

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

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

**Call to Order:** By Chairperson Eleanor Vaughn, on January 28, 1991, at 10 A.M. in room 331.

#### **ROLL CALL**

**Members Present:**

Eleanor Vaughn, Chairman (D)  
Bob Pipinich, Vice Chairman (D)  
John Jr. Anderson (R)  
Chet Blaylock (D)  
James Burnett (R)  
Harry Fritz (D)  
Bob Hockett (D)  
Jack Rea (D)

**Members Excused:** Senators Bill Farrell and Bernie Swift

**Staff Present:** David Niss (Legislative Council).

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

**Announcements/Discussion:** None

#### **HEARING ON SENATE BILL 156**

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

Senator Steven Doherty, Senate District 20, westside of Great Falls, said Senate Bill 156 is an act to generally revise and clarify the state and local referendum and initiative petition processes. Section 1 changes municipal process and makes it track the county process. Section 2 outlines procedure to exercise right of initiative or referendum on how you change the government form to the next. If an approved petition containing sufficient signatures is filed prior to the effective date, they can have the referendum. Section 3 provides that the local county attorneys to review the petitions for legality. This is the same procedures that state petitions follow. Section 4 deals with problems of submission of initiatives. Section 5 deals with deadlines for submission of petition sheets or withdrawal of signatures. They would like more time, 4 weeks is suggested. Petitioners would have to get their petitions in earlier. Section 6 says that the Attorney General may endeavor to seek out parties on both sides for preparation of statements.

The Attorney General shall prepare a fiscal statement or fiscal note for the proposed ballot issue. Section 7 says the Attorney General shall appoint a committee less than 7 months before the election and no later than 30 days after the measure is approved by the Secretary of State. The committees that write the pro and con for the voter information pamphlet must be appointed.

### Proponents' Testimony:

Nancy Harte, Bureau Chief of the Elections and Legislative Bureau in the Secretary of State's office is testifying today in support of Senate Bill 156. These changes will solve problems that have the potential of becoming embroiled in litigation. For people fighting for or against a cause through the initiative process, the clarity and consistency in the application of the election law becomes important. (She gave a written copy of her testimony. Exhibit 5) Ms. Harte gave a proposed amendment. (Exhibit 1)

Betty Lund, Ravalli County Clerk & Recorder and a member of the Secretary of State's Advisory Council, said she supports this bill. One of the big problems is the checking of the petitions and the short time they have to finish that job. On page 9, line 25, they've changed 2 weeks to 4 weeks, and are willing to negotiate that time if the voters think it is going to harm them grievously. She supports this bill.

Mike Steven, representing the Clerk and Recorders Association, said they support this bill. Many of the things that it entertains will make the whole procedure more smooth and efficient and give those who work with the system the time they need to do a good job. Yet it remains very fair to petitioners.

Beth Baker, representing the Department of Justice, talked about sections 4 and 6 which have to do with the Attorney General's office. Section 4 page 8, line 25 states the Attorney General may not reject the petition solely because the text contains material not submitted to the legislative council, unless the material not submitted to the legislative council is a substantive change not suggested by the legislative council. Then on page 9, line 16 (5) A petition with technical defects in form may be approved with the condition that those defects will be corrected before the petition is circulated for signatures. On page 10, line 25, changes shall to may and 11 they deleted a committee and instead have drawn up a statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure. On page 12, line 19 there is a change from 10 days to 21 days after receipt of the petition by the Attorney General he shall forward his comments to the secretary of state. Their objective is to make the petitions solid and not subject to challenge.

C. B. Pearson, Executive Director of Common Cause, is a government advocacy organization who uses the initiative process. They basically support the bill, but have 1 objection. That is the reduction in the amount of time people would be able to carry petitions for signatures. He understands that they're moving 2 days forward.

Mark Mackin has been an advocate of the initiative process for 10 years. He thinks most of the changes are very good, but there are two points he wonders about. The loss of 2 weeks is an important issue to those gathering signatures, because the time immediately before the election is the best time for collecting signatures. He said there should be an incentive to turn in signatures early and get an early count back from county clerks and recorders. The signature collectors would know how many more they needed and the clerks could be partially done early and perhaps have less signatures to count later. Mr. Mackin suggested using a statistical method of qualifying signatures. If a group turns in a very large group of signatures at the last minute for tactical reasons, the burden on the Clerk was a extreme to count them. Presently, all signatures must be verified as to whether or not that person is a registered voter. He thinks a statistical method would be fairly accurate for the process. He suggested that on page 9, line 25 that the number be 3 weeks.

Mr. Mackin would like in 13-27-312 Section (6) on page 12, line 12 to add in after "similar" the words ", but not limited to,". Presently it looks as though the Attorney General is required to use the for and against statement in a very rigid manner. This clarifies that the Attorney General's office doesn't have to use double negatives, such as, "for repealing the seat belt law".

#### Opponents' Testimony:

Jerome Anderson, an attorney from Helena representing the Tobacco Institute, said certain parts of this legislation are fine and others should be changed. First, it's important to remember this is legislation and is part of the code passed by the people. The present initiative law follows the path that when people who want legislation submit a proposal to the Legislative Council. The Council reviews it and either suggest changes or saying it is in order. Ultimately it goes to the Attorney General for a statement of implication and gets to the ballot process. He believes the steps as presently outlined are proper safeguards that should remain in the statute. The people who prepare petitions need to follow the form that is readily available to them from the Secretary of State's office.

Mr. Anderson said he has trouble with the new language on the bottom of page 8 and top of page 9 that says, "The secretary of state or the attorney general may not reject the petition solely because the text contains material not submitted to the legislative council, unless the material not submitted to the

legislative council is a substantive change not suggested by the legislative council." If you are to avoid litigation, someone has to rely on a determination by somebody. The legislative council should go over these things and make suggestions.

Mr. Anderson said on page 9, line 16 through 18 is all new language. Who makes the determination of what is a technical defect in form? How do we know? Leave this out and keep the law the way it is.

Mr. Anderson said on page 10, line 25 says shall and changes that to may. He likes the term shall. On the top of page 11 concerning the appointment of a 5 member committee, he thinks it should be left in for future attorney generals to use if they so desire. That procedure should be available to them. The petition process is an enactment of state law, which is done by the people rather than the legislature, and the present procedures give a sense and consistency to the legislation. The Clerks need time to qualify those signatures and the time they're given is too short. The petitioners turn in the lists at the last moment to prevent withdrawal of signatures.

#### Questions From Committee Members:

Senator Blaylock asked how would a statistical method of verifying signatures work? Mark Mackin responded that if a clerk has 5,000 signatures, she would sample 100 of them and apply that percentage to the entire 5,000.

Senator Pipinich asked Jerome Anderson what is his opinion of the statistical method of verifying signatures? Mr. Anderson responded this would not serve the general public. It would make the process more rapid, but it would not be valid or accurate. Montana validation process is more loose than many other states.

Senator Blaylock asked Nancy Harte about page 8, line 24 and 9, lines 1 through 4. Who is going to determine the materiality of whether it is substantive or not? The legislative council reviews the proposals first. There advise is just advise and they don't specify what language ought to be. The Secretary of State or the Attorney General could make that determination.

Senator Blaylock asked C. B. Pearson about the bundling of signatures and submitting them at the last moment. That prevents the opposition from getting people to withdraw signatures. Plus the burden on the clerks is phenomenal. The process needs 4 weeks to really look at the initiative and explain to the people of the state what that initiative would do. Mr. Pearson responded that moving the time 2 weeks forward in this legislation will solve that problem. The initiative campaigners need the time to collect signatures and they need good weather.

Senator Blaylock stated people should have a right to reconsider

their signature of a far-reaching initiative. C. B. Pearson stated this bill doesn't address that issue.

Senator Vaughn called attention to Jerome Anderson request that we leave in lines 2 through 11 on page 10. Beth Baker responded that the attorney general should always get advise from both sides of an issue. It is difficult to find people to serve on these committees. Also, if it is repeat legislation, it won't require seeking out additional advise. Time is a problem with appointing a committee also. Her office wouldn't object to leaving the word "shall" in on page 10, line 25.

Senator Blaylock asked Nancy Harte if there is a way in this legislation to allow people to withdraw their signatures? She said under current law people can withdraw their signature up to the time of submission of petition sheets, which would be the time they would be submitted to the secretary of states office, which is 2 weeks after they are submitted to the county. If you accept the 4 weeks, there would be a 4 week window. The deadlines would be the same. Jerome Anderson said it is important that both sides have the right to oppose or support an initiative.

Senator Fritz asked if this legislation makes it easier, more difficult or about the same to file a petition. Mr. Doherty answered it makes it easier because this legislation clarifies and defines the problem areas. Jerome Anderson said all the rights of all the people ought to be preserved. Beth Baker said this bill is designed to make the initiatives less subject to legal challenge for a minor technicality, which isn't spelled out in the process well enough. Jerome Anderson explained that Montana has a fairly loose framework around the initiative process and other states are more stringent.

Chairperson Vaughn asked Betty Lund if this bill is viable for the clerk and recorders? Betty Lund said these clarifications help from having the petitions challenged in court, because that delays the printing of ballots. The 4 weeks would be wonderful. Ballots must be in-shop ready 45 days before election so people can vote. Perhaps 3 weeks would be a good compromise. The Department of Justice has good advice about these problems too. It's difficult to find people on both sides of an issue to serve on a committee.

#### Closing by Sponsor:

Senator Doherty said this bill removes technicalities that prevent initiatives from being taken to the people of Montana. Bundling and dumping on the last day is a problem. The legislative council are advisors and the Attorney General and the Secretary of State are the final word in this balloting process. Thank you for the hearing.

Chairperson Vaughn handed the gavel to Vice Chairman Pipinich so that she could present Senate Bill 157.

### HEARING ON SENATE BILL 157

#### Presentation and Opening Statement by Sponsor:

Senator Vaughn, Senate District #1 representing most of Lincoln County, said that Senate Bill 157 is presented at the request of the Secretary of State's office. For the past 2 years the Secretary of State's staff has kept track of inconsistencies and problems they and county election administrators have found in the state election laws. An election advisory council was formed in 1989 and it's task was to review proposed legislative changes. The council also proposed additional changes. This council presented these ideas on legislation as resolutions at the 1990 clerk and recorders annual convention, which adopted most of these resolutions. With the assistance of most of the state's election administrators, the Secretary of States office prepared this general revision of these election laws.

#### Proponents' Testimony:

Nancy Harte, Bureau Chief of the Election Bureau, Secretary of State's office, read her testimony in support of Senate Bill 157. (exhibit 4) She read through the bill with the senators. She explained at length Section 9 which deals with independent candidates filing for election. This is based on California law that has been proven constitutional, which requires that a candidate not be affiliated with a political party for 1 year. Section 10 is eliminated because it has been declared unconstitutional on the federal level. Section 11 eliminates the pollbook, simplifies that part of the voting process, and eliminates 1 election judge at the polls. Section 12 provides for faxing a request for absentee ballot. Section 13 provides that a primary election can be called off in certain circumstances. Section 14 deals with write-in candidates and they must pay the required filing fee if elected. Section 15 deals with the problem where there is a tie vote and there must be a recount and inspection of ballots, this allows county commissioners to find the lost ballots without going to court. Section 17 defines and simplifies mailed ballots.

Betty Lund supports 99% of the changes in this bill. She offered an amendment. (Exhibit 3) She left a copy of her testimony (Exhibit 6)

C. B. Pearson, Executive Director of Common Cause, supports this bill.

#### Opponents' Testimony:

None

Questions From Committee Members:

Senator Burnett told of a tie vote being decided by the choice of a coin, which process was outlined by the Secretary of State's office. Nancy Hart responded that the law says it had to be done by lot. The local election judge has to make the decision.

Senator Blaylock asked if in Section 5 on fire districts any notary was necessary? Betty Lund said they do need 1 notary on a candidate.

Senator Blaylock asked if this prohibits a loser in a primary coming back as an independent in the general election? Nancy Harte said yes that is what would happen.

Senator Burnett asked about the regulations surrounding filing under a certain party, after they have run on another party, does that eliminate them from running at all? Garth Jacobson, attorney for the Secretary of State's office, explained that in the case "Anderson vs. Celebresy" Anderson wanted to run for president as an independent and he challenged the Ohio election laws and was successful in convincing the Supreme Court that it's not fair for independent candidates to file early on. What we have here is an attempt to head off a constitutional challenge that could occur from a legitimate independent candidate, who did not have any partisan ties. So they have an opportunity to file up to the date of the primary election in this legislation. They can not have any affiliation with any party for 1 year prior to the filing deadline. That is constitutionally permissible.

Senator Burnett asked if a person loses as a partisan candidate can he come back in 2 years as an independent? Garth Jacobson answered that he could.

Senator Anderson stated that write-in campaigns come under a different section and they are permissible.

Senator Blaylock asked if the sanctity of the ballot is still protected if you do away with the stub procedure? Nancy Harte answered that mail ballot procedures are much more tightly covered than machine voting.

There was discussion about absentee ballots, early voting at the clerk and recorder's office, and sick people's ability to vote.

Senator Blaylock said he agreed with the amendment about the exemption from unemployment insurance.

Senator Rea asked if there are any other elections that might prevent a person from running in a different office. Garth Jacobson said this would only apply to that election and it doesn't matter what office you run for. You can still run for another office in another election. The only limitation is you

SENATE STATE ADMINISTRATION COMMITTEE

January 28, 1991

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can't have a party affiliation if you want to run as an independent candidate. Most elections are on a 2 year cycle. This section is labeled the "sore looser statute".

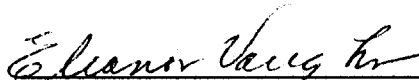
Senator Vaughn asked that an amendment be drawn on Section 16 to add a sentence that says, "After receiving the petition the election administrator shall inspect the ballot." This gives the directive of what needs to be done.

Closing by Sponsor:

Senator Vaughn said as an ex-clerk and recorder she can relate to many of the problems on the absentee ballot or people coming to vote the day before. In some counties the polls open at 7 A.M. and the transportation crew needs time to set up. They need time to get ready for the election. All counties give out information on voting deadlines, etc. This is correcting things that needed to be corrected. She hopes the committee will pass this bill.

ADJOURNMENT

Adjournment At: 12:05 P.M.



ELEANOR VAUGHN, Chairman



DOLORES HARRIS, Secretary

EV/dh

SA012891.SM1



ROLL CALL

STATE ADMINISTRATION COMMITTEE

DATE Jan 28, 1991

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR ELEANOR VAUGHN	X		
SENATOR BOB PIPINICH	X		
SENATOR JOHN ANDERSON	X		
SENATOR CHET BLAYLOCK	X		
SENATOR JAMES BURNETT	X		
SENATOR "BILL" FARRELL			<i>excused</i>
SENATOR HARRY FRITZ	X		
SENATOR BOB HOCKETT	X		
SENATOR JACK "DOC" REA	X		
SENATOR BERNIE SWIFT			<i>excused</i>

Each day attach to minutes.

Jan 28, 1991

State Administration

# VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

## PROPOSED AMENDMENT TO SENATE BILL 156

Page 9, line 18.

Insert following signatures.

The secretary of state may provide a sample petition form including the sponsor's text, statement of purpose and statements of implication as provided in 13-27-312, MCA, which is approved and may be circulated in the form prepared by the secretary of state.

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 1-28-91

BILL NO. SB 156

Proposed amendment to SB 156

13-27-312 Section (6) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar, but not limited to, ~~to~~ the following example:

FOR extending the right to vote to person 18 years of age

AGAINST extending the right to vote to persons 18 years of age.

Amendment to SB 157

Page 1 line 10.

Insert following TRUSTEES: EXEMPT ELECTION JUDGES FROM  
UNEMPLOYMENT INSURANCE COVERAGE;

Page. 1

Line 15

Insert before "MCA": 39-51-204,

Page. 8

Section 7

Following Line 2

Insert following session.

"Election judges shall be exempt from unemployment insurance for  
the services performed in this chapter.

Amend 39-51-204, MCA by inserting a new subsection with the  
following language:

The services performed by election judges pursuant to title 13  
chapter 4.

**TESTIMONY -- SENATE STATE ADMINISTRATION COMMITTEE  
ON SENATE BILL 157, JANUARY 28, 1991**

Mr. Chairman 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 quickly review the changes proposed in the bill.

**TESTIMONY -- SENATE STATE ADMINISTRATION COMMITTEE  
ON SENATE BILL 156, JANUARY 28, 1991**

Madame Chairman and members of the committee, for the record I am Nancy Harte, Bureau Chief of the Elections and Legislative Bureau in the Secretary of State's office.

I am testifying today in support of Senate Bill 156, which was drafted at the request of Secretary of State Mike Cooney.

Montana's initiative and referendum process is a popular one, but it is not without its flaws. Senate Bill 156 cures some of these flaws in both state and local initiative and referendum statutes.

Individually, these changes seem minor, and they do not require immediate action. But collectively, making these changes will solve problems that have the potential of boiling over and becoming embroiled in litigation. For those people fighting for or against a cause through the initiative process, the clarity and consistency in the application of the initiative election law becomes extremely important.

Each one of these proposed changes come as a result of an event that took place over the last year that caused confusion and could have resulted in a court case.

The initiative process is usually undertaken by average citizens, not professionals in the development of ballot issues. The law regulating the petition process ought to be clear enough for those average citizens to complete the petition process without jumping through bureaucratic hoops or doing fancy legal maneuvering.

Senate Bill 156 will, we think, assist in that effort. I ask you to support Senate Bill 156, and I will be happy to answer any questions you might have.

# COUNTY OF RAVALLI

SENATE STATE ADMIN.

EXHIBIT NO. 6

DATE

1-28-91

BILL NO.

SB

STATE

157

OF

MONTANA

The Bitterroot Valley

EXHIBIT NO.

HAMILTON, MONTANA 59840

January 28, 1991 DATE

BILL NO.

Madam Chairman and Members of the Committee:

For the record, I am Betty T. Lund, Ravalli County Clerk & Recorder/Election Administrator, member of the Secretary of State's Election Advisory Council and member of the Montana Association of Clerks & Recorders' legislative committee.

I would like to urge for a DO PASS for SB 157. Every two years, we seem to bring in legislation to correct election laws. Know you all wish that someday we would get all the corrections done. These changes in the election laws have come into the Secretary of States office as problems that Election Administrators were having throughout the state of Montana. With the help of the Advisory Council, the Secretary of State has pulled all the little problems into on big solution. The Honorable Mike Cooney and his staff, being "new kids" on the block, have brought fresh insight into perhaps old antiquated methods. Some of these are addressed in this bill. Some of the changes are to conform with Federal legislation. Some are new procedures to make the line at the polling places move speedily. Some also are changes to save taxpayer dollars.

In every legislature we are trying to make election laws more efficient and cost effective. Please feel free to ask questions of me.

Thank you for your DO PASS vote on SB 157.

Sincerely,



Betty T. Lund  
Ravalli County Clerk & Recorder