

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIR JAN BROWN, on March 12, 1991, at 8:00 a.m.

ROLL CALL

Members Present:

Jan Brown, 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)

Members Excused: Vicki Cocchiarella, Vice-Chair (D)

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

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

Announcements/Discussion:

CHAIR BROWN announced that Sen. William's flag desecration bill originally scheduled for March 13 would be heard on Tuesday, March 19.

CHAIR BROWN welcomed and thanked the children from the Children's Alliance who came to distribute juice and cookies to the Committee.

HEARING ON SB 358Presentation and Opening Statement by Sponsor:

SEN. THOMAS BECK, Senate District 24, Deer Lodge, introduced SB 358 at the request of his constituent, Larry Dodge, a member of the Libertarian party. SB 358 would review the requirements for a political party to nominate candidates for the primary.

Proponents' Testimony:

Doug Mitchell, Chief Deputy, Secretary of State's Office (SSO), said the SSO "drew" the opinion and requested the attorney general's opinion that determined that third party candidates need to qualify at every general election, instead of only during the presidential year. "We feel that this bill will clarify that. The purging process for voters takes place every four years. SB 358 would be consistent with that. It is a good measure and clarifies the law significantly."

C. B. Pearson, Executive Director, Common Cause/Montana, said they were in support of the bill as they believe "it makes a lot of sense."

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

SEN. BECK closed by thanking the Committee and requesting their support. Rep. Gary Beck will carry the bill in the House.

HEARING ON SB 157Presentation and Opening Statement by Sponsor:

SEN. ELEANOR VAUGHN, Senate District 1, Libby, introduced SB 175, which is an act to generally revise laws relating to elections. The Secretary of State's Office and the Election and Legislative Bureau have worked on SB 157 for two years to try to correct problems relating to election laws. Most of the bill relates to changing the name of clerk and recorder to election administrator since election administrators handle the elections. In most cases, the clerk and recorder and the election administrator are one and the same person. The general areas affected by SB 157 would be special district elections, candidates waiving nonpartisan primary elections, recounts of election results, mail-ballot elections and technical provisions for conducting elections. Sen. Vaughn pointed out the section of the bill that would exclude election judges from unemployment compensation. "We were not aware of the problems that might create with the federal rules on unemployment compensation. The Committee might

want to look at that. Sandy Bay, from the Department of Labor, would be willing to discuss this portion of the bill."

Informational Testimony:

Nancy Harte, Bureau Chief, Election and Legislative Bureau in the Secretary of the State's office, presented the following:

Sect. 1 and 2 refer to changes in the term of clerk and recorder to election administrator. There are seven counties that have a split office. SB 157 will make it clear who has the responsibility.

Sect. 3, 4 and 5 deal with water and sewer district nominations. Under current law, if someone wants to run for a water or sewer district, they must file five separate petitions. Each must be signed and notarized by a different elector to nominate them to the position. In small communities, it is not always easy to find notaries. SB 157 would require only one petition with five signatures and one notary signature. The process would be simpler and similar to what occurs for other nominations.

Sect. 6 refers to fire district trustees. Under current law, state-wide fire district trustees hold staggered terms by practice. There is no procedure in statute to set these up, particularly when a fire district is first established. SB 157 would require a staggered term and the first rotation would be defined.

Sect. 7 deals with pay for the chief election judge. Under current law, all election judges are required to be paid the federal minimum wage. SB 157 would allow the chief election judge, at the county's option, to be paid a higher wage. This would cover some of their additional responsibility.

Sect. 8 refers to the filing date for independent candidates. In Dawson County, a candidate filed for office in the primary election. They lost in the primary election and wanted to run as an independent candidate. There was a District Court decision that said "that was not permitted in that particular circumstance, but (the District Court) did not make a blanket judgment." This section would clarify that an independent candidate could file as late as the day before the primary election, or the (day before the) filing deadline if it was a special district.

Sect. 9 also deals with independent candidates. This section takes care of what is known as the "sore loser problem" where someone running as a partisan candidate loses and immediately wants to run as an independent candidate. The definition of an independent candidate would be tied to an association with a political party. A candidate could not run as a partisan candidate and then seek candidacy as an independent candidate for one year. It would still cover for most two-year cycles.

Sect. 10 refers to the signing of the precinct register when voters first come in to vote. The section that is being deleted is in conflict with the federal voting rights act. The current law says that a person who cannot sign his own name must produce two witnesses. SB 157 would change that requirement so the person would only have to make an identifying mark or a fingerprint in order to vote -- this would conform with federal law.

Sect. 11 deals with the poll books. This has been tried in Ravalli County where it worked quite successfully. When you go to vote, you must first sign the list where your name is located. In the meantime, an election judge next to the person watching you sign your name, is keeping a tally of all the ballots handed out. They are writing your name over again. SB 157 would combine those two positions. It is a technical amendment. It has saved counties a good deal of money as they have one less election judge to hire. This would be done at the county's option.

Sect. 12 deals with the faxing of requests for absentee ballots. This is different from the bill the Committee has already heard about the faxing of the ballot itself. This only deals with the absentee request. It allows a voter to fax their request for an absentee ballot. The ballot would be sent by the usual procedures. It is currently allowed under administrative rule. SB 157 would enter it into statute and clarify it is appropriate to do so.

Sect. 13 deals with when a primary election need not be held. Under current law, in a nonpartisan primary election, if there aren't a sufficient number of candidates filed, the county can waive the primary. What has happened is that there is often a problem with the deadlines and the timing because the county must act within seven days. SB 157 would change that by allowing the election administrator, who would know who has filed and knows if there is a mathematical number to necessitate a primary, to say there will not be a primary and to inform the county commissioners. If the county commissioners decide they do want to have a primary, they can pass a motion requiring a primary.

Sect. 14 deals with write-in candidate filing fees. Under current law, if you are a write-in candidate in the primary, you must pay a filing fee if you are nominated. If you are a write-in candidate in the general election, you pay no fee. SB 157 would require a filing fee for the write-in candidate who wins in a general election. The fee would not be required until after the election. All write-ins would not have to pay the filing fee in advance.

Sect. 15 and 16 deals with the problem that arose in Yellowstone County in the legislative tie vote in the last election. The county had a recount. During the recount, it was discovered that some ballots were missing. It was decided that when the ballots

were "split out" into the various precincts, some of the ballots were put into the wrong precinct pile. The only way the county could look at the ballot envelopes would be with a court order. This is what finally did happen in Yellowstone County. SB 157 would allow a county canvasser to say, "Go ahead and open up the other envelopes where the precinct votes are and find the right ballots and put them back in the right piles and recount them."

Sect. 17 and some subsequent sections deal with mail-ballot elections. Under current law, if a ballot stub is used, a person who is going to vote receives a ballot with a stub. After voting, the secret ballot is to be placed in a secrecy envelope. The ballot stub is to be placed in another envelope. Both of those are then to be put into another envelope. What sometimes happens is they forget the stub or sometimes the stub is placed in the wrong envelope. It is very complicated and causes ballots to be voided for technical reasons. This would eliminate stubs for mail-ballot elections only. It is a very controlled process; there is tracking of the ballots.

Sect. 18 deals with mail ballots for multi-elections. Sometimes a county will have more than one mail-ballot election occurring on the same day. Under current law, they must send out separate ballot envelopes for each and every election and the voters are required to return each one separately. That is a waste of postage and time. SB 157 would allow all ballots to be placed in one envelope.

Sect. 19 and 20 expands the authority to deposit mail-ballot election ballots. SB 157 would allow a designated person, other than the voter, to drop off his completed ballot after it has been voted and sealed into a secrecy envelope. Current law only allows the voter to drop it off.

Sect. 21 also deals with the multi-election forms.

Sect. 22 refers to mail-ballot elections. Under current law, the judges may not start counting the ballots until after 8 p.m. on election day. SB 157 would make the procedure similar to the way that absentee ballots can be counted during the day where a sequestered board begins counting them. This would help to eliminate some of the overtime for election judges.

Sect. 23 and 24 changes the election administrator from the county clerk and recorder in the language of the bill.

Sect. 25 refers to the change Sen. Vaughn mentioned about the unemployment insurance. This covers the state statute dealing with labor law where unemployment insurance is covered. It gives the exclusion on Pg. 26 for election judges.

Sect. 26 is the repealer section for multiple petitions for water and sewer districts.

Proponents' Testimony:

Nancy Harte, Bureau Chief, Election and Legislative Bureau in the Secretary of the State's office, presented written testimony.
EXHIBIT 1

Mike Stephen, Montana Clerk and Recorders' Association, said they support the bill. Elections are very technical and there are many fine points. SB 157 will help the clerk and recorders and election administrators do a better job.

John McCarthy, Lobbyist, Common Cause/Montana, said, "We think it is a good bill. The language that it uses helps to streamline the process. It also protects the elections from disgruntled candidates."

Opponents' Testimony: None

Questions From Committee Members:

REP. WILBUR SPRING said he did not understand the meaning of an independent candidate in Sect. 9, Pg. 9, and where there was a referral to a write-in candidate in Sect. 13 and 14. Is a write-in candidate an independent? He said he was addressing the situation that occurred in Gallatin County where one person was defeated in the primary election. They then "came out" as a write-in candidate. Does that mean that person can't file as a write in. Ms. Harte said, "No, that would not have affected the particular case you are thinking of with Sen. Boylan. Write-in candidates can still file in whatever party they wish." REP. SPRING questioned whether a write-in candidate could file as a write-in candidate? Ms. Harte said that in the primary election, the candidate must file as a party person if they want to be nominated as a party person. In the general election, they don't have to specify the party at all.

REP. SIMPKINS said he would like to know the relationship between the election administrators and the clerks and recorders in the seven counties that have separate offices. Whom do they work for if they are not under the clerks and recorders? Ms. Harte said the county election administrator is appointed by the county commissioners. REP. SIMPKINS asked if they work directly for the county commissioners. Ms. Harte said yes. REP. SIMPKINS said the rest of election administrators work directly for the clerks and recorders, is that right? Ms. Harte said that in the rest of the counties, the clerk and recorder and the election administrator are the same person -- they hold two positions. REP. SIMPKINS said he was concerned because that position was eliminated. He did not know if it was recognized in law as a separate official function versus the elected position of the clerk and recorders office. SB 157 would create a separate title. He wondered whether the laws would conflict. Ms. Harte replied that county election administrators already exist as an appointed position in state election law. It is not addressed in

SB 157 because it did not need to be changed. In 49 counties the clerk and recorders and election administrators are the same person; in 7 counties they are split. In Yellowstone County there is a clerk and recorder who does all the duties of the clerks except election duties. **REP. SIMPKINS** referred to Sect. 10, Pg. 14, Lns. 14 - 16. "If the elector is not able to sign his name to the precinct register, a fingerprint or other identifying mark may be used." Would a handicapped person have to use a fingerprint rather than just have identification to vote? We now allow someone else to mark the ballot for them if they can't write. **Ms. Harte** said this section refers to the very first step in voting where the voter must prove to the election judge that they are the person they say they are. With the change, they would continue to have to make the mark or some sort of identification that they are who they say they are, but they do not have to bring two witnesses to prove that. A person can still request someone to assist them in voting the ballot. **REP. SIMPKINS** asked if a person is totally unable to make a mark, how is that person able to vote? **SEN. VAUGHN** said if the voter didn't have any hands or legs they must have someone to accompany them to sign papers. "Any identifying object they would have with them I am sure the election judges would accept as a legal means to accept their ballot. They can be helped by any person to mark their ballot. It must be secret." **REP. SIMPKINS** said if you read (2) and (3) together, it states, "if an elector fails to or refuses to sign his name or if unable to write fails to provide a fingerprint or other identifying mark, he may not vote." Now you're telling me he may. The law simply states . . . he cannot vote. **SEN. VAUGHN** said, "If you don't feel comfortable with this, I don't think there would be any objections to amending the bill to take care of that. In discussing it with the secretary of state and the election clerks, who work with their judges and do the instructing of the election judges, there didn't seem to be any question in their minds"

REP. JIM SOUTHWORTH said he was very comfortable with the paragraph and he thought Rep. Simpkins was "nit picking."

REP. SIMPKINS referred to Pg. 20, Lns. 9 - 12 where the absentee ballots could be counted early. There has been talk of a noon-time or early pickup of the ballots. Do they have the authority to start counting early pickups and then keep the count secret? **Ms. Harte** said the section being amended refers only to mail-ballot elections. When there is an early pickup, there is a special absentee board that is sequestered until the closing of the polls. Anyone can observe the absentee board but they must remain sequestered. They can start counting "early pickups" in advance. **REP. SIMPKINS** referred to Pg. 11, Lns. 1 - 3. Is the number on the ballot and the tab both or just on the tab? **Ms. Harte** said the number is on the ballot stub. When someone comes in to vote, they sign the precinct register and a poll book is kept that has a running list of the numbers and the person's name is written next to the stub number. The ballot and stub number

are separated when the votes are cast. The stub number does not appear on the ballot.

REP. BETTY LOU KASTEN asked if SB 157 would encourage more counties to hire election administrators? Ms. Harte said, "I don't believe so. . . . It would depend on the nature of the county as to whether or not they needed additional help. REP. KASTEN said that in Dawson County many ballots were declared invalid because of technical problems with the write-in procedure. The result was that anytime there is a clerk and recorder running for office, "you must do something different than what is in law." The clerk and recorder has responsibilities for other duties in the election. Ms. Harte said she did not think SB 157 would change anything as far as the situation in Dawson County. REP. KASTEN asked if whenever a clerk and recorder were running for election in the county, could the commissioners hire an election administrator. Ms. Harte said the county could do whatever they wanted since they were the ones that appointed the county election administrator.

CHAIR BROWN asked if anyone in the audience wanted to address the question about the exclusion of employment insurance. Sandy Bay, Department of Labor, said the amendment to the bill exempting election judges from unemployment insurance coverage would create a conformity issue for federal unemployment tax purposes. She received a letter from the Denver regional office that states the exemption would create a conformity issue. The consequences of this would be that Montana employers could see a loss of the tax credits of 5.8 percent that they currently receive. It could also result in the loss of administrative funds for the Unemployment Insurance Program.

REP. CAROLYN SQUIRES asked Bob Jensen if the exclusion bill passed by the Labor and Employment Relations Committee would take care of this problem. Bob Jensen, Administrator, Unemployment Insurance Division, Department of Labor and Industry, said he did not think that in this instance it would relate to Workers' Compensation at all. This is just strictly a conformity issue on Unemployment Insurance. He said he hadn't looked at SB 157 in that regard, but they would look at it before the Committee was to take executive action if they wished. REP. SQUIRES said she would like them to do that.

Closing by Sponsor:

SEN. VAUGHN said she did not think SB 157 would cause more election administrators to be appointed. The law is already there if the county wanted to appoint election administrators. SB 157 would just clarify the election laws and make it easier for small districts to hold elections. Many people working as election judges are housewives and people who have no other means of employment. The minute they receive a check, they try to draw unemployment. That has created paper work. Since it is such a minor amount of pay they receive, it was felt they should be

excluded. She said she would appreciate Mr. Jensen and the Committee looking into the problem so the state would not lose any rights to unemployment monies. Rep. Cocchiarella will carry the bill in the House.

CHAIR BROWN asked Rep. Simpkins if he wanted to pursue looking at the section that he was concerned with regarding the fingerprint and the other marking. **REP. SIMPKINS** requested Sheri Heffelfinger to draft an amendment that would allow the election judge to verify the record based upon identification.

CHAIR BROWN requested Sheri Heffelfinger to work on an amendment with Rep. Simpkins.

HEARING ON SB 399

Presentation and Opening Statement by Sponsor:

SEN. PAUL SVRCEK, Senate District 26, Thompson Falls, introduced SB 399 at the request of a constituent to make initiative petitions available for signing in each county courthouse. The secretary of state shall make copies of the initiatives available in each of the county seats as well as signature sheets. The secretary of state informed Sen. Svrcek that they already must make the petitions available in the clerk and recorders' offices in each of the counties. It would be relatively simple to include signatory sheets. "I am not advocating anything fancy or any grand scheme or new program. I envision this as being something as simple as the clerk and recorder hanging a clipboard on the wall with a sign above it that says these are the initiatives that are being considered and are available for signatures this year."

Proponents' Testimony:

Doug Mitchell, Chief Deputy, Secretary of State's Office, said they support SB 399. This is a fairly simple bill. We already provide the clerks and recorders with a copy of every petition that has qualified to be submitted to the electorate for signatures. We would, in addition, stamp the petition to notify the clerks and recorders that this petition is for publication and is to be placed for public review with a signature sheet for the appropriate petition. They would then have these available for the public to sign. There are a "couple of distinct advantages:" 1) one needs to be a registered voter in order for their signature to be counted. The voter could check in the Clerk and Recorder's office to see if they are registered. 2) this would give an individual, who is uncomfortable with people requesting their signature on a petition, the opportunity to say they would prefer doing this at the Clerk and Recorder's Office where they can check to make sure they were registered to vote. It will not cost the taxpayers any money. There was some spirited debate on SB 399 in the Senate. Most of it revolved around the additional functions that would be mandated for the

clerks and recorders. "It is the intent of the bill that those would be minimal." One of the main questions was what would happen when the clerks finished the processing of the petitions. The clerks and recorders would use the standard process they use to count the signatures. They would not have to submit them to anyone other than to themselves. "This bill makes a lot of sense, and I am surprised we haven't gotten to it sooner."

C. B. Pearson, Executive Director, Common Cause/Montana, said they support the bill because it is an idea that has percolated up from the people and it makes a lot of sense. They have been active in the initiative process. "We see the primary function of this as being a good educational tool. (Many) times folks in the various counties don't have access to the petitions. This is an opportunity for people to get informed and look at a particular initiative that is being passed around and decide at their own pace whether they want to sign it."

Opponents' Testimony: None

Questions From Committee Members:

REP. KASTEN said there may be a charge for the person submitting the petition. Do you have any idea how much that charge might be? Mr. Mitchell said there is no charge now under the law. "We wouldn't have to charge. They are very simple and small. We could fold them in an envelope and send them out. . . . If the petitions suddenly became 14 pages long and there was a significant cost, we would have a cost basically for duplication and postage that would be passed on to the initiative sponsor. We don't anticipate that kind of a change at this time."

REP. GARY FELAND asked if the Clerk and Recorder's Office would be the only place where the petitions could be signed. Mr. Mitchell said no. They will still go through the standard process of circulation. This will be an additional vehicle where folks could sign petitions.

Closing by Sponsor:

SEN. SVRCEK said that given the rural nature of the state, this would be a good measure to make petitions available and provide some education for the voters. Rep. Wilbur Spring will carry the bill in the House.

HEARING ON SB 173

Presentation and Opening Statement by Sponsor:

CHET BLAYLOCK, Senate District 43, Laurel and West Billings, introduced SB 173 at the request of the Commissioner of Political Practices (CPP) to revise campaign finance laws.

Proponents' Testimony:

Dolores Colburg, CPP, presented written testimony. EXHIBIT 2

She also suggested the Committee amend the bill to provide an immediate effective date. Elections for the small districts occur all over the calendar; some will occur later this spring, some will occur this fall.

Mike Stephen, representing Montana Clerk and Recorders' Association, said they support the bill for the reasons covered by the CPP.

Marguerite Burns, Lobbyist, Common Cause/Montana, said they want to go on record in support of SB 173. "We feel that the changing of reporting requirements encourages more public participation and we support the idea of 'separating out' the public campaign funds from other contributions."

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

SEN. BLAYLOCK said he closed. Rep. Ernest Bergsagel will carry the bill in the House.

HEARING ON SB 423

CHAIR BROWN announced that Rep. Fritz Daily would "stand in" for Sen. J. D. Lynch, Senate District, 34, Butte.

Presentation and Opening Statement by Sponsor:

REP. FRITZ DAILY, House District 69, Butte, introduced SB 423 to allow the secretary of state to sell corporate information lists.

Proponents' Testimony:

Doug Mitchell, Chief Deputy, Secretary of State's Office (SSO), said SB 423 was introduced to respond to a problem that the SSO very frequently comes in contact with, which is the distribution of information about Montana corporations and foreign corporations doing business in Montana. The SSO is mandated to provide corporate information to the public. The Office maintains both hard copy files and those on a computer system. The SSO is not given, by law, the clear ability to disseminate corporate information that is contained on the computer system in bulk. This is the conflict: The SSO is mandated to give information if a person were to call the Office and say start reading from A and go to Z and give me the information on your computer system. This is public information and is available in that form. However, the attorney general has ruled -- following

a Supreme Court decision regarding insurance companies and proprietary information on the auditor's computer system about insurance companies -- that insurance corporations are entitled to a level of privacy that prohibits, in some cases, the dissemination of corporation "lists." That particular court case prevents the dissemination of corporation lists that have proprietary information. The attorney general, because he does not have first-hand knowledge that there is no proprietary information on that computer list and because we have no clear authority to sell corporation lists, cannot allow the SSO to sell those. His opinion says the only "go ahead" can be through our discretion or with clear Legislative intent that says it is okay to take this information that is currently provided to the public and distribute it in data form on a computer disk or tape to the public. The Office receives these requests frequently. Law enforcement officials call and say they need a copy of "any corporation in which X individual is involved." The Office must, unfortunately, tell them they cannot provide them with that information. The U.S. Department of Commerce also makes requests for statistical purposes of all corporations doing business within the state. Corporate America, particularly Dun and Bradstreet and Prentice Hall (service companies that provide services to corporations) wants information to keep their lists current. The SSO provides the information, but it is given in a much more expensive way for both them and the SSO. For example, Dun and Bradstreet will come in and photocopy all the corporation information. The SSO must provide a staff member to "shuffle folders" back and forth for them. SB 423 would allow the SSO to provide a computer tape of the listings for a fee commensurate with the cost of what it would cost the SSO to "detail that information." The cost of \$250 thousand is currently being paid by the General Fund. "I am not saying we should charge Dun and Bradstreet \$.25 million, but we can -- through the dissemination of the lists and charging for that -- significantly decrease (SSO's) necessity to raise fees to corporations in the state by accurately charging (those) who are really using the services. It is not rare for a grade 10 staff member to spend 45 minutes on the phone -- for free -- responding to inquiries because someone needs to make 60 to 70 searches, which they would much prefer to receive on a diskette.

Opponents' Testimony: None

Questions From Committee Members:

REP. RICHARD SIMPKINS asked if the lists were not disseminated to anyone, would they still have to be maintained on the computer for state information. Mr. Mitchell said yes they would. We currently have a considerable amount of information concerning corporations. We are mandated to send out certain reports and updates to corporations with their annual report being the key one. Without some computer function, that would be significantly more labor intensive than with one. REP. SIMPKINS said according to the fiscal note, the actual cost of providing a list is

\$7,500. But you feel the actual cost, also, of storing the information on the computer is \$7,500. I could understand that if you didn't already have to have the information in the computer. If the SSO has to maintain the data, then you would only be dealing with the cost of providing the information -- not recouping the cost by selling information that you're required to store. Mr. Mitchell said the Office determined the cost allocation for the fiscal note. We think there is a portion of this system that is maintained only to facilitate the dissemination of information we file on paper. There are two individuals, similar to Delta Airlines, that are sitting there answering questions all day. We maintain more information on the system, than we would need to simply to provide for those corporate annual report lists and so forth. There is some fractional cost. Whether or not that is the accurate number, it is a good guess. We would do a cost estimate in developing a fee to make sure it is commensurate with the cost.

REP. KASTEN asked how many other state agencies sell compiled lists. Mr. Mitchell said he was unable to provide a specific answer to the question. There are agencies, including their own, that provide lists. SSO provides a list of all farm bill UCC lien files on a monthly basis on a computer tape, diskette or paper or microfilm. They contain the name and address of every debtor and every secured party that is involved in a UCC filing within the office. There are other agencies. REP. KASTEN said she understood the necessity of providing information for liens. Does any other agency specifically sell lists for undefined purposes when there is no law specifying their necessity. Mr. Mitchell said the SSO perceives it as being different. "I cannot provide you with a list of agencies that provide this information." We currently distribute this list. It is a matter of how we distribute it. It is public information that is currently dispersed in list form. Their frustration comes from not being able to disperse it in computer form. REP. KASTEN asked whatever happened to the bill introduced at the request of the Fish and Game Department that would have allowed lists to be sold. REP. BEVERLY BARNHART said it was tabled.

Closing by Sponsor:

REP. DAILY said he closed. Rep. David Wanzenried will carry the bill in the House.

EXECUTIVE ACTION ON SB 423

Motion/Vote: REP. SOUTHWORTH MOVED SB 423 BE CONCURRED IN. The motion carried unanimously of the members present. Reps. Simpkins, Cocchiarella and Phillips were absent for the vote.

EXECUTIVE ACTION ON SB 173

Motion: REP. GARY BECK MOVED SB 173 BE CONCURRED IN.

Motion/Vote: REP. BECK moved the amendment for an immediate effective date. The motion carried unanimously.

Motion/Vote: REP. BECK MOVED SB 173 BE CONCURRED IN AS AMENDED. The motion carried unanimously. EXHIBIT 3

EXECUTIVE ACTION ON SB 399

Motion/Vote: REP. SOUTHWORTH MOVED SB 399 BE CONCURRED IN. The motion carried unanimously.

Motion/Vote: REP. SIMPKINS MOVED SB 399 BE PLACED ON THE CONSENT CALENDAR. The motion carried unanimously.

EXECUTIVE ACTION ON SB 358

Motion/Vote: REP. BECK MOVED SB 358 BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE ACTION ON SB 156

Motion: REP. SOUTHWORTH MOVED SB 156 BE CONCURRED IN.

Discussion:

CHAIR BROWN said that there were several proposed amendments to SB 156 with which the sponsor did not agree. Ms. Heffelfinger said the only formal request she received from the sponsor was to change on Pg. 10, Ln. 15, three weeks back to four weeks.

Motion: REP. SOUTHWORTH moved the amendment on Pg. 10, Ln. 15 to amend three weeks to four weeks.

Discussion:

REP. BARNHART asked which of the people testifying had requested that amendment. She was told that Ms. Harte had requested the amendment.

Vote: SB 156 AMENDMENT. The motion carried unanimously.

Motion: REP. SOUTHWORTH MOVED SB 156 BE CONCURRED IN AS AMENDED.

Discussion:

REP. SIMPKINS said that another amendment had been proposed and agreed upon by the SSO on Pg. 13, Ln. 2, to allow some flexibility in the language on a ballot by inserting after the word "to" but not limited to the following.

Motion: REP. SIMPKINS moved to amend SB 156 by adding on Pg. 13, Ln. 2, after the word "to" by inserting the language "not limited to." It would then read "the marking of the ballot in a manner similar to but not limited to the following example." That would allow a little flexibility to the Secretary of State as to the wording of the ballot.

REP. SOUTHWORTH asked Ms. Harte to comment on Rep. Simpkins proposed amendment. Ms. Harte said, "This is the amendment that was proposed by one of the people involved in initiative petitions. We don't see a problem with the idea of trying to make that language different. We do, however, see a problem with trying to get some consistency in how the question will be composed. . . . It might be a little premature, and you may want to do some study to see how other states do this so we can have some consistency. This generally affects the Attorney General's Office more than (SSO)."

REP. SIMPKINS said Peter Funk from the Attorney General's Office did agree to this type of an amendment during the hearing.

CHAIR BROWN asked if Ms. Heffelfinger had a comment on the proposed language of the amendment. Ms. Heffelfinger said that Rep. Simpkins is correct. The Attorney General's Office proposed the "not limited to." Mr. Funk was concerned about the consistency of the wording.

REP. BARNHART spoke in favor of the amendment. She felt it was a consumer issue. "Some initiatives (appearing) on the ballot, are very difficult to read. . . . If we have the opportunity to correct that, I certainly would be in favor of waiting to have a correct amendment."

Motion: REP. SIMPKINS said he would withdraw his amendment if Ms. Heffelfinger would check with Mr. Funk at the Attorney General's Office and see what language they want for the amendment.

Discussion:

REP. PATRICK GALVIN referred to Pg. 6, Lns. 5 - 7, "The ballot statement must be an accurate and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language," and said, "I think those lines would be sufficient to carry on all through the bill."

CHAIR BROWN requested Rep. Southworth to withdraw his DO PASS AS AMENDED motion and the Committee would hold action until the amendment was ready.

Motion: REP. SOUTHWORTH withdrew his motion.

EXECUTIVE ACTION ON HB 871

Motion: REP. BARNHART MOVED TO RECONSIDER ACTION ON HB 871 AND TAKE FROM THE TABLE.

Discussion:

REP. BARNHART said HB 871 would try to change the Citizen's Advocacy Program (CAP) from the Governor's Office to the Legislative Council. She would like to have the CAP in the Governor's Office and have the CAP be in statute as requested by the sponsor.

Ms. Heffelfinger said HB 871 would be amended by striking all of Sect. 2 through Sect. 5 in their entirety. The title and Pg. 1, Ln. 11, "Legislative Council" would be changed to "the Governor's Office." Sect. 1 would say, "The Governor's Office shall operate and maintain a CAP. Subsection (2) would remain the same. REP. ROGER DEBRUYCKER asked how the title would read.

Ms. Heffelfinger said she did not have the language, but basically it would say "An act putting in statute or codifying the CAP under the Governor's Office." CHAIR BROWN asked if that could be done within the title of the bill. Ms. Heffelfinger said it was questionable.

REP. FRITZ DAILY said he uses the Citizen's Advocate phone line frequently. The people who operate that phone do an outstanding job, without question. "I know they get a lot of calls from Legislators and it becomes difficult for them because they have other business to take care of. I certainly do not want to take the CAP away from the Governor('s Office) because that is where I think it belongs. . . . I would like to have a toll-free number in the Legislative Council for just Legislators." Instead of tying up the CAP line, the Legislative Council could connect the Legislator with the party with whom they wish to speak. He asked for time to pursue the idea until he was able to obtain the information.

REP. JOHN PHILLIPS said he agreed with Rep. Daily. "I don't think it would cost that much more for incoming calls. If there is a lot of expense, the Legislator could request the person answering the phone in the Legislative Council office to have the person they wish to speak to return their call on the other state-contracted line. "The system is not (broken) it is working (well) in the Governor's Office. If we don't do anything there, we are not hurting anything."

CHAIR BROWN asked Rep. Barnhart if she would like to hold onto HB 871 until Rep. Daily had time to check with the Legislative Council as his suggestion "really does have merit." The question before the Committee would be "do we want to put the CAP in statute?" The Committee would have until March 22 to move bills out of Committee.

Motion: REP. BARNHART withdrew her motion.

EXECUTIVE ACTION ON SB 241

Discussion:

CHAIR BROWN said that Public Service Commissioner Driscoll had proposed extensive amendments to SB 241. She asked Ms. Heffelfinger to report on her findings on the research she had conducted.

Ms. Heffelfinger said the issue is rather complex with conflicting opinions. SB 241, as amended on the Senate floor, would require that if an elected official (mentioned in the bill), goes on military duty for training or is called to active duty or for whatever reason, other than their training-drill weekend and their annual training, their salary would have to be reduced by that amount that they earned on active duty. The issue that Sen. Blaylock brought up in his opening and closing is that SB 241 would put into statute what is in the Constitution. Ms. Heffelfinger then read the provision of the Constitution that Commissioner Driscoll suggested be put into statute: "During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency." Commissioner Driscoll's argument was that this should go into statute. He maintained the bill, as written, is unconstitutional because the amendment that says this doesn't apply to the drill weekends or to the annual training is actually in violation of the Constitution that says "receive compensation for services from any other governmental agency." Sen. Blaylock talked about the ConCon and the conversation between the delegates. The delegates specifically mentioned national guard's salaries were to be excluded. "You cannot stop the federal salary; the National Guard gets paid from the federal government when they do 'these things' unless they are ordered to active duty by the governor. The governor signs any order. Basically, you cannot stop the federal paycheck for drill weekends, for annual training and for any other training." Sen. Blaylock wants to reduce the state pay.

REP. BARNHART said when she was listening to the bill she began wondering about jury-duty pay and if there were any rules about that in statute. Unofficially, people usually take one or the other but not both. Ms. Heffelfinger said she didn't know. Under the provisions of the Constitution, if you are a public elected official in the executive branch, you cannot receive two checks if the state is paying you.

REP. SIMPKINS said that the Command and General Staff School is an advanced military course given by invitation only for those people who are in a command position. It is a leadership course being taught at Fort Leavenworth, Kansas. It is absolutely necessary and mandatory to be promoted to a colonel. The state

gains by the federal government paying a person to take the course. This is like being paid to take a master's degree by the federal government. It is unusual to pick this one particular subject that benefits the state in the long run. This bill creates more problems, in the long run, when you start trying to "pick and choose" who is going to get their state pay or a federal pay check.

REP. SOUTHWORTH said, "I favor the bill, personally, without the amendments." He asked if Ms. Heffelfinger thought the bill, as presented, was unconstitutional. Ms. Heffelfinger said, "I can give you the attorney general's opinion and the opinion of the Legislative Council (LC). I am not in a position where I can tell you whether it is constitutional or not because there is a question about it. The LC said, "I don't care if it is a guard-drill weekend . . ., you cannot receive compensation from any other governmental agency. This opinion cites the conversation between the two delegates. . . . You cannot stop that compensation from the National Guard because it is a federal paycheck. It is not a state paycheck. They never addressed what to do about the state pay. The LC said the intent is to not receive two paychecks from a governmental agency. They said you cannot accept your state paycheck then. The auditor, Andrea Bennett, said she could not stop the state paycheck as there was no mechanism in law. So they had to pay him. If they don't pay him, there could be a temporary vacancy in office. The statutes say that military service will not create a vacancy in office. The attorney general wrote a clarifying opinion. It differs somewhat from the LC's opinion by saying that you 'can't tamper with the federal paycheck.' He did not address what to do about the state pay."

REP. GARY FORRESTER said, "I do not think the bill had anything to do with the fact that the Commissioner benefitted or did not benefit from military training. The bill questions whether or not he was doing his job as a public service commissioner while he was gone. He was not reduced in pay. I presume his pay as a major was greater than or equal to his salary as a public service commissioner. I don't think there was an issue that he suffered a reduction in pay while he was gone. It is just that Commissioner Driscoll felt that he needed to receive both pay checks while he was gone. I think, as public officials, you need to have a perception of fairness and tell people what I'm doing is right -- not only according to the letter of the law, but morally. I don't think Commissioner Driscoll met that responsibility. I support this bill."

REP. GARY BECK said it looked like a law was being written for one particular person for one particular incident. He thought the situation was "very unique and would not happen again."

CHAIR BROWN asked Ms. Heffelfinger if SB 241, with the way it was amended in the Senate, was unconstitutional or not. "The opinions you have address the issue, but they don't address this

bill. Is there any way we can tell that?" Ms. Heffelfinger responded, "When the bill was drafted without the amendment, it was based on the LC opinion. The amendments exempt the drill pay and they say if you want to do that outside of office working hours. Working hours is not defined; office hours is. Office hours for state elected officials are 8 to 5 p.m. on weekdays. Without those amendments, the bill would have required that even if an individual went to a drill weekend or performed extra duty after hours with the National Guard, they still would have to reduce their salary by the amount earned. This brings up a lot of questions. It says you cannot participate in the National Guard if you do that because you have to go to your drill weekends. Under the LC opinion, that is constitutional, because you can't receive compensation from any other governmental agency. When you add the amendments . . . , there is no opinion on that. My own personal concern is whether that in itself is an exception to what the Constitution reads."

REP. PHILLIPS said he agreed with Rep. Beck that this probably was a one-time incident. . . . If it ever happens again, it would give the lawyers and courts something to do. Whatever we do is liable to make a worse mess. I am in support of tabling the bill.

REP. FRITZ DAILY said, "Everyone of us, including John Driscoll, is subject to the voters. If the voters don't like what John Driscoll did, they're going to take care of him just like they would take care of us."


REP. SOUTHWORTH said, "That is true. But I believe many voters didn't feel that he was doing his job. I think that is what this is all about. He was a man who was elected to do a very important job."

REP. BECK said part of the written testimony from the other commissioners said that he did do his job while he was there and he did it quite well. In fact, they said they thought he did it better there than when he was in Montana.

Motion/Vote: REP. SIMPKINS MOVED SB 241 BE TABLED. The motion carried 15 to 3 with Reps. Southworth, Forrester and Davis voting no. Rep. Cocchiarella was absent for the vote.

ADJOURNMENT

Adjournment: 9:52 a.m.


JAN BROWN, Chair


JUDY BURGRAFF, Secretary

JB/jb

HOUSE OF REPRESENTATIVES
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE 3/12/91

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

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that Senate Bill 173 (third reading copy -- blue) be concurred in as amended .

Signed: _____

Jan Brown
Jan Brown, Chairman

And, that such amendments read:

1. Title, line 10.

Following: "PRACTICES;"

Strike: "AND"

2. Title, line 11.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 3.

Following: line 24

Insert: "

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval."

HOUSE STANDING COMMITTEE REPORT

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report
that Senate Bill 423 (third reading copy -- blue) be concurred
in .

Signed: Jan Brown
Jan Brown, Chairman

Carried by: Rep. Wanzenried

HOUSE STANDING COMMITTEE REPORT

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that Senate Bill 399 (third reading copy -- blue) be concurred in and be placed on consent calendar.

Signed: _____

Jan Brown
Jan Brown, Chairman

HOUSE STANDING COMMITTEE REPORT

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that Senate Bill 358 (third reading copy -- blue) be concurred in.

Signed: Jan Brown

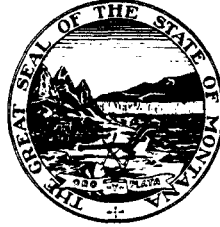
Jan Brown, Chairman

Carried by: Rep. Beck

SECRETARY OF STATE

STATE OF MONTANA

EX-101 1
DATE 3-12-91
SB 157



Mike Cooney
Secretary of State

Montana State Capitol
Helena, MT 59620

TESTIMONY -- HOUSE STATE ADMINISTRATION COMMITTEE ON SENATE BILL 157, MARCH 12, 1991

Madam Chairwoman and members of the committee, my name is Nancy Harte; I am the Bureau Chief of the Elections and Legislative Bureau in the Secretary of State's office.

I am testifying today in support of Senate Bill 157, which was drafted at the request of Secretary of State Mike Cooney.

As Senator Vaughn discussed in her opening remarks, this legislation came about through cooperative efforts between the Secretary of State's office and the local election administrators.

As we developed this legislation, we were careful to consider the opinions of these administrators who actually conduct the elections on a local level. We knew that the county clerks and recorders wanted legislation that would not only correct the inconsistencies and problems in election law, but legislation that would be practical to apply. We think Senate Bill 157 does that.

While this election law clean-up will be useful to the election administrators, the Secretary of State also insisted that any proposed election revision must make elections more fair, less costly and easier to understand for the public and candidates.

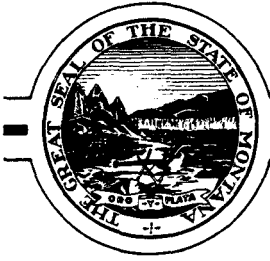
We know that everyone involved in the electoral process has their opinions about what's wrong, and right, with the law. This bill does not include, by any means, an exhaustive inventory of every problem that might be fixed. Questions continually arise about the appropriateness and consistency of election law.

So while Senate Bill 157 is not a cure-all, it does represent a collaborative effort that will solve most of the problems for most of the people most of the time.

I urge your support of Senate Bill 157. At this point, I will take a few moments to review the changes proposed in the bill.

COMMISSIONER OF
POLITICAL PRACTICES

EXHIBIT 2
DATE 3-12-91
HB SB 173



STATE OF MONTANA

DOLORES COLBURG
COMMISSIONER
TELEPHONE (406) 444-2942

CAPITOL STATION
1205 EAST EIGHTH AVENUE
HELENA, MONTANA 59620-2401

March 12, 1991
House State Administration Committee

TESTIMONY IN SUPPORT OF SB 173

For the record, I am Dolores Colburg, Commissioner of Political Practices. I appear before the committee this morning in support of SB 173--a not surprising circumstance since the bill was introduced at the request of my office.

Although the title in the first line indicates that the bill is for an act "revising the campaign finance laws," let me assure you that it is not a sweeping overhaul of those laws. Rather, the intent of the bill is quite modest and would make changes in just two areas--and some of the changes I would characterize as being "housekeeping" in nature.

Under current campaign finance law, an exception from reporting requirements is provided for candidates and committees in small school districts. This bill would extend that exemption to certain special districts as enumerated in the bill--that is, conservation, fire, hospital, irrigation, sewer, transportation, and water districts.

I am told that finding candidates who will run for offices in these districts is hard enough. When candidates learn that

reports also will be required of them--even though in nearly all cases it may be simply to report that they will spend no money--people are further put off from running for these special offices. Most candidates in these special districts run unopposed; and, as the reports in my office indicate, they really spend no or very, very little money in their campaigns.

The same reasoning for exempting candidates and committees in small school districts from reporting requirements also applies to these special districts; thus, they too should be excepted from filing reports that reveal little or nothing.

The second area addressed in the bill is the public campaign fund. Moneys accumulate in this fund from the \$1.00 check-off on individual income tax returns and are allotted to eligible gubernatorial and Supreme Court nominees during general elections.

The law provides that moneys disbursed from the public campaign fund shall be spent only for ". . . legitimate campaign expenses of the candidates" who receive the funds. No such restriction is placed on other moneys that these candidates receive. In keeping with very basic accounting principles, this bill would assure that the restricted funds from the public campaign fund are not commingled with all of the unrestricted funds from other sources. It would do so by requiring that the public money be deposited in an account separate from any other campaign account and from any personal account.

EXHIBIT 2
DATE 3-12-91
~~HB~~ SB 173

Dolores Colburg
Testimony on SB 173
Page three

Finally, the bill corrects the designation of the office where the records must be filed to show how the public campaign funds were spent. Currently, the law designates the office of the secretary of state; the bill changes that to the office of the commissioner of political practices, where campaign finance reports actually are filed.

In addition to the areas already discussed, the bill also includes a few stylistic changes and corrections in some other terminology.

Prior to introduction of SB 173, I discussed the features of the bill with the executive directors of both major political parties and with the chief of staff in the governor's office. None of them has any objection at all to the bill.

The sponsor of the bill, Senator Chet Blaylock, agrees with an amendment that I offer this morning to provide an immediate effective date for this bill.

I hope the committee will take favorable action on SB 173 and the proposed amendment.

Thank you for your consideration. I will be pleased to take any questions you may have.

EXHIBIT 3
DATE 3-12-91
HB SB 173

Amendments to Senate Bill No. 173
Third Reading Copy

For the Committee on House

Prepared by Sheri S. Heffelfinger
March 12, 1991

1. Title, line 10.
Following: "PRACTICES;"
Strike: "AND"

2. Title, line 11.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 3.
Following: line 24
Insert: "

NEW SECTION. Section 4. Effective date. [This act] is
effective on passage and approval."

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

STATE ADMINISTRATION COMMITTEE BILL NO. SB 157
 DATE 3/12/91 SPONSOR(S) SEN. VAUGHN

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
John McCarthy	Common Cause/MT	157		✓
Nancy Harte	Secretary of State	157		✓
Mike Stephen	MT Clerk & Records	157		X

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

STATE ADMINISTRATION COMMITTEE BILL NO. SB 423
 DATE 3/12/91 SPONSOR(S) SEN. LYNCH

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
DOUG MITCHELL	SECRETARY OF STATE	SB423		✓

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VISITOR'S REGISTER

SB 399

SPONSOR (S) SEN. SVRCEK

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[illegible]

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

STATE ADMINISTRATION COMMITTEE BILL NO. SB 358
 DATE 3/12/91 SPONSOR(S) SEN. BECK

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
DOUG MITCHELL	SECRETARY OF STATE	SB358		✓
BOB PEARSON	Common Cause/MONTANA	SB 358		✓

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