuals and businesses, both from inside and outside the state, who frequently have the opportunity and obligation to participate in ballot issues that impact their business in Montana: The business community of Montana has two major concerns with HB 892: 1) HB 892 clearly tells a company,

headquartered outside of Montana but doing business within the state, that if a ballot issue arises that impacts their business their ability would be limited to express themselves and present their point of view to the public. There are multiple companies in competition outside of Montana doing business in Montana. For example: If an issue arises that affects companies A, B, and C and companies A and B "use up" the 49 percent, company C may very well not be represented at all. 2) issues arise from time to time that affect a broad spectrum of companies and individuals, both inside and outside of Montana. At times the complexity of an issue is so great that the only way you have the opportunity to put the information needed before the voting citizens so they may properly render a decision is through a very expensive process of sound and visual media. Handouts and posters are not adequate. This is a real problem. A couple of years ago there was an issue before the state, Constitutional Initiative 30, that involved very complex issues that directly impacted the citizens within the state and businesses both in and out of the state that were doing business in Montana. There was an obligation to get the meaning of the issues before the public. When you talk about joint and several liability, collateral source, the tort of bad faith and so forth, you have to have the capability to go into the market with a medium that can reach the people. HB 892 says that you would not have that opportunity. "You cannot put an iron fence around Montana, particularly when we're becoming part of a global economy. This bill is not an incentive for business . . . (as it) blocks critical information to citizens on major issues."

**CHAIR BROWN** requested the following opponents to state their names and organizations as there was only 30 seconds left for opponents.

**Riley Johnson, Montana Broadcasters' Association**, submitted testimony from the chairman and members of the board and said, "The broadcasters would like to make only one comment, John Brant, KBOZ-AM/FM RADIO, president of the Montana Broadcasters, points out that while I-115 raised only 2.6 percent of the money, they did accumulate 40 percent of the vote." **EXHIBIT 4 and EXHIBIT 5**

**Emmett Cronnelly, Artcraft Printers**, representing the Associated Printers of Montana, urged opposition to HB 892 as he "would hate to spend 30 days in jail for printing something he didn't know was false."

**John Radeck, President, Big Sky Broadcasting**, said we do not need to limit the amount of dollars spent on any product or issue. The public has always made up its mind and will continue to do so.

**Roger Tippy, Montana Beer and Wine Wholesalers**, said this bill sets a double standard between the two types of legislation. **Mike Voeller, Lobbyist, Lee Enterprises**, said, "We oppose this

bill."

**Mark Staples, Montana Tavern Association,** stated, "We got beat by just such an onslaught once on beer and wine in grocery stores, but we still defend people's right to do that."

**John Delano, Montana Soft Drink Bottlers,** stated, "We oppose the bill."

**CHAIR BROWN** apologized to everyone for the brevity of the hearing due to the limited time.

**Questions From Committee Members:**

**REP. WILBUR SPRING** referred to the term "false" in Sect. 1 and asked who would make the judgment as to whether or not the publication was false. **REP. BROOKE** said she would presume it would be determined by the CPP. The language doesn't seem to be very clear about who would make the determination, but for purposes of campaign reform, it is codified into the CPP's section of the law. **REP. SPRING** said that a decision such as that could go all the way to the Supreme Court. **REP. BROOKE** remarked, "That is the avenue it could take; but in most cases, I think the CPP would be able to make a determination."

**REP. BETTY LOU KASTEN** said many of the PAC checks she and her opponent received "had out-of-state issuance." Does that mean it is out-of-state money? **REP. BROOKE** said, "I presume so." **REP. KASTEN** said HB 892 merely limits money contributions, it does not limit help such as door-to-door campaigning. Is that right? **REP. BROOKE** said the cash contribution limitation we are proposing is specifically for ballot issues. **REP. KASTEN** said Rep. Brooke testified that mega landfills (in eastern Montana) will probably be the next ballot issue. Since the "area people" should make their own decisions, does this mean that we can't have the western part of the state trying to influence the eastern part of the state? **REP. BROOKE** said HB 892 only limits out-of-state contributions. "If you would like to amend in a local type of limitation, I certainly think that is very legitimate."

**REP. PATRICK GALVIN** said he agrees that campaigns need some "overhauling. I understand that contributions from anyone or any group do not obligate a candidate to that entity. . . . You say there is no attempt to limit contributions." He referred to Sect. 5, Pg. 6 and asked if that section didn't limit contributions. "While I agree with the bill, I think it needs a lot of amendments." **Mr. Pearson** said he did not believe it limited contributions. It just says initiatives and ballot issues need a dominant Montana flavor.

**REP. RICHARD SIMPKINS** asked who represented his wife, as a smoker, on I-115. The organization opposing smoking was already formed and in place, with money coming in, before his wife knew

she "was under attack." How can the minority group, that doesn't want to pay an extra 25 cents, participate on a level playing field? When the smoking industry steps in to defend their product, we are told it is unfair. How can you defend that? Mr. Pearson remarked that Common Cause/Montana was not involved in the tobacco initiative in any way or form. On I-115, he thought there was a citizens' group that did some advertising and promotion. They promoted themselves as a citizens' group from Billings. Montana citizens were organized, which is the intent of this legislation.

REP. JANE DEBRUYCKER referred to the last page of Mr. Pearson's testimony that listed the total out-of-state contributions received for different initiatives. She asked if those contributions were spent within the state of Montana or if it was spent out of state and the item(s) shipped in. Mr. Pearson said the monies were used in a variety of ways. A considerable amount of polling, the printing and possibly the production of the advertisements were done out of state. There was a mix of money. It wasn't all spent either in or out of the state. REP. JANE DEBRUYCKER said if that money was spent in the state, it wasn't that bad. Mr. Anderson said the major portion of the money that was raised for the campaign was spent within the state of Montana. The printing was done in Montana; the advertising agency was a Montana firm; the radio, television and newspaper advertising were from Montana. An out-of-state polling firm was used with some in-state employment. Some of the money was spent out of state for mailing. The major portion of the money was spent in the state. "We felt it helped the economy in Montana substantially."

Closing by Sponsor:

REP. BROOKE thanked the Committee for their time. She apologized to the people who had "some personal insults thrown at them during the debate." HB 892 has a simple and good concept. The initiative process is primarily an avenue and a vehicle for Montanans to express how they believe their public policy and future should be. HB 892 is a contribution limitation, not an expenditure limitation. A considerable amount of help can still be given from out of state with the 49 to 51 percent contribution proportions. Radio, television and the advertising media will still continue to benefit as there is no expenditure limitation. Montana's economy can still benefit. A simple amendment designating that the treasurer of the ballot issue, or the PAC, would be responsible for mailing the advertisement to the CPP would solve the concern the newspaper industry expressed on Pg. 2, Ln. 21. She asked the Committee to consider HB 892 as a bill to allow Montanans to determine their own special interests and not the special interests determining Montana's future.



Presentation and Opening Statement by Sponsor:

REP. JIM ELLIOTT, House District 51, Trout Creek, introduced HB 737 by presenting written testimony. EXHIBIT 6

Proponents' Testimony:

Jerry Calvert, Bozeman, head of Political Science Department of Montana, appearing for himself, presented written testimony. EXHIBIT 7

Tootie Welker, appearing for herself, said she supports HB 737 for the following reasons: 1) It will give her the opportunity to exercise her right to vote even if it is for neither candidate. It is hard to vote for the lesser of two evils. 2) It would allow her to vote her dissatisfaction as a protest, instead of "just not voting." 3) It would be a way to vote against an unopposed incumbent. 4) This would give voters a way to express their dissatisfaction and possibly this would do away with negative campaigning.

Ray Harbin, representing himself, testified that he supported HB 737 for "one particular self-serving reason." In the last election in his county, there were several people who ran unopposed. "I think that is patently unfair. I have never had the chance to do that, and I don't think anybody else should have the opportunity to do that either. . . . When someone is elected who is unopposed, they think they have everyone's support. We know that is not true. There should be a statement available to the public where they can say, "This person will be elected, but I want him to know that I don't always agree with him, and as a matter of fact, I don't even like the guy." The fiscal note attached to HB 737 is zero.

Opponents' Testimony:

Bonnie Ramey, Jefferson County Clerk and Recorder, presented written testimony. EXHIBIT 8 She also presented written testimony for Betty T. Lund, Ravalli County Clerk and Recorder/Election Administrator and The Ravalli County Commissioners. EXHIBIT 9

Questions From Committee Members:

REP. SPRING said Mr. Harbin testified that he thought it was wrong for anyone to run unopposed. Do you know of any way to correct that? Mr. Harbin said he was being "somewhat facetious" in his statement. Philosophically he believes it is inappropriate for anyone to be elected to any public office without the ability of the voters to register their dissatisfaction with that individual. The candidate should not have the impression that he has the concurrence of every voter.

REP. KASTEN said she has seen ballots cast for "Mickey Mouse type characters" because the person did not like the candidate or there was no opposition. "When there is no opposition, I think people would use this way just to have fun on a ballot and not tell us anything. Do you think that would be possible?" Mr. Harbin said he thought Rep. Kasten had a lower opinion of voters than he did. In his district, when people take the time to go vote, the voters are serious. REP. KASTEN asked if Mr. Harbin's district received an award for having the highest voter turnout. Mr. Harbin said, "We wouldn't be so presumptuous."

REP. BECK said that during the primary elections many voters cross over and vote against a candidate who might be the winner. Did Rep. Elliott think this could get out of control during the primary election if the opposite party voted for none of the above. "It would be a tremendous embarrassment to some really good people." REP. ELLIOTT said that when you register in the primary process you have to vote a complete party ticket; you cannot crossover to vote for just a few candidates. "I don't think that would be a big problem. I think you are selling the electorate short."

REP. GARY FORRESTER commented that the candidate that placed third in his particular election was Bart Simpson. He asked what purpose this bill would serve in the primary. REP. ELLIOTT said Nevada used this process with "substantial effect in the primary. They actually rejected two Republican candidates for governor." He pointed out that 13-1-103, MCA, requires that the individual with the highest number of votes wins an election. He distributed an amendment. EXHIBIT 10 The vote for "none of the above candidates" is a non-binding vote and "none of the above candidates" may not be declared or certified as the winner of an election. The effect would be to change the distribution of votes for candidates. The individual candidate receiving the highest percentage of the votes would win the election.

#### Closing by Sponsor:

REP. ELLIOTT closed by responding to the clerks and recorders by saying, "They say it is hard to find people to run for public office anyway, well I have never known a clerk and recorder to go out and look for people to run for office." That is the job of the political party or of the individual. Why would you want someone in office that loses to "none of the above?" I would want him to resign as soon as he loses to "none of the above." The other concern is that a voter already has a chance to register a protest vote by not voting or by writing in a name. When that is done, it is not recorded as "I don't like either of these candidates." This will allow a voter to register their displeasure by voting. This does change the odds in a political campaign; it is like having a third-party candidate. Nevada has had a "none of the above" choice for 15 years, and they still have politicians. "We can say we abhor negative campaigns, but we are the first to engage in them when the sledding gets tough."

Having "none of the above" on the ballot can change that.

HEARING ON HB 902

Presentation and Opening Statement by Sponsor:

REP. EDWARD GRADY, House District 47, Canyon Creek, introduced HB 902. He said HB 902 is similar to, but quite different from, Rep. Grinde's bill. This bill is in regard to the sale or exchange of state property by a public entity. He then quoted from Sect. 1: "Any lands that may be sold to or exchanged for other lands with another public entity on terms and in a manner as the board, after consultation with the appropriate legislative committee, may be determined to be in the state's best interests subject to the enabling act and Constitutional restrictions." Cities and towns are now renting property from the state. In some cases, they are not paying fair market value. The statute states that leases are supposed to be at fair market value. The cities and counties cannot, in many cases, afford to pay market value. The fairgrounds in Lewis and Clark County and in Boulder and property in Madison County are being leased from the state. This property is a liability to the state. HB 902 would enable the counties to purchase the land on which they have been, and currently are, making major improvements.

Proponents' Testimony:

Linda Stoll-Anderson, Lewis & Clark County Commissioner, said the county has a lease with the state until the year 2008. The county has spent a considerable amount of money on the fairgrounds. The state has said they would reimburse the county for any capital improvements the county has made. "The county cannot obtain bonding for improvements when we do not own the property."

David Hemion, Executive Director, Helena Chamber of Commerce, spoke in favor of HB 902.

Dave Anderson, Jefferson County Commissioner, said their county is in a similar situation as Lewis and Clark County as their fair grounds belong to the Department of Institutions. Approximately 15 years ago, the Jefferson County Fair Board was about to get into a lease situation with the Department of Institutions prior to the investment of a considerable amount of money in order to make their fair buildings safe. They now have a 25-year lease and the Fair Board would be interested in purchasing the property. The problem is that they have invested about \$40 to \$50 million dollars in the property which has increased its value. He distributed an amendment to the bill that would amend Pg. 1, Ln. 12, following the word "land" by inserting "or other consideration." EXHIBIT 11

Roy Pace, Friends of the Fairgrounds Corporation, said that many

people would not give their private dollars to the fairgrounds because the land and buildings could revert to the state. The public would benefit from this bill.

Loren Davis, Chairman, Last Chance Stampede, presented written testimony. EXHIBIT 12

Opponents' Testimony: None

Questions From Committee Members:

REP. JOHN PHILLIPS stated that Rep. Grinde has been trying to acquire land from the state for some time. The only way he could find to do this is by changing the Constitution. He wants the state to give him the land. REP. GRADY said we are not asking the state to give us the land, we are trading the land for consideration for "fair market value." It would take a Constitutional change to do this below "fair market value." John North, Chief Legal Counsel, Department of State Lands, said, "That is right."

Closing by Sponsor:

REP. GRADY said he would support the amendment. The fairground boards are having a difficult time in maintaining the fairgrounds and it is almost impossible to obtain funds when the state may reclaim the property. The public would have use of the land. It would be a good idea to remove the state from the liability of the land and buildings.

#### HEARING ON HB 955

Presentation and Opening Statement by Sponsor:

REP. HAL HARPER, House District 44, Helena, introduced HB 955 for voluntary campaign expenditure limits. He said he introduced the bill in response to the complaints he has heard most often from the people in his district when he went campaigning door to door. He was told that politicians are spending too much; they are being bought off. We need to instill in the voter's minds the concept "that you do not need a lot of money to be a politician." He conducted a survey regarding campaign reform. Eighty-four percent of the 1,151 respondents to the survey want to put a limit on campaign spending. There was a federal case that prohibited the limitation on campaigns. "We know that the amount of money spent has an effect on who wins (the election)." Rep. Harper distributed amendments to HB 955. EXHIBIT 13 HB 955 was patterned after New Hampshire's law. It is a way of getting out of the dilemma of limits. It establishes a voluntary limit. If a candidate signs an affidavit, he would be limited in the amount of money he could spend. If the candidate does not sign the affidavit agreeing to the voluntary campaign expenditure limitations, he would have to pay a higher filing fee. If the candidate were to then exceed the political expenditure

limitation, he would be required to pay a percentage of the excess campaign expenditures as listed in Sect. 3 of the bill. There is an option for your opponent to get out of his voluntary expenditure limitation. "There are checks and balances." The main purpose of the bill is to instill voter confidence and to return to grass-roots campaigns. . . . When you spend big bucks you can win without going out and shaking someone's hand. . . . We are trying to limit massive spending."

Proponents' Testimony:

Mike Cooney, Secretary of State, presented written testimony.  
EXHIBIT 14

C. B. Pearson, Executive Director, Common Cause/Montana, said they could not support this specific bill but they support what the bill is trying to do. "We like this bill because it adds some sort of incentive. You need a carrot or you need a stick to make this work; this bill has both." He said there is wide support for the bill.

Opponents' Testimony: None

Questions From Committee Members:

REP. PHILLIPS said if he decided to run for the Senate, and chose to not sign the voluntary campaign limitation affidavit, he would have to pay a \$200 filing fee. If someone decided, on general principles, that he did not believe in the concept would he be able to sue? Mr. Cooney said he was not an attorney so couldn't answer the question. But the signing of the affidavit would be voluntary. REP. PHILLIPS said he could see where the perennial candidates would like the fee. Mr. Cooney responded by saying we should not discourage perennial candidates. Montanans could make a viable decision on whether or not to sign the affidavit.

REP. FRITZ DAILY commented that HB 955 favors the incumbent as they usually have a substantial amount of campaign materials left over from their campaign. There was a considerable amount of money spent on candidates' signs in Helena. Those signs could be carried over to the next campaign. How would this bill address that problem? Mr. Cooney said, "That is a good point. This bill does not address everything. I presume if we put (this bill) into effect, we would be back (next session) with some fine tuning. I am not sure how you would take away that advantage."

REP. SIMPKINS said we, in this Committee, have been dealing with fees and taxes. Taxes are to be used to "share the wealth" by everyone. Taxes are used to provide services. What service will the candidate, who chooses not to sign the affidavit, receive for the higher fees he will have to pay? Mr. Cooney said, "This is the stick holding the carrot. It is not a way to get better service." REP. SIMPKINS said, "Instead of calling this a fee,

(you should call it) a tax on politicians. The kind of politician that will be paying these fees are lying politicians."

REP. BEVERLY BARNHART commented that she knew one of the county commissioner (candidates) who spent more money than he would have made in a year if he had been elected. Was this repeated throughout the state?" Mr. Cooney said the trend has been an increase in political spending. "The bill, as currently written, removes the county officials, as that is a county issue. I do not think we should address that; it should be addressed separately."

REP. SPRING remarked that it was more costly to campaign in a rural area than in a more concentrated voter area. Gas is a big expense. Is that addressed in the bill? He also asked how the bill addressed in-kind contributions. Douglas M. Mitchell, Chief Deputy, Secretary of State's Office, answered, "A direct answer is we do not seek to delineate from one district to the next. We have looked, but those figures are not in yet." Candidates spent from 15 cents to \$2.75 per voter. There are an average of 4,300 registered voters in every district. Most (98 percent) of the candidates could live with a cost of \$1.75 per voter. The bill does not attempt to address in-kind contributions and other loop holes.

#### Closing by Sponsor:

REP. HARPER said we do have some people that do "clutter up" the system. The only way to get rid of them is to raise the filing fee to where it is prohibitive for them to participate. In answer to whether this system would favor incumbents, I think you know the answer to that. Rep. Simpkins asked about the fee provision in the bill saying that fees are for services provided. Instead of calling this a fee, this is a tax on politicians. The kind of politicians that will be paying this fee are lying politicians. Saying that it is a tax for lying politicians is totally irresponsible.

#### HEARING ON HB 941

#### Presentation and Opening Statement by Sponsor:

REP. STEVE BENEDICT, House District 64, Hamilton, introduced HB 941 to allow members in the Sheriffs' Retirement System to purchase one additional year of service for every five years of creditable service and to limit the combined purchase of service to five years.

#### Proponents' Testimony:

Tom Harrison, Montana Sheriffs' and Peace Officers' Association, spoke in favor of the bill.

#### Opponents' Testimony: None

Questions From Committee Members:

REP. PHILLIPS asked what systems "did we do this for last session." Linda King, Assistant Administrator, Public Employees Retirement Division, answered, "For PERS and teachers and there was another bill for highway patrol officers." REP. PHILLIPS asked if the Sheriffs' System still requires 25 years of service before retirement. Ms. King said some members who were hired before July 1, 1989, only have to have 25 years of service. Those after that date must have reached age 50 and have 25 years of service.

REP. KASTEN said we have a bill before the Committee for police officers who want to retire after twenty years of service, regardless of age. If that goes through, I look for this to spread to the other systems. How would the passage of this bill affect the other systems? Ms. King said if the police officer bill passed, in general, all hazardous-duty system retirements would be requesting retirement at 20 years regardless of age.

REP. KASTEN said if this spreads throughout the rest of the retirement plans and subsequent plans, they would be able to purchase more years. We would have people retiring with 15 to 16 years of service. What would that do in most cases to the retirement systems? Ms. King said if this law was in effect -- where someone could buy three years -- they would have to pay the full actuarial cost of that. The cost in this bill would be very large, and maybe no one would buy it.

Closing by Sponsor:

REP. BENEDICT requested a DO PASS and requested HB 941 be placed on the Consent Calendar.

HEARING ON HB 936Presentation and Opening Statement by Sponsor:

REP. JIM RICE, House District 43, Helena Valley, introduced HB 936 to provide that a public employee in the Public Employees' Retirement System may elect to have his employer transfer 100 percent of the value of his unused sick leave credits to the employee's retirement account to purchase eligible service. Under the present law, there is an incentive to use your sick leave. If you wait until you retire, you only receive 25 percent of the sum of your sick leave. "It is a concept whose time has come." He said he did not have a fiscal note, but there would be people who would be able to comment on it. He proposed the Committee amend the bill to help clarify that it will be a small group of employees who would qualify under Subsection (9) when an employee transfers between agencies within the same jurisdiction.

Proponents' Testimony:

Tom Schneider, Montana Public Employees Association, presented written testimony. EXHIBIT 14A

Larry Holman, Helena, representing himself, distributed a photocopy of an article, "Rewarding Employees for Not Using Sick Leave," PERSONNEL ADMINISTRATOR magazine (May, 1983). EXHIBIT 15 He said the purpose of the bill is to provide an incentive to not use sick leave. This bill would allow an employer to purchase sick leave. Some employees are now using their sick leave for personal leave. HB 936 would provide a bonus on termination for state employees. According to the report he distributed to the Committee, Well-Pay Plans resulted in a 6.6 percent decrease in the total number of sick leave hours used.

Opponents' Testimony: None

Questions From Committee Members:

REP. KASTEN questioned how the bill would affect the Sick Leave Bank. Ms. Schneider said it would not directly affect that fund. Once the time is contributed, it cannot be withdrawn. The bill may have the affect of some people being a bit more reluctant to donate their time.

REP. SIMPKINS said once we improve a retirement system we can never take that back, is that correct? Ms. King said that is correct for current employees, but it could be withdrawn for members that come afterwards. REP. SIMPKINS said is this an indirect cash benefit to PERS employees at 100 percent because normally this would come out of their pockets. Ms. King said yes. REP. SIMPKINS said that if there were some employees who chose not to use this law, they could bring a suit against the state where the state could lose. Ms. King answered, "If there is discrimination in this benefit, they could take the state to court and challenge this law. If that were found to be correct, there could be a suit."

REP. SPRING commented that the Committee had heard a number of bills this session and last session that are similar to this. Are you prepared to make a prediction that the system, with the formula that is now being used, will still be sound in ten years? Mr. Schneider said he would make predictions when he sees that something is actuarially sound. "I do not make any prejudgments and I do not make any judgments. We are not changing any of the benefits of the retirement system. We are just fixing sick leave, and it would not have any affect on the actuarial part of the system."

Closing by Sponsor:

REP. RICE closed by saying he thought the bill could be drafted



to take care of any discrimination possibility. There are many hidden costs when an employer is absent from work. If, because of the bill, state employers discontinue the use of their sick leave for personal leave, it might resolve some of the fiscal impact of the cost of the bill.

#### HEARING ON HB 945

#### Presentation and Opening Statement by Sponsor:

REP. DOROTHY BRADLEY, House District 79, Bozeman, introduced HB 945 which would authorize state employees to contribute annual vacation leave to an Annual Vacation Leave Fund for employees called to active military duty. She said that Rep. Phillips' bill would remove most of the reason for doing this. HB 945 does have an additional paragraph which leaves this option open to counties and local governments on Pg. 3, Ln. 4. This bill was introduced by the House Appropriations Subcommittee on Human Services and Aging as a nice gesture. It includes all the Committee member's signatures.

Proponents' Testimony: None

Opponents' Testimony: None

#### Questions From Committee Members:

REP. SOUTHWORTH asked if everything in this bill wasn't already addressed in Rep. Phillips' bill. REP. BRADLEY said her bill included local governments and they may wish to do the same thing. She thought the bill would generate good will, and it would make the people serving in the Gulf "happy to see it."

REP. KASTEN questioned if there was a limitation on the bill when people were called to active duty. REP. BRADLEY said the bill says "active duty." It does not say Desert Shield or Desert Storm. So it could be broader. "It would be like a catastrophic pool."

REP. VICKI COCCHIARELLA questioned if agencies could put undo pressure on its employees to contribute to the fund. REP. BRADLEY said, "There is no vehicle where pressure can be brought to bear. I do not see how it could be a pressure vehicle."

REP. KASTEN wondered if there would be a possibility of "double dipping" with the bill. REP. BRADLEY said there was no intention for "double dipping" under any circumstances with the bill. The Department of Administration would set up the rules, and she did not think they would allow that.

#### Closing by Sponsor:

REP. BRADLEY said she had been trying to find a Consent Calendar bill. She thought this one could be it. She urged a DO PASS and

requested her bill be placed on the Consent Calendar.

EXECUTIVE ACTION ON HB 902

Motion: REP. FORRESTER MOVED HB 902 DO PASS.

Motion/Vote: REP. GARY BECK moved the amendment suggested by the Jefferson County Commissioner. The motion carried unanimously.

Motion/Vote: REP. FORRESTER MOVED HB 902 DO PASS AS AMENDED.  
The motion carried unanimously.

Motion/Vote: REP. FORRESTER MOVED HB 902 BE PLACED ON THE  
CONSENT CALENDAR. The motion carried unanimously.

EXECUTIVE ACTION ON HB 941

Discussion:

REP. KASTEN asked if HB 941 could have the same amendment applied to it as the amendment for Rep. Rice's HB 936 to limit to 25 to 30 years service. Ms. Heffelfinger said she could work on such an amendment. REP. COCCHIARELLA said they were not the same retirement systems, and she didn't think that would work because they don't have to accumulate 30 years of service to retire to receive the full amount as with PERS.

REP. SIMPKINS said the only problem with all of these little enhancements is he keeps hearing we need a good retirement program to encourage people to stay longer so the state has the benefit of their experience. This bill would enhance the system to let them leave early.

REP. JIM SOUTHWORTH said they don't want old guys, they let you out early. It is the same incentive.

REP. PHILLIPS said he had watched the retirement bills for several years. The retirement bills remind me of a little game you play with race horses. One goes up a little ways and then the next one moves up. "In a manner of fairness, we already do this in two systems." In two years they will probably ask to take the age limit off. But as a matter of fairness, the Committee should look "close at this one."

Motion: REP. PHILLIPS MOVED HB 941 DO PASS.

Discussion:

REP. COCCHIARELLA referred to the bottom of Pg. 2 regarding the election to qualify previous military service. She said we already allow these people to buy their military service. The

bill will not change the situation for them. If they can afford to buy the years, they bear the cost. The bill would just allow them to buy other years. If they bought three years of military service, they would then have the option of buying two more years of service up to a maximum of five years. They are already allowed to buy up to five years of military time if they so chose.

**Vote:** HB 941 DO PASS. The motion carried 17 to 2 with Reps. Kasten and Feland voting no.

**Motion/Vote:** REP. SOUTHWORTH MOVED HB 941 BE PLACED ON THE CONSENT CALENDAR. The motion carried with Reps. Kasten and Feland abstaining.

EXECUTIVE ACTION ON HB 945

**Motion:** REP. FORRESTER MOVED HB 945 DO PASS.

Discussion:

REP. PHILLIPS said that he was obviously for the troops, but "there are some problems here." He said his bill does what Rep. Bradley said the House Appropriations Subcommittee on Human Services and Aging intends to do. There is no termination date in the bill and the bill allows a person to be called up for any reason and receive the same benefit as those serving in Desert Storm. His bill has a termination date and qualifies who would receive the benefit. "We could only encourage the local governments to participate, which I think most of them will. . . . I don't think we are gaining very much with this (bill). The only benefit I could see . . . would be to allow (a returning serviceman) to spend a little time with his wife that he lost out on . . . ."

REP. SOUTHWORTH said he agreed with Rep. Phillips. He was afraid the bill could be misused. "I am opposed to it."

REP. FORRESTER said HB 945 allows for the building up of a pool. The bill does not need an effective date because there have been numerous times Montanans have been called to active military duty. "I would support this same concept if the troops or the national guard were called to active duty to man the prisons in a strike. I think it is a people and a fairness issue. It is not going to be used that much."

**Motion/Vote:** REP. COCCHIARELLA moved to amend HB 945 so the bill would only apply to troops serving on active duty for Desert Storm.

Discussion:

REP. BECK said he opposed the amendment. Some people were called

There are various codes to say whether it is for school, training or reserve mobilization. That is why the language is still a little vague. **REP. FORRESTER** asked how many state employees would be willing to donate a day's vacation to John Driscoll because he went to an officer's training course? You're only going to get people to donate if there is a cause. Desert Storm is a cause.

**REP. BARNHART** asked for clarification. If a state employee is able to donate vacation time to people who are called up to active duty, when would those people use that vacation time? **CHAIR BROWN** asked to respond to the question because she was involved in the Sick Leave Bank. "The provisions for this bill say that the Department of Administration will adopt rules to implement things like that. All those kinds of questions are not addressed in the bill, they would be addressed in the rules. They managed to set up something that worked really well on the Sick Leave Fund. Apparently there are not a lot of abuses with that." **REP. BARNHART** asked if an employee could designate the person they wished to receive their donated vacation day. **CHAIR BROWN** said that under the Sick Leave Fund that it can be done either way. This fund would be modeled after the Sick Leave Fund. "You probably could say you don't want it to go to someone."

**REP. KASTEN** asked if the donation could be withdrawn. **CHAIR BROWN** said it could not be withdrawn.

**REP. SOUTHWORTH** said he opposed the bill because he thinks it would be abused.

**REP. COCCHIARELLA** said she still has a concern that was raised by Rep. Simpkins concerning the unused hours and the fund going on forever. The Sick Leave Fund makes sense as those hours can accumulate. Also, state employees can only accrue up to twice the number of annual hours earned per year before losing their annual leave. Employees, who lose hours every year because they already have saved up to their maximum amount earned, would appreciate having a fund like this rather than just losing those hours.

**REP. SIMPKINS** said there is a way to make the bill "very palatable" if the Committee were to make "extensive modifications." Amend the bill to include Rep. Cocchiarella's suggestions, make it for Desert Shield, and decide what you want to do when Desert Shield is over such as having the hours left in the system transferred to the Sick Leave Fund. The most feasible bill in the world would be to allow the people who are going to lose their leave, to donate it to the Sick Leave Fund.

**REP. PHILLIPS** said we are only talking about 47 or so troops in Montana right now. "I think I can get (Rep. Bradley) to clean it up in the Senate by (tightening the language) to add a termination date and so forth."

HOUSE STATE ADMINISTRATION COMMITTEE


February 21, 1991

Page 22 of 22

Vote: HB 945 DO PASS. The motion carried 16 to 3 with Reps.  
Feland, Spring and Simpkins voting no.

ADJOURNMENT

Adjournment: 11:35 a.m.

  
JAN BROWN, Chair

  
JUDY BURGGRAFF Secretary

JB/jb

# HOUSE OF REPRESENTATIVES

## STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE 2/21/91

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 21, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 902 (first reading copy -- white) do pass as amended and be placed on consent calendar .

Signed: \_\_\_\_\_

Jan Brown, Chairman

And, that such amendments read:

1. Page 1, line 12.

Following: "land"

Insert: "or for other consideration"

HOUSE STANDING COMMITTEE REPORT

February 21, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that House Bill 941 (first reading copy -- white) do pass and be placed on the consent calendar.

Signed: Jan Brown  
Jan Brown, Chairman



HOUSE STANDING COMMITTEE REPORT

February 21, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report  
that House Bill 945 (first reading copy -- white) do pass.

Signed: \_\_\_\_\_  
Jan Brown, Chairman

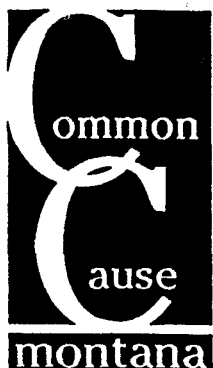


EXHIBIT 1  
DATE 2/27/91  
HB 892

COMMON CAUSE TESTIMONY IN SUPPORT OF  
HOUSE BILL 892  
21 FEBRUARY 1991

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

Madame Chairwoman and members of the House 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 our members to speak in support of HB 892.

Montanans have a rich history of using the ballot issue process. This process has proven itself an effective avenue for legislation when interest in an issue captures the desires of the people. In recent years, however, this zest has been blunted with the influx of large sums of out-of-state special interest money generally working in opposition to new initiatives. Further, there is no telling what other proposals will be sought either in support or opposition in the future by well-financed special interests.

Out-of-state special interest money threatens to dominate Montana's ballot issue campaigns. The table attached to my testimony shows those ballot issue committees in which the most money was collected over the past decade. Dominant contributions by out-of-state interests on either side of any ballot issue can hardly pretend to represent the interests of Montanans. By

EXHIBIT 1  
DATE 2/21/96  
HB 892

limiting out-of-state contributions to 49% of all contributions, there is no restriction on any individual or groups right to free speech.

There is a long American history of support for reform on the use of money where it threatens the integrity of the political process. It is the position of Common Cause/Montana that the use of massive amounts of money by special economic interests, such as tobacco companies, is a threat to the integrity of Montana's initiative process. Because the use of this money purchases media access solely for the corporate side, there is no balance or fairness to any aspect of the ensuing debate. What this bill does is not establish a limit on aggregate contributions or expenditures, it merely says the majority of contributions on ballot issues must come from Montanans. This approach does not infringe upon free speech as speech is represented by money. This bill puts fewer restrictions on contributions than our current PAC contribution limit law. Such limits on contributions from PACs have been tested in the courts. The Wisconsin Supreme Court, and the U.S. Supreme Court let stand, the PAC contribution law in that state by holding that the law was a contribution limit, not an expenditure limit.

The Montana legislature attempted to address the issue of the disparity between interests in a ballot measure and availability of money to advocate one's position. The target of reformers was the seemingly bottomless pool of corporate wealth. The critical

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framework for evaluating reforms is constitutional law rather than political feasibility or administrative efficiency. One of the leading cases in this area of law stems from a now void Montana statutory provision prohibiting corporate contributions supporting or opposing ballot measures [C & C Plywood Corp. v. Hanson, 583 F2d 421(CA9 1978)].

This bill does not attempt to address limits on contributions from corporations or individuals inside Montana. In fact there is no attempt to limit contributions at all. There is one simple requirement, that a majority of campaign contributions come from within Montana. As a matter of practical concern, that means for every one dollar contributed by Montanans, individuals, organizations or corporations, an additional 98 cents can be contributed by individuals, organizations or corporations from outside the state.

Switching to other provisions of this bill, the provision to prohibit false political advertising is overdue. In modern campaigns the use of polling has increased the temptation to use false or misleading advertisements. Public opinion polls can tell a ballot issue campaign the reasons why a voter may vote against a ballot issue. Armed with such information, the political committee is tempted to advertise these points regardless of the truthfulness of the advertisement. The 1988 Bottle Bill initiative saw just this type of activity.

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During the 1988 election, I-113 opponents ran a several hundred thousand dollar campaign of television advertising, radio advertising, and day-glow stickers on pop containers claiming that beverage container prices would rise if I-113 passed. Yet, despite frequent requests, opponents provided no evidence to back these claims. Data collected by initiative proponents showed that prices would not increase and, in some cases, were lower in states with bottle bills. The opponents also predicted, with no solid support, that Montana would suffer lost revenue from a decrease in beer sales. Further, opponents falsely advertised that the law would require taverns to be redemption centers for containers. Opponents also falsely advertised that grocery stores and convenience stores would be the only redemption centers. The anti-113 effort was, at least in part, based on a poll which sought to identify those reasons Montanans would vote against a bottle bill.

A ban on false political advertising is consistent with the kind of protection individuals receive as consumers. We do not allow for false advertising of goods, nor should we on ballot issues.

In another aspect of this bill direct mail campaigning has also seen a rise in use in modern ballot issue campaigns. Without proper "sunlight" no piece of direct mail advertising can be analyzed for compliance to Montana law which specifically requires, for instance, proper labeling and identification. Further, there is no public discourse or debate as is the intent.

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DATE 2/21/91  
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Finally, HB 892 provides for the subscription of political committees to the Code of Fair Campaign Practices. It seems that with the growing participation of political committees in both candidate and ballot issue campaigns, they too should have the opportunity follow common guidelines of fair campaign practices.

Common Cause/Montana feels that the citizens of Montana have much to gain from a balanced and honest ballot issue process. Before out-of-state interests truly dominate this process we must act to keep Montana ideas and issues in the hands of Montanans.

EXHIBIT 1.  
DATE 2/21/94  
HB 892

Ballot Issue	Total Contributions	Total Out-of- State Contributions	Percent of total contributions received from out-of-state
1990 I-115 Tobacco Tax (opposed)	\$1,530,056.70	\$1,519,083.90	99%
1988 I-113 Beverage Container Deposit (opposed)	\$493,339.77	\$337,854.60	69%
1988 I-110 Seat Belt Repeal (opposed)	\$221,579.23	\$219,145.30	99%
1980 I-95 Beverage Container Deposit (opposed)	\$575,793.57	\$455,735.55	79%

COMMENTS IN OPPOSITION TO HB 892

EXHIBIT 2  
DATE 2/21/91  
HB 892

WE CERTAINLY ACKNOWLEDGE THAT A SUBSTANTIAL SUM OF MONEY WAS EXPENDED IN OUR CAMPAIGN AGAINST I-115.

OUR EXPENDITURES RANKED RIGHT ALONG WITH THE MONEY SPENT IN THE ONLY OTHER STATEWIDE CONTEST OF CONSEQUENCE--THE UNITED STATES SENATE RACE. IT IS MY RECOLLECTION THAT SENATOR BAUCUS'S CAMPAIGN COMMITTEE EXPENDED MORE FUNDS THAN DID THE COMMITTEE THAT OPPOSED I-115.

IT IS NECESSARY IN ANY CAMPAIGN TO FIND A MEANS OF EFFECTIVELY COMMUNICATING WITH THE ELECTORATE.

IN MONTANA, A STATE WHICH IS THE THIRD LARGEST IN GEOGRAPHICAL AREA IN THE CONTINENTAL U.S. AND WHERE THE POPULATION IS SO WIDELY SCATTERED, WE FEEL THAT THE ONLY EFFECTIVE WAY OF COMMUNICATING WITH THE ELECTORATE IS THROUGH THE MEDIA--NEWSPAPERS, RADIO, AND TELEVISION.

THAT MEANS OF COMMUNICATION COSTS MONEY--LOTS OF IT.

MONEY FOR CAMPAIGNS COMES FROM MANY DIFFERING SOURCES DEPENDING ON THE NATURE OF THE CAMPAIGN.

IN OUR INSTANCE, BY FAR THE MAJOR PORTION OF THE FUNDING CAME FROM OUT OF STATE--WE MAKE NO APOLOGIES FOR THAT--IT'S SIMPLY A FACT OF LIFE.

IT DID BOLSTER THE MONTANA ECONOMY TO A CONSIDERABLE EXTENT.

CUTOFF OF FUNDING SOURCES INHIBITS OUR RIGHT OF FREEDOM OF SPEECH.

THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION STATES THAT THERE SHALL BE NO PROHIBITION OR ABRIDGEMENT OF THE RIGHT OF FREEDOM OF SPEECH.



TO RESTRICT OUR SOURCES OF FUNDS FOR CAMPAIGN PURPOSES AMOUNTS TO SHACKLING OUR USE OF THE MEDIA FOR COMMUNICATION TO THE ELECTORATE AND, THUS, ABRIDGES OUR RIGHT OF FREEDOM OF SPEECH.

THE MONTANA CONSTITUTION, ARTICLE II, SECTION 7, STATES THAT:

"No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty.\*\*"

THIS LAW WOULD ABRIDGE OUR RIGHT OF FREEDOM OF SPEECH, AS PROVIDED FOR IN THE MONTANA CONSTITUTION.

SECTION 1 OF THE BILL RELATES TO FALSE PUBLICATIONS REGARDING BALLOT ISSUE INFORMATION.

SECTION 2 WOULD SET UP THE COMMISSION OF POLITICAL PRACTICES AS A CENSOR REGARDING CAMPAIGN MATERIALS.

*here section*  
THIS SECTION RELATES TO BALLOT ISSUE MATTERS ONLY AND DOES NOT COVER ANY OTHER TYPE OF POLITICAL CAMPAIGN--WHY NOT?

WHY SHOULDN'T THE SAME RESTRICTIONS APPLY TO CANDIDATES GENERALLY--NOT JUST THOSE INVOLVED IN BALLOT ISSUES?

IT IS MIND BOGGLING TO SUGGEST THAT THE COMMISSIONER'S OFFICE SHOULD BE REQUIRED TO REVIEW EVERY PIECE OF LITERATURE THAT WILL BE SENT TO OR DISTRIBUTED TO MORE THAN 50 PEOPLE AND GIVE AN OPINION ON FACTUAL MATERIAL THAT, FOR THE MOST PART, THE OFFICE WILL HAVE NO EXPERTISE WITH.

SECTION 5 OF THE BILL THAT RESTRICTS CAMPAIGN CONTRIBUTIONS AGAIN ONLY COVERS BALLOT ISSUE CAMPAIGNS.

WHY NOT COVER ALL POLITICAL CAMPAIGNS?

IF OUTSIDE MONEY IS NO GOOD FOR A BALLOT ISSUE, IT'S NO GOOD FOR A RACE FOR CONGRESS, FOR THE UNITED STATES SENATE, FOR

*As in the 49th provision of the bill one introduction suggests that if an initiative involved the automobile industry and General Motors contributed an amount equivalent 49% - Ford Motor Co., Chrysler Corp., Toyota, Honda and others would be precluded from*

GOVERNOR, FOR ANY STATE OFFICE--FOR ANY LEGISLATIVE OFFICE OR ANY LOCAL OFFICE.

CARRY TO THE EXTREME ONE COULD REQUIRE THE SAME RESTRICTION TO BE APPLIED TO LOCAL BALLOT ISSUES SO THAT A COUNTY ISSUE WOULD REQUIRE RESTRICTIONS ON FUNDS FROM OUTSIDE THE COUNTY, AND CITY ISSUES WOULD REQUIRE RESTRICTIONS ON FUNDING FROM OUTSIDE THE CITY.

THOSE SUPPORTING THIS LEGISLATION APPARENTLY WANT TO TERMINATE THE BUSINESS ACTIVITY OF OUT-OF-STATE COMPANIES IN MONTANA. IF I WERE SELLING AND DISTRIBUTING MY PRODUCTS FROM OUT OF STATE INTO AND THROUGHOUT MONTANA AND I WERE TO BE RESTRICTED FROM PROTECTING MYSELF FROM THE EFFECTS OF A BALLOT ISSUE THAT I THOUGHT WAS PUNITIVE OR UNREASONABLE, I WOULD QUIT OPERATING IN THE STATE.

YOU'RE TELLING CAR MANUFACTURERS GET OUT.

YOU'RE TELLING FOOD MANUFACTURERS AND DISTRIBUTORS GET OUT.

YOU'RE TELLING PHARMACEUTICAL COMPANIES GET OUT.

YOU'RE TELLING PETROLEUM PRODUCT DISTRIBUTORS GET OUT.

YOU'RE TELLING RAILROADS GET OUT.

YOU'RE TELLING PUBLIC UTILITIES GET OUT.

YOU'RE SETTING UP A FENCE AROUND MONTANA AND RETURNING IT TO THE DARK AGES.

*apparently*  
COMMON CAUSE FEARS A RAT UNDER EVERY LITTLE PEBBLE IN THIS STATE.

I HAPPEN TO BELIEVE THAT MONTANANS ARE GENERALLY INTELLIGENT, PERCEPTIVE, AND HONEST. COMMON CAUSE APPARENTLY DOES NOT HAVE THE SAME CONFIDENCE IN THE RESIDENTS AND CITIZENS OF THIS STATE.

I URGENTLY REQUEST THAT YOU NOT SUPPORT HB 892.

*The Tobacco Institute*  
*James Anderson*

4A

EXHIBIT 2A  
DATE 2/21/91  
HB 892

## Free speech under attack

Last December Montana Common Cause Executive Director C.B. Pearson issued a call for campaign reform on the financing of campaigns for and against initiatives.

Pearson specifically targeted the heavy financing of last fall's successful campaign against Initiative 115.

I-115 would have raised the state tax on cigarettes by 25 cents per package and increased the sales tax on other tobacco products from 12.5 percent of wholesale price to 25 percent.

### AN IR VIEW

Pearson said his group will ask the 1991 Legislature to "even the playing field" with statutory changes that would reduce out-of-state financial influences on ballot issues.

Common Cause's reform measure surfaced this week in the form of House Bill 892. Among other things, it would require that out-of-state contributions to a Montana political committee formed to promote or oppose a ballot issue may not exceed 49 percent of total political contributions to the political committee in Montana in any reporting period.

Our editorial opposition to the proposal promoted a letter to the editor from Pearson.

Pearson wrote that, "There is a long American history of support of restraints on the use of money where it threatens the integrity of the political process. It is the position of Common Cause/Montana that the use of massive amounts of money by special economic interests...is a threat to the integrity of Montana's initiative process."

In discussing the 49 percent limit Pearson wrote: "With that type of approach (the 49 percent limit) there is no limit on the quantity of 'speech' (as speech may be equated with money) since one group can still spend \$1.5 million on an initiative, so long as 51 percent of that money comes from Montana businesses or people. What this proposal will therefore do, is define the quality of the speech by saying it must primarily be Montana speech. (Emphasis ours.)

So, the quality of Montana speech is superior to the quality of out-of-state speech. That's a goofy contention.

What's next, a law that says any political committee tied to a ballot issue must hire a Montanan as its executive director to ensure that the purity and quality of Montana speech is maintained?

Will we have another law that says a Montana political committee cannot hire out-of-state consultants or advertising agencies because their quality of speech is inferior to Montanans'?

The percentage of non-smokers far exceeds that of smokers. Nevertheless, I-115 was opposed by 59 percent of those who voted on the ballot issue. No doubt the money spent by I-115 opponents had an effect on the outcome of the issue. The fact that it would dramatically increase the cigarette tax and funnel earmarked money to a variety of programs probably had as much, if not more, of an effect as the opponents' campaign.

We didn't agree with Pearson last December and we don't agree with him today.

Like it or not, out-of-state tobacco companies that oppose cigarette tax increases; brewers who oppose bottle bills; and, as was the case in California, insurance companies who oppose premium limits on auto insurance, have a constitutional right to free speech. And, in our view, that freedom of speech extends to campaigns for or against ballot issues.

**Testimony in Support of  
HB 737: "None of the Above Candidates Act".  
House State Administration Committee  
February 21, 1991**

Ladies and Gentlemen of the Committee. My name is Jerry Calvert. I am head of the Political Science Department at Montana State University. The opinions I am going to express are my own and not those of M.S.U. faculty, administration, or staff. I am here today because I support greater citizen participation and voter choice. HB 737 will do that.

In the last presidential election the turnout of the voting age population was a bare 50.15%. In Montana, we did somewhat better with a recorded turnout of 62.4%. But this figure is somewhat misleading since it is based on the votes cast for presidential candidates. In fact, the total turnout was somewhat higher because nationwide approximately 2.41% of the electorate did not vote for president. In Montana, 3.59% of the Montana voters did not vote for president. Who were these people? I submit that most of them were attempting to express their vote for "none of the above". But we can't know for sure since we do not give voters the clear chance to express that preference. Further, a 3.59% drop-off in the number of people voting captures only the minimum number of people dissatisfied with the choices presented to them. Of those casting a ballot for a candidate we do not know how many would vote for none of the listed candidates if they were given the explicit right to do so.

Under our current system the voter often faces a choice between the "lesser of two evils", and in many cases, he or she has no choice at all because only one candidate is running uncontested on the primary or general election ballot. We may assume that in most election contests most of the time most voters are presented with a reasonable choice between candidates. But the NOTA bill addresses a situation where the political system has failed to generate a choice. For example, in a primary election an incumbent faces no opposition, but some are dissatisfied with the absence of choice. Or in a general election, a major party candidate, often an incumbent, faces no significant competition because the opposition party was unable or unwilling to field a viable candidate. Finally, there are those rare situations where the general election produces a choice between major party candidates, but those choices are unacceptable to a significant portion of the electorate. In all of these examples, the option of NOTA on the ballot will allow voters to clearly express their opinion that the choices presented are not acceptable.

What will be the potential effects of NOTA? First, a large NOTA vote will "concentrate the attention" of the winning candidate, encouraging that candidate to more carefully attend to the needs of the voting public. Secondly, NOTA will increase the potential for

competition. A large NOTA vote will show the opposition that the incumbent may be vulnerable and will encourage the other party to recruit, field, and actively support an attractive candidate the next time around. Finally, NOTA will encourage citizen participation by offering each voter the explicit right to clearly voice his or her dissatisfaction with the absence of choice in any particular contest.

Some may argue that the NOTA option is a waste of time and money. But it is the job of the government to provide for every reasonable increase in democratic opportunity and plan for and provide the budget to pay for it. In the absence of clear evidence that the costs of providing this option far exceed the benefits, you should vote for HB737.

Secondly, NOTA is not a waste of time. On the contrary, the NOTA vote can be a positive expression of popular sovereignty. For example, anti-abortion voters may feel that neither candidate represents their point of view. How can they respond most effectively? By encouraging all "pro-life" people to vote NOTA and send a message. Or, Montanans who are dissatisfied with the stance of either candidate on the ongoing wilderness issue, can organize a NOTA vote. Send a message. Send it often enough and loud enough and it will probably be received either by the incumbent or the challenger.

Voting for NOTA is also good politics. You can be assured the public will endorse your actions in giving a "do pass" recommendation to HB737.

**HB 892 (Brooke)**  
**House State Administration**  
**February 21, 1991**

Madam Chair, members of the committee, for the record my name is Chuck Walk. I am executive director of the Montana Newspaper Association, which represents all 11 daily newspapers and 64 weekly newspapers across the state.

I rise in opposition to HB 892.

We have several concerns with the bill. First, we are concerned about Section 1 which seems, we believe, to indicate that the publisher of a newspaper, the manager of a television station or the owner of an outdoor advertising company is the culpable individual or individuals under the legislation as proposed.

I would suggest this is the ultimate attempt to "kill the messenger." It places the burden of policing the entire legislation on the wrong end of the conduit of the process. At very least, the section should be amended to replace the word "publish" on line 17 of page 1 with the phrase "cause to be published" and the word "publishing" on line 19 on page 1 with the phrase "causing to be published." This we believe would place the policing burden where it belongs...on those persons who originate and produce the information provided the media.

We have the same kind of concern with Section 2, Paragraph 3 of the legislation. We are uncertain about who is responsible for submitting the material or document to the commissioner and where the ultimate responsibility for that material or document rests.

In the case of a newspaper advertisement which might be subject to that same paragraph, we are unclear about the purpose of such a section. It states that the advertisement would have to be submitted to the commissioner not later than the day of mailing. The commissioner would then be required to issue an opinion on the material's compliance within five days.

That would mean, the public would have had the opportunity to read and see the advertisement for at least four days before such an opinion would be required. What purpose would the opinion serve at that point?

I would also point out that this particular section addresses only documents or materials mailed and does not even mention other media outlets which might carry the same basic information, such as radio, television, outdoor billboards or political handouts.

It raises a serious question on our part as to why newspapers and magazines and other mailed vehicles of the advertisement are being singled out for such treatment.

Of course, we also have serious concerns about Section 5, paragraph 3 of the bill.

We disapprove in general with any laws which limit or hinder in any way the dissemination of information or the access to that information. And, we obviously carry that disapproval to anything that limits commercial information.

This section of the bill could greatly limit this dissemination of information in the ballot process.

A couple of months ago, a proponent of this particular method of information limitation said in a letter to the editor to the Capital City newspaper that under present Montana law there is "no limit on the quantity of speech" in our election process.

I agree and hope we never see the day when there are such limits.

In the same letter the proponent went on to say that legislation as the kind before you today defines 'the quality of speech' by saying it must primarily be Montana speech."

While I appreciate the ideas and pronouncements of all my fellow Montanans in all areas in which they have knowledge and expertise, I do not believe - nor do I hope most fair-minded people believe - that only Montanans have good ideas and problem-solving programs which could be helpful in informing and educating the people of Montana.

We do not need to limit the access to information for Montanans. I trust the intelligence and the integrity of Montanans to be able to sort through any and all such information to arrive at a proper decision in any forum...including the ballot process.

I urge the committee to give HB 892 a "Do Not Pass" vote. Thank you.

CWW  
2-21-91



**1090**

**KBOZ-FM**

EXHIBIT 4

DATE 2/21/91

HB 892

**FAX MEMO**

**TO: RILEY JOHNSON**

Sent to:

Beverly Barnhart  
Wilbur Spring  
State Administration Committee

**FROM: JOHN BRANDT, JR.  
KBOZ-AM/FM RADIO**

**RE: HOUSE BILL #892**

**DATE: 2/20/91**

Just a quick note to let you know that I am strongly opposed to HB #892, limiting out-of-state spending on ballot issues. I understand why the bill came about, due in large part to I-115 that would have put a 25 cent tax, per pack, on cigarettes.

The tobacco industry spent well over \$1.5 million dollars on the issue and the opposition raised \$40,000. Yet at the polls Montanan's voted 60/40 on the issue. Dr. Robert Shepard of Helena raised just 2.6% of the money compared to the tobacco industry, yet Dr. Robert Shepard's group got 40% of the vote. What that tells me is that Montanan's can make up their own minds, no matter how much money is thrown at an issue.

Dr. Robert Shepard of Helena may have raised only \$40,000 to fight the issue, but I know for a fact that many broadcasters including KBOZ-AM & KBOZ-FM gave him tens of thousands of dollars in free air time to help balance the issue. There is no longer a Fairness Doctrine that requires broadcasters to give equal time to both parties of an issue. Many broadcasters just do it as part of their service to the public in commercial schedules, news stories, and editorials.

I have been in the advertising business for over 16 years and it has been my experience, that you can't make the public buy something they don't want, no matter how much money you throw at advertising and marketing.

**A Citadel Communication Station**

(406) 586-5466 • FAX (406) 587-6201  
P.O. Box 20 • 5446 Johnson Road • Bozeman, MT 59715



BUTTE, MONTANA

EXHIBIT 5  
DATE 2/21/91  
HB 892

February 20, 1991

TO: Chairperson Jan Brown  
State Administration Committee

FROM: Ron Cass  
President/General Manager  
KXLF TV  
Butte, Montana

RE: HB 892

We always talk about more jobs and income for Montana. This bill would limit both. Out of state spending on ballot issues is part of what pays broadcasters salaries and taxes.

Broadcasters spend many hours, through news and public affairs programming, covering ballot issues. This is free time. Do we limit the free time also?

Broadcast media also has a policy where, on issue advertising, we have to offer the other side free time if they do not have the money to buy. This means that both sides of the issue are aired.

Whether totally equal or not, I feel the people of Montana should be considered intelligent enough to decide an issue on its merits, and not by which side spent the most money.

Let us not limit our chances to bring outside money to Montana.

Thank you.

A handwritten signature in black ink, appearing to read "Ron Cass".

## NONE OF THE ABOVE (NOTA)

Why NOTA: Democracy is Experiment.

What NOTA would do:

Allow voters to choose among any candidates on a ballot position as well as a ballot choice labeled "I choose to vote for none of the above".

Offices affected:

It is proposed to include offices for all municipal, county and state elected officials up to the President of the United States.

What if NOTA wins?

NOTA is a non-binding vote. If NOTA polls more votes than the other candidates the individual having the highest number of votes wins. (13-1-103 MCA)

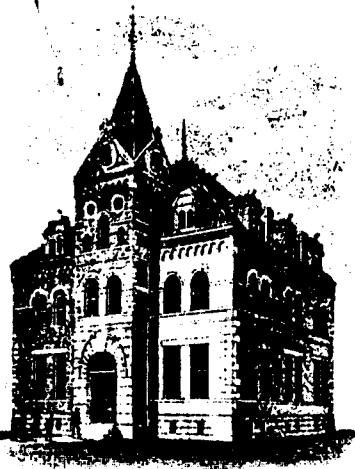
What NOTA could do:

Because of the threat of censure by voters which would benefit neither candidate, it could serve as a deterrent to negative campaigning. This would serve to raise the level of debate.

It could give disaffected voters a chance to vote FOR disapproval and help bring them back to participation in the electoral system, even if in an unusual way.

It would provide an actual tally of voter disapproval.

If enacted by those who would be most affected by



Jefferson County  
**Clerk and Recorder**  
Boulder, Montana 59632

EXHIBIT 8  
DATE 2/21/91  
HB 737

Bonnie Ramey  
County Clerk and Recorder

Carla Matlack  
Deputy

February 20, 1991

House State Administration  
State Capitol  
Helena, Mt. 59601

RE: HB 737 - AN ACT PROVIDING ELECTORS WITH A "NONE OF THE ABOVE CANDIDATES".

Madam Chairman and Members of the Committee:

For the record, my name is Bonnie Ramey, Jefferson County Clerk and Recorder/Election Administrator.

Please consider a DO NOT PASS for HB 737. In many of our small municipalities we have trouble finding even one person to run for the position of councilman. No one will be willing to file if they feel there is a possibility of losing to "None of the Above". As elected officials we all know how humiliating that would be.

This bill does not address the question of what will happen if "None of the Above" should win. A new election is beyond most city and county budgets. Whose name will appear on the General Election Ballot if "None of the Above" wins in the Primary Election? Would the filing process be opened again for anyone? Would we be able to find someone to file for the position?

Thank-you for your consideration.

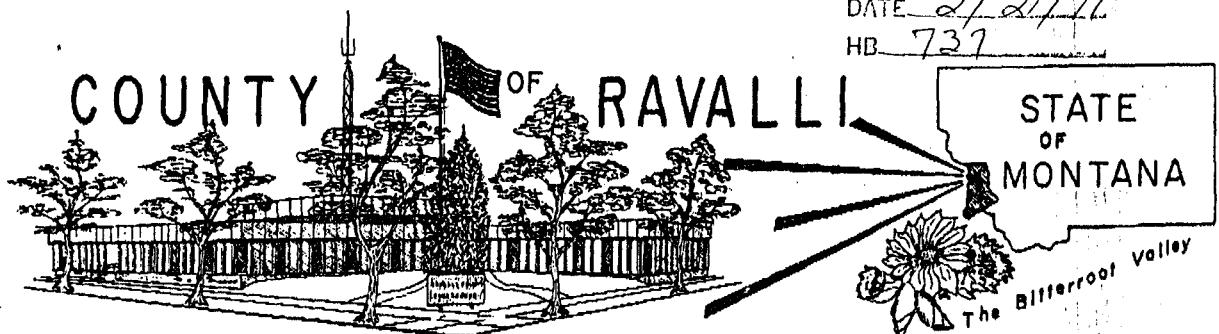
Sincerely,

*Bonnie Ramey*

Bonnie Ramey  
Jefferson County Clerk and Recorder

DATE 2/21/96

HB 737



HAMILTON, MONTANA 59840

February 20, 1991

House State Administration  
 State Capitol  
 Helena, MT

RE: HB 737 - AN ACT PROVIDING ELECTORS WITH A "NONE OF THE ABOVE CANDIDATES".

Madam Chairman and Members of the Committee:

For the record, my name is Betty T. Lund, Ravalli County Clerk & Recorder/Election Administrator.

Please consider a DO NOT PASS for HB 737. In our busy society today, we find only dedicated people, committed to serving the public will file for public office. If you pass the option for "None of the above candidates" I strongly feel that no one will be filing for public offices. Who would want to be beaten by "None of the above candidates"? I am an elected person - I would hate to be beaten by "None of the above". Wouldn't you?

This also brings me to a question of what would happen if "None of the above" wins? Will eventually all our public officials be appointed by the governing bodies? All county offices would be appointed by the Commissioners. Who appoints a Governor? The thought of having another election is beyond comprehension. The counties do not have enough budget to redo an election and who would you get to run? Certainly not the candidates that were just beaten by "NOTAC".

The voter already has a protest avenue. They can just not vote for either candidate as a no vote speaks almost as loudly as "NOTAC".

Thank you for listening to this testimony as I feel this bill could destroy our democratic process.

Sincerely,

Betty T. Lund  
 Ravalli County Clerk & Recorder

The Ravalli County Commissioners asked to be included in this statement as they feel as I do.

Jerry Allen, Chairman  
 RAVALLI COUNTY COMMISSIONER

Steve Powell, Member

Allan C. Horsfall, Jr, Member

EXHIBIT 10  
DATE 2/21/91  
HB 737

Amendments to House Bill No. 737  
First Reading Copy

Requested by Representative Elliott  
For the Committee on

Prepared by Sheri S. Heffelfinger  
February 16, 1991

1. Page 1, line 19.  
Following: "intent."  
Insert: "(1)"

2. Page 1.  
Following: line 24  
Insert: "(2) A vote for "none of the above candidates" is a non-binding vote and "none of the above candidates" may not be declared or certified as the winner of an election."

3. Page 2, line 5.  
Following: "for"  
Strike: "ech"  
Insert: "each"

EXHIBIT 11  
DATE 2/21/91  
HB 902

AMENDMENT TO HB 902

February 21, 1991

Page 1, line 12 following the word "land", insert **or other consideration**



EXHIBIT \_\_\_\_\_  
DATE 2/21/91  
HB 902

# Lewis and Clark County FAIR BOARD

POST OFFICE BOX 4237, HELENA, MONTANA 59604  
TELEPHONE (406) 442-1098

February 20, 1991

House Administration  
Committee Chairman, Representative Jan Brown

re: House Bill No. 902

Chairman, Representative Jan Brown and Committee Members:

I, Loren Davis, chairman of the Last Chance Stampede, would like to express my support of House Bill No. 902.

Lewis & Clark County leaders and tax payers have worked hard to improve and maintain the Lewis & Clark County Fairgrounds for many years. One of the big problems has been that the property is owned by Montana State Lands and leased to Lewis & Clark County. This has prevented the possibility of passing an improvement bond issue in Lewis & Clark County or actively seeking foundation and other grant monies.

The fact that the State Lands must pay Lewis & Clark County for any and all improvements at the expiration of the lease should strengthen our position in converting ownership of the property to Lewis & Clark County.

The Lewis & Clark County Fairgrounds is a very important part of the Helena community and the county not only because the activities bring people which benefit businesses, but it strengthens our western culture and our youth through 4-H programs as well.

I ask that you vote for a "Do Pass" for House Bill No. 902.

Sincerely,

*Loren W. Davis*

Loren W. Davis      By: *SM*  
Chairman, Last Chance Stampede  
LWD/tml



EXHIBIT 3  
DATE 2/21/91  
HB 955

House Bill 955  
Proposed Amendment

**Amendment Number One**

Page 1, Line 3, insert:

BY REQUEST OF THE SECRETARY OF STATE

**Amendment Number Two:**

Page 1, Line 5, at the beginning of the line, strike:

~~STATEWIDE~~

**Amendment Number Three**

Page 1, Line 10, at the beginning of the line, strike:

~~politieal~~

and replace with

campaign

**Amendment Number Four**

Page 1, Line 21, following "not condone", strike:

~~and may not solicit~~

**Amendment Number Five**

Page 2, Line 1, following "be filed", strike:

~~within 10 days after~~

and replace with:

with the secretary of state on

#### **Amendment Number Six**

Page 2, Line 3, following "primary election.", insert:

Immediately after receiving an affidavit filed pursuant to [Section 1], the secretary of state shall forward a copy of the affidavit to the commissioner of political practices.

#### **Amendment Number Seven**

Page 2, Line 4, following "Section 2.", strike:

~~Political~~

and replace with:

Voluntary campaign

#### **Amendment Number Eight**

Page 2, Line 17, following "state representative", strike:

~~or county elected official~~

#### **Amendment Number Nine**

Page 2, Line 21, insert new subsection (7) as follows:

(7) Beginning on July 1, 1993, and on July 1 of each odd numbered year, the commissioner shall increase the dollar amounts contained in subsections (1) through (6) of this section by an amount equal to the aggregate percentage increase in the previous two calendar years' consumer price index for all urban consumers, U.S. Department of Labor, Bureau of Labor Statistics or any other Index that the Bureau of Business and Economic Research of the University of Montana may in the future recognize as the successor the that index. The new amounts shall be rounded up to the nearest hundred dollars, and the commissioner shall adopt the new amounts by rule.

#### **Amendment Number Ten**

Page 2, Line 23, following "the total", strike:

~~political~~

and replace with:

voluntary campaign

**Amendment Number Eleven**

Page 4, Line 16, following "commissioner of", strike:

~~campaign~~

and replace with

political

**Amendment Number Twelve**

Page 4, Line 17, following "of the", insert:

results of an

**Amendment Number Thirteen**

Page 4, Line 18, at the beginning of the line, strike:

~~Failure to pay this fine disqualifies a person to serve in office.~~

and replace with:

A certificate of election shall not be granted to any candidate who fails to pay a fine assessed under this section.

**Amendment Number Fourteen**

Page 4, Line 23, following "(1)", is amended to read:

payments made ~~funds spent~~ by a the candidate or his committee

**Amendment Number Fifteen**

Page 5, Line 1, following "(2)", strike:

~~funds spent for~~

**Amendment Number Sixteen**

Page 5, Line 7, following "notify the", strike:

~~secretary of state~~

and replace with

commissioner of political practices

**Amendment Number Seventeen**

Page 5, Line 10, following "exceeded", strike:

~~the spending limitations~~

and replace with

his voluntary expenditure limitation

**Amendment Number Eighteen**

Page 5, Line 10, following "limitation, the", strike:

~~secretary of state~~

and replace with

commissioner of political practices

**Amendment Number Nineteen**

Page 5, Line 11, following "shall notify", insert:

the secretary of state. Upon notification from the  
commissioner of political practices, the secretary of state  
shall notify

**Amendment Number Twenty**

Page 5, Line 18, at the beginning of the line, strike:

~~secretary of state~~

and replace with

commissioner of political practices

**Amendment Number Twentyone**

Page 6, Line 25, following "representative", strike:

~~and county elected official~~

Talking Points  
House Bill 955  
Secretary of State Mike Cooney

EXHIBIT 14  
DATE 2/21/96  
HB 955

1) INTRODUCTION FOR THE RECORD

2) THE PUBLIC CONCERN ABOUT THE  
RISING COST OF CAMPAIGNING CASTS A  
DARK CLOUD OVER THE ENTIRE ELECTION  
PROCESS. EARLIER THIS WEEK I DEFINED  
GOOD GOVERNMENT AS GOVERNMENT THAT  
LISTENS TO THE NEEDS <sup>AND</sup> ~~OF~~ CONCERNS OF  
THE PEOPLE AND DEVELOPS EFFECTIVE  
METHODS TO MEET THESE NEEDS. HOUSE  
BILL 955 IS A MEANINGFUL MEASURE THAT  
WILL HELP DEVELOP INCREASED PUBLIC

**CONFIDENCE IN THE ELECTORAL PROCESS  
HERE IN MONTANA.**

**3) THIS BILL DOES ONE THING, AND IT  
DOES IT WELL. IT PROVIDES FOR  
VOLUNTARY SPENDING LIMITS, AND IT  
GIVES THESE LIMITS SOME TEETH.**

**4) LET ME BRIEFLY WALK YOU THROUGH  
THE PROCESS AND TELL YOU HOW IT  
WORKS.**

**A) SYSTEM KEYS AROUND THE**

**CANDIDATE FILING DONE WITH MY  
OFFICE.**

**B) WHEN A CANDIDATE FILES, HE OR  
SHE WILL DECIDE WHETHER OR NOT TO  
ACCEPT THE VOLUNTARY LIMITS.**

**C) IF THE CANDIDATE AGREES TO THE  
LIMITS, HE OR SHE FILES AN  
AFFIDAVIT AGREEING TO THE LIMITS  
AND PAYS THE FILING FEE, WHICH IN  
MOST CASES IS REDUCED FROM THE  
CURRENT LEVELS.**

**D) IF THE CANDIDATE DOES NOT AGREE  
TO THE VOLUNTARY LIMITS, HE OR SHE  
PAYS A HIGHER FILING FEE.**

**E) THE AFFIDAVITS OF THE  
CANDIDATES AGREEING TO THE  
VOLUNTARY LIMITS WILL IMMEDIATELY  
BE FORWARDED TO THE COMMISSIONER  
OF POLITICAL PRACTICES FOR HER USE  
IN MONITORING THE CAMPAIGNS.**

**5) AT THIS POINT, ALL THE  
CANDIDATES NEED TO DO IS RUN THEIR**



**CAMPAIGNS. THEIR FEES HAVE BEEN  
PAID, THEY HAVE EITHER AGREED OR NOT  
AGREED TO ABIDE BY THE VOLUNTARY  
LIMITS, AND THE STANDARD CAMPAIGN  
PRACTICES LAWS ADMINISTERED BY THE  
COMMISSIONER OF POLITICAL PRACTICES  
APPLY.**

**6) THE ONLY ADDITIONAL REQUIREMENTS  
ARE TWO:**

**A) WHEN ANY CANDIDATE EXCEEDS THE  
VOLUNTARY LIMITS PRESCRIBED IN**

**THIS ACT, HE OR SHE MUST NOTIFY  
THE COMMISSIONER OF POLITICAL  
PRACTICES. THE CANDIDATE'S  
OPPONENTS WILL THEN HAVE THE  
OPTION OF PAYING THE ADDITIONAL  
FILING FEE FOR CANDIDATES NOT  
WORKING UNDER THE VOLUNTARY  
LIMITS, AND TO EXCEED THE LIMITS**

**B) WHEN ANY CANDIDATE WHO HAS  
AGREED TO THE LIMITS BY FILING AN  
AFFIDAVIT AND ENJOYING THE REDUCED  
FILING FEE EXCEEDS THE VOLUNTARY**

**LIMITS, HE OR SHE MUST PAY THE  
APPROPRIATE FINES PRIOR TO BEING  
CERTIFIED FOR OFFICE.**

**7) CLOSING---I'M SURE YOU WILL HAVE  
SOME QUESTIONS. AS I KNOW ALL TOO  
WELL FROM BEING A MEMBER OF THE  
LEGISLATURE, NO BILL IS PERFECT. BUT  
WITH THIS BILL WE HAVE AN OPPORTUNITY  
TO ADDRESS AN IMPORTANT ISSUE.**

**LET ME GIVE YOU SOME FACTS:**

**IN THE TEN YEAR PERIOD BETWEEN  
1978 AND 1988, CAMPAIGN SPENDING  
IN AMERICA WENT UP FROM 540  
MILLION IN 78 TO 2.7 BILLION IN  
1988.**

**BY 1988, SPENDING ON CONGRESSIONAL  
RACES ALONE TOTALED 458 MILLION  
DOLLARS.**

**IN 1988 THE AVERAGE AMOUNT SPENT  
ON A WINNING U.S. SENATE RACE WAS  
AN ASTONISHING 3.7 MILLION**

WITNESS STATEMENT

NAME Tom Schneider BILL NO. HB 936

ADDRESS Box 716

WHOM DO YOU REPRESENT? NPEA

SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS: Based on facts provided in the Fiscal Note for HB 727 HB 936 appears to Do and cost the following -

1989 Leg allowed employees to PLED To buy 1 year of service for each 5 yrs worked - a person w/25 yrs could buy 5 yrs and retire without penalty -

Cost is both Employee + Employer 6.417 + 6.417% or 12.834% of salary Cost to average State Emp \$18,500 Local Gov \$15,340

By buying 5 yrs Emp gets 53.57% of avsal vs 44.64% in HB 727

HB 936 allows an employee w/25 yrs to receive a 100% payout of sick leave directly to the PERS to buy these years - HB-727 FN shows 91 per year of which 80%

are from 25 to 29 + 48% state & 52% Local Gov = 34 FP92 State 3740 34 FP93 " 3740

Cost = 25 yrs = 2400 hours using 50% average = 1200 hrs

Average state payout FP92 state \$12,474 FY93 State \$13,032

FP92 Local Gov \$10,359 FY93 Local Gov \$10,818

	FP 92	Cost	FY 93
State	424,116		443,088
(State Fund)	(212,058)		(221,544)
Local Gov	383,283		400,266

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Rewarding employees for not using sick leave

A detailed analysis shows savings through a well-pay plan

Barron H. Harvey, Judy A. Schultze and Jerome F. Rogers

**W**ith the acknowledgement that absenteeism is costly to any organization, sick leave has become a high-priority item in management's attempt to deal with absenteeism.

There are several studies that suggest sick-leave plans may increase sick-leave use by employees.<sup>1</sup> There is empirical evidence that organizations with paid sick leave experience almost twice the absenteeism of organizations without such a program.<sup>2</sup>

An examination of a sick-pay program will show these common characteristics:

- Sick pay accrues over time (usually every pay period).
- It is used when the worker is absent from work due to short-term illness.
- Upon termination of employment, no compensation is given for accrued sick leave.

The central mission of any paid sick-leave program is to provide short-term insurance to workers against loss of wages due to short-term illness. However, this well-intended insurance program for employees has added costs because of sick-leave abuse, the use of paid sick leave due to non-reality illnesses—slight fatigue, personal problems, weather, personal activities and transportation problems, and results from the employee posture that paid sick leave is a right of the employee and if not used will be lost.

The costs associated with the abuse of a paid sick-leave program include:

- Expenses that come from covering for the absent employee via overtime, extra work for present employees or overstaffing.

Overtime due to absenteeism can have a snowball effect and cause employees who worked the overtime to reward themselves with a non-reality illness causing more overtime,

- Benefit expenses that continue to accrue.
- Costs of maintaining and administering an absence system.
- Absenteeism (most are unscheduled with short or no notice) increases the amount of supervisory time devoted to its impact.
- Possible lowering morale of workers who may resent having to do someone else's work.
- A drop in productivity (effectiveness) because inexperienced personnel are performing the work of the absent worker.<sup>3</sup>

This article outlines an organization's attempt to overcome the various problems associated with paid sick-leave programs also increase employee morale. The approach, called "well pay", was instituted to replace the sick-pay program and its negative effects.

### The concept's roots

Before outlining the program, it is important to note briefly the historical development of deviations from traditional paid sick-leave programs/plans. One of the first published deviations from traditional sick-leave plans was called "the paid-leave plan."<sup>4</sup>

The new concept was introduced in a hospital that had experienced alleged abuse of its sick-leave program. The desire was to create a paid time-off plan that would be more responsive to the employee's wants and needs, allow flexibility

*Barron H. Harvey is assistant professor of accounting and organizational behavior at Georgetown University's School of Business Administration. He holds MBA and PhD degrees from the University of Nebraska-Lincoln, and is a certified public accountant.*

*Judy A. Schultze has eight years of experience as a personnel generalist. She holds a bachelor's degree in personnel management from Metropolitan State University, St. Paul, MN.*

*Jerome F. Rogers is director of finance for Rural Minnesota CEP Inc., Detroit Lakes, MN. He holds an associate's degree in accounting and business law from the Minnesota School of Business and a bachelor's degree in business administration and psychology from St. Mary's College.*

## COMPENSA- TION & BENEFITS

for individual differences and meet the needs of the organization.<sup>5</sup> A review of the organization's records shows some employees constantly used sick leave while others did not. And the paid sick-leave program provided incentive for employees to be sick.

The paid-leave plan actually combined the average number of sick leave paid per employee, vacation leave and holidays into a total for the employee to use at their discretion. The result was to take away the incentive to be sick, reward those who did not miss work, increase the self-control of the employees by making them responsible for administering their own leave program. It should be noted that there was a separate sick-leave provision for prolonged illness, but the paid leave hours must be used first.

---

**The premise is to increase the effectiveness of an organization by encouraging employees to be on the job...**

---

The major result was a marked reduction in absenteeism and perceived increase in employee morale.

Another study, using the same concept, was conducted.<sup>6</sup> The concept was called "The Personal Time Bank." The results were similar to that experienced in the first study—reduced absenteeism, better scheduling of time off, increased employee self-control and perceived increase in employee morale.

Another variation of the paid-leave concept is sick-leave banks. This is an arrangement that allows employees to pool some of their compensated sick-leave days in a common fund and draw upon the fund if extensive illness uses up their remaining time off. It is believed that the

sick-leave bank reduces absenteeism because employees are intent on protecting those jointly owned days in the bank. There is psychological pressure on the worker to get to work unless they really are sick.<sup>7</sup>

### Well pay's advantage

The well-pay concept is the act of reinforcing employees for not being absent or sick. The premise is to increase the effectiveness of an organization by encouraging employees to be on the job (or discouraging unnecessary absences—non-reality illnesses). The well-pay program replaces the traditional sick-leave plan by giving a bonus to employees well for four weeks, and it discontinues sick pay.

A non-profit organization, founded in 1968, is located in the Midwest and provides employment and training activities for the jurisdiction it serves. The management of the organization prides itself on a for-profit organization philosophy. This philosophy is realized by the intent to ensure adequate client services through a cost-conscious program.

The largest budget item of this organization is salary/wages and employee benefits. The organization's employee benefit package includes annual-leave accrual and sick-leave accrual systems. Some employees used sick leave as personal time, because as soon as sick leave accrued (one day a month), it was used.

Further investigation concluded that since sick leave, unlike annual leave, was not paid to terminating employees, there appeared to be a "If I don't use my sick leave, I'll lose it" attitude.

The investigation found that absenteeism via sick leave cost the organization in the 1980 fiscal year approximately \$41,000 (6400 hours with an average of 53 hours per employee). The cost represented payment for zero productivity. Sick-leave patterns reflected excessive one-day absenteeism. Management sought an answer to their sick-leave dilemma.

**Figure 1**  
Well-pay plan analysis

	FY 1980	FY 1981	FY 1981 % Change
Number of employees (average)	129	120	6.6 decr.
Total sick leave used (hours)	6,893¼	3,754	45.5 decr.
Average sick leave used per employee (hours)	53.44	31.28	—
Average duration of sick leave (hours)	9.6	20.0	108 incr.
Amount paid for sick leave (unadjusted)	\$40,864.	\$21,558.	47.2 decr.
Amount paid for sick leave (adjusted)*	\$40,864.	\$18,540.	54.6 decr.
Number of employee eligible for well-pay bonus	N/A	120	—
Number of employees receiving bonus (average)	N/A	102	—
Amount paid in well-pay bonus	N/A	\$38,374.	—

\* Adjustment made based on an average employee wage increase on 10/1/80 of 14 percent.

## COMPENSA- TION & BENEFITS

At the beginning of their 1981 fiscal year the organization began the well-pay program. The program contained the following features:

- Discontinue and freeze the current accrual of sick leave.
- Employ a well-pay policy that pays a bonus to employees have no absences for four weeks.
- Discontinue pay for absences for the first eight hours of absence due to illness.
- Employees who are not sick for two consecutive pay periods or four weeks would receive a bonus of four hours' pay.
- Any illness time beyond eight hours would be paid in full until the disability plan began.

Thus the sick-leave accrual system was replaced with a system that provided an incentive to be on the job and protection against serious illness. The key features are being paid for being on the job and discouraging casual absences by non-payment of the first eight hours of absences. Figure 1 presents a comparative analysis of the sick leave accrual system and well-pay program.

After introduction of the well-pay program, absenteeism decreased 46 percent in the 1981 fiscal year. This represents a reduction of sick leave per employee of 53 hours in 1980 to 31 hours in 1981. Moreover, the new plan resulted in a 55 percent reduction in sick leave paid (40,864 vs 18,540).

Figure 1 shows an increase of 108 percent in average duration of sick leave from 9.6 to 20 hours. The increase may be due to the fact that the program encouraged those employees who had an illness not to take only one day, for

which they would not be paid, but two or more to minimize their loss of eight hours' pay. Another seemingly negative element in the comparative analysis is the amount of bonus paid under the new program—\$38,374.00. Comparing the 1980 cost of sick leave (\$40,864) with \$18,540 paid in 1981 plus the bonus pay (\$38,374) results in a cost to the organization of \$16,050 under the new plan (\$38,374 + \$18,540 - \$40,864).

### Comparing real costs

In making a comparison between the sick-pay system and the well-pay plan in terms of costs, the real cost of sick pay must be considered. When sick leave is used, employees are not only paid their daily rate but they are also paid fringe benefits for their day of absence resulting in a significant increase in real costs for sick leave. Further, a comparison of the two systems must evaluate the savings to the organization from increased productivity. In this organization, reduction in productivity occurs when an employee is not on the job, resulting in reduction in quality of services provided to the client population. Because the well-pay plan reduced absenteeism significantly, it was concluded that there was an increase in productivity. Figure 2 attempts to calculate the real cost of the well-pay plan by estimating the savings derived from increased productivity based on the assumptions that:

- Without well pay, absenteeism would be the same average number of hours per employee in fiscal year '81 as it was in fiscal year '80 (53.44 hours per employee).
- The same class of employee (average wage rate) would utilize sick leave.

Figure 2 shows that the well-pay plan resulted in 3139.25 hours of reduced

Figure 2

#### Well-pay plan costs analysis

A)	120 employees using 53.44 hours of sick leave	=	6,412.8	hours
B)	Average hourly rate for employees using sick leave in FY '80 (\$40,864.00 divided by 6,893¼ hours)	=	\$5.93	
C)	Average wage increase on 10/1/80	=	14	percent
D)	Adjusted hourly rate for employees using sick leave	=	\$6.76	
E)	Assumed cost for FY '81 sick leave (a x d)	=	\$43,351.00	
F)	Actual cost for sick leave in FY '81	=	\$21,558.00	
G)	Savings from decreased absenteeism (e-f)	=	\$21,793.00	
H)	Sick leave used in FY '81	=	3,754	hours
I)	Sick leave used in FY '80	=	6,893¼	hours
J)	Increased hours available to organization (i - h)	=	3,139¼	hours
K)	Average hourly rate for employees using sick leave in FY '81 (\$21,558.00 divided by 3754)	=	\$5.74	
L)	Savings from increased productivity (j x k)	=	\$18,019.00	
M)	Cost of well-pay plan bonus	=	\$38,374.00	
N)	Adjusted cost for well pay plan (m - l - g)	=	\$1,203.00	



absenteeism or additional hours of productivity. These hours resulted in \$18,019 in savings from productivity. Using this productivity savings figure and adding the cost savings from reduced absenteeism to compare the cost of the well-pay plan bonuses, the plan results in an organization savings of \$1,203 (see Figure 2).

### Employee reactions

Any change in policy must also be evaluated based on the impact it has on employee attitudes. At the end of FY '81 (one year after well-pay plan had begun), a survey was conducted to determine the positive or negative impact the well-pay plan had on employees and supervisors. The survey response rate was 89 percent.

The well-pay plan was not well received initially, but when asked which program they chose, well pay was overwhelmingly accepted.

Another key element in the survey was supervisor attitudes. Supervisors indicated that the program was somewhat effective in increasing productivity and reducing absenteeism as compared with the sick-leave system. In addition, the supervisors were very satisfied with the

well-pay plan, with 85 percent indicating moderately or very satisfied. Supervisors said less time had to be spent reprimanding employees with a history of absences, and less time was required to assist employees covering for absent co-workers.

Because there is no control group, there can be alternative explanations for these results but in interviews with management and subordinate personnel, no other explanations were cited. Further, there were no other significant policy changes relating to sick-leave or annual-leave programs. Because of the results, the well-pay plan was continued. □

## SICK PAY VS. WELL PAY

### References

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3. Kopeiman, R. E., Schweller, G. O., IV, and Silver, J. J., Jr., "Parkinson's Law and Absenteeism: A Program to Rein in Sick Leave Costs," *Personnel Administrator*, May 1981, pp. 57-63.
4. Jordan, F. C., "A fair system of time off the job: Combine sick days, vacation days and holidays into paid days," *Modern Business Practice*, 1974.
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EXHIBIT 16  
DATE 2/21/91  
HB 945

HOUSE OF REPRESENTATIVES

STATE ADMINISTRATION COMMITTEE

ROLL CALL VOTE

DATE 2/21/91 BILL NO. HB 945 NUMBER 1

MOTION: To table.

NAME	AYE	NO
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		✓
REP. JAN BROWN, CHAIR		✓
TOTAL	6	13

HOUSE OF REPRESENTATIVES  
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1062

STATE ADMINISTRATION

COMMITTEE

BILL NO.

HB 892

DATE 2/21/91

SPONSOR(S)

REP. VIVIAN BROOKE

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
JOHN DELANO	MT. SOFT DRINK ASSN		X
RILEY JOHNSON	MT. BROADCASTERS ASSN		X
STROMB ANDERSON	TOBACCO INSTITUTE		X
JIM TUTWILER	MT CHAMBER		✓
Charles Wall	MNA		✓
JOHN RADECK	BIG SKY BROADCASTING		✓
Mike Jeller	Lee Enterprises		✓
Emmett Cronnelly	Aircraft Printers		✓
Kristin Page	MONT PIRG	✓	
Sam moti	self	✓	
MTLA	MTLA	✓	
Mark [unclear]	MA: THE WHOLESALE		✓
Robert Shup MA	self	✓	
Tookie Welker	MAPP	✓	

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HOUSE OF REPRESENTATIVES  
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2 of 2

State Administration COMMITTEE BILL NO. HB 892  
DATE 2/21/71 SPONSOR(S) Rep. Hal Harper

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Newa Hassanin	NPRC	✓	
Mr. R. Gopd	MT Senior Citizens Assoc	✓	
Ray Lytle	KMTX		✓
Roger Tippy	Mc Beer & Wine Wholesalers		✓
CB. PENNSON	Common Cause / Montana	✓	

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COMMITTEE \_\_\_\_\_

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

HB 737

DATE 2/21/91 SPONSOR(S) REP. JIM ELLIOTT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jerry Calvert	myself	X	
Bonnie Ramey	myself		X
Shelly Cheney	myself		X
Totie Welker	self	✓	
Ray Harris	self	✓	

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**HOUSE OF REPRESENTATIVES  
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DATE 2/21/91  
HB 902

STATE ADMINISTRATION COMMITTEE BILL NO. HB 902  
DATE 2/21/91 SPONSOR(S) REP. ED GRADY

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
PAUL COTEN HELENA	LOREN DAVIS	✓	
Ray Pace	Friends of The Fairgrounds	✓	
Elaine Baum	Last Chance Stampede + Fair	✓	
DAVID HEMMON	HELENA CHAMBER OF COMMERCE	✓	
LINDA STILL-ANDERSON	LEWIS & CLARK COUNTY	✓	
John North	Dept. of State Lands		
DAVE ANDERSON	Jefferson Co.	✓	

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STATE ADMINISTRATION

**COMMITTEE**

**BILL NO.**

HB 955

**DATE** 2/21/91

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REP. HAL HARPER

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STATE ADMINISTRATION \_\_\_\_\_ COMMITTEE \_\_\_\_\_ BILL NO. HB 941  
 DATE 2/21/91 SPONSOR(S) REP. STEVE BENEDICT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Tom Hannon</i>	<i>Mt. Sheriff &amp; Peace Offs</i>	<i>X</i>	
<i>Tom Schneider</i>	<i>MPEA</i>	<i>X</i>	

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DATE 2/21/91  
HB 936

HB 936

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**HOUSE OF REPRESENTATIVES  
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STATE ADMINISTRATION \_\_\_\_\_

COMMITTEE \_\_\_\_\_

BILL NO. HB 945

DATE 2/21/91 SPONSOR(S) REP. DOROTHY BRADLEY

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE

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