

**MINUTES**

**MONTANA SENATE  
53rd LEGISLATURE - REGULAR SESSION  
COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By Senator Eleanor Vaughn, on January 12, 1993,  
at 10:00 a.m.

**ROLL CALL**

**Members Present:**

Sen. Eleanor Vaughn, Chair (D)  
Sen. Jeff Weldon, Vice Chair (D)  
Sen. Jim Burnett (R)  
Sen. Harry Fritz (D)  
Sen. John Hertel (R)  
Sen. Bob Hockett (D)  
Sen. Bob Pipinich (D)  
Sen. Bernie Swift (R)  
Sen. Henry McClernan (D)  
Sen. Larry Tveit (R)

**Members Excused:** None

**Members Absent:** None.

**Staff Present:** David Niss, Legislative Council  
Deborah Stanton, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 95, SB 96  
Executive Action: SJR 8, SB 84, SB 69

**HEARING ON SB 95**

**Opening Statement by Sponsor:**

Sen. Burnett, Senate District 42, presented SB 95. SB 95 would transfer the duties of the Commissioner of Political Practices to the Secretary of State. It's a duplication of services when the Secretary of State has an election office and directs the election offices around the State.

**Proponents' Testimony:**

None.

**Opponents' Testimony:**

Ed Argenbright, Commissioner of Political Practices spoke in opposition to SB 95. He stated there would be no fiscal savings in transferring the functions to the Secretary of State's office. It would still require three people to do the job. There would be an increase of cost at the local level. Most county attorneys refer to the Commissioner's office for mediation, prosecution, investigation and if the independent Commissioner's office was not doing that function there would be an increase in the work load at the county attorney level. The most important aspect of opposition relates to the integrity of Montana's Campaign, Finance and Practice Operations. The loss of the independent politically insulated commissioner will be a step backward. Now the Commissioners are nominated by Legislative leadership, appointed by the Governor, and confirmed by the Senate. The Commissioner is appointed to a single six year term with a prohibition of seeking any elected office in Montana for five years after leaving the office. So it is no political stairway to future political aspirations. He urged the committee not to support this bill.

Doug Mitchell from the Secretary of State's office gave written testimony (EXHIBIT #1).

Darrell Holzer from the Montana State AFL-CIO spoke in opposition to SB 95. He said the bill would politicize campaign reporting by abolishing the Commissioner of Political Practices and replacing it with the Secretary of State, an elected partisan official. To carry out the role of political watchdog for the people of Montana the responsible official must be fairly autonomous and not beholding to any political party. The current selection and appointment process for the Commissioner of Political Practices ensures fairness in this regard. The AFL-CIO opposed this legislation when the Secretary of State was a Republican and still oppose it when the Secretary of State is a Democrat. (An AFL-CIO "endorsed" Democrat.) The people of Montana want fair, independent, political watchdog. They do not to be faced to someone who owes their present position to the designs of a political party.

Amy Kelley, Executive Director of Common Cause of Montana, gave written testimony (EXHIBIT 2).

Tootie Welker, Montana Alliance for Progressive Policy spoke in opposition of SB 95. MAPP feels there is a lack of public trust in the Legislature and elected politicians and everything possible needs to be done in order to regain the trust. Putting the office into a partisan office is not the way to go. MAPP opposes SB 95.

Daniel Ray Stahly, Student Board Member of the Montana Public Interest Research Group gave written testimony (EXHIBIT 3).

Steve Brown, attorney spoke as a private citizen in opposition to SB 95. Mr. Brown worked on contractual basis for the Commissioner of Political Practices from time to time. He worked as Tom Judge's legal counsel. What shaped the demand for campaign reform in Montana was a series of three events. 1) Watergate; 2) Tom Judge's own problems arising out of the 1972 election, whether he properly reported \$94,000 in campaign contributions, and 3) the Legislative effort to enact campaign reform in the 1973-74 session. A bipartisan committee was established, a comprehensive bill was presented to the Legislature and died. He gave an example of why he opposes SB 95. The Secretary of State during Tom Judge's term of Governor was a democrat and Tom Judge was also a democrat. Frank Murray did not want the responsibility of prosecuting Tom Judge if that was the decision made. He knew he was in a no-win situation. If he didn't prosecute, everyone would say, "it's politics as usual." If he did prosecute he would be accused of trying to unseat a Governor or using it for his own personal political gain. Putting the enforcement arm of the election laws back into a partisan situation is not the answer. The Commissioner of Political Practices office is the best system and he opposes SB 95.

Jim Jensen, Executive Director of the Montana Environmental Center spoke against SB 95. To ensure that the Commissioner of Political Practices maintains credibility and efficiency, the best way to do that is for Mr. Argenbright to look at changing the way reporting is required, making information more accessible to more Montanans in a more timely fashion, and using computers to improve the way information is collected and disseminated.

Jonathon Motl, an attorney and a member of the Common Cause board. His concern for the office stems from efforts that would tend to undermine or weaken the very reason the office exists. It is very difficult to follow the money, when the money might end up in the pocket of someone you know personally or have a relationship with. To the greatest degree possible there must be independence in the office. Not for compiling of information but for investigatory functions and the enforcement functions in the office. If those functions are transferred to another elected official the office will be weakened. He urges opposition to SB 95.

**Questions From Committee Members and Responses:**

None.

**Closing by Sponsor:**

Sen. Burnett said he was well aware of the past activities of the office. If Section 1 of this bill was cancelled and Section 2

left in it would be a good bill.

HEARING ON SB 96

Opening Statement by Sponsor:

Sen. Burnett said Sen. Vincent from Bozeman put this bill in 1979. SB 96 would require a candidate to sign and pledge to follow the code of fair campaign practices. Sen. Burnett said if it has to be signed it is a viable piece of legislation; if it is not signed it's worthless. If the recommendation is to not go along with the bill he recommended rescinding it.

Proponents' Testimony:

None.

Opponents' Testimony:

Jonathon Motl spoke on behalf of Amy Kelley of Montana Common Cause. He is rising as an opponent. His concern is that the intent of the bill is to interject more ways and means to measure standards in which ethics can enter a campaign is good. This campaign code is the best way of interjecting ethics in a campaign. The concern is whether it is constitutional to require a candidate to adopt standards. An option is to say a candidate must sign a form and they must sign on one of two places; either I will abide by it or I won't abide by it.

Questions From Committee Members and Responses:

Sen. Pipinich asked about line 20 making it mandatory to sign.

Mr. Motl said mandatory to sign is ok. Mandatory imposition on the standards may not be constitutional.

David Niss asked if it was possible that there would be a violation to take a position either way. Do we need three options?

Mr. Motl said there would not be any standards imposed on anyone. It is reasonable to ask them to sign.

Mr. Niss asked if there was a first amendment violation that requires them to say they will abide, might not there be a violation to say they will not abide.

Mr. Motl said he will research that.

Sen. Pipinich said he would support the bill if it is constitutional.

Sen. Hockett asked about a penalty for refusal to sign.

David Niss answered 6 months or \$500.

Sen. Hockett asked who would initiate legal proceedings for the misdemeanor. The Attorney General?

Sen. Vaughn asked who would determine whether they did or didn't and how far would you go with that.

Sen. Pipinich said the candidate would have to report back to the Commissioner and the Commissioner would go from there.

Sen. McClernan asked for a copy of the code before executive action.

Sen. Burnett said 13-35-02 is the code.

Sen. Vaughn asked Mr. Argenbright if more work is required, how would you determine what was actually being done against a candidate.

Mr. Argenbright said he is hesitant to comment since he has not been through the cycle. He said Ms. Colberg did a great deal of mediation. He said it is difficult to legislate morality.

**Closing by Sponsor:**

Sen. Burnett said "I close."

**EXECUTIVE ACTION ON SJR 8**

**Motion:** Sen. Pipinich moved SJR 8 DO PASS.

**Discussion:**

**Vote:** Motion CARRIED Unanimously.

**EXECUTIVE ACTION ON SB 84**

**Motion:** Sen. Fritz moved to adopt the amendments to SB 84.

**Discussion:** Sen. Hockett had concerns about the fees for various activities where the agency is allowed to set the amount of fee commensurate with their need to fund whatever they are doing. He is opposed to granting agencies rate making authority.

Sen. Fritz said the alternative is to put the fee into the bill. So every time you want to raise the fee by 50 cents you have to have an act of Legislature which costs \$2000 to process. The statement that the fee is commensurate with the cost means that you cannot make money by charging a fee. The fee has to cover the cost of the service only and it's not profit making.

David Niss said the language commensurate with cost is included for the licensing fees of every board contained in title 37, MCA. The amount of money which results from fees is audited by the Legislative Auditor has found that some board have collected too much money. The cost which the board has collected exceeds the cost of processing but in aggregate generally haven't to the level the Department of Commerce expected that they had. There have been some healthy bank accounts developed as a result of that language and the Legislative Auditor has suggested in the final audit documents that result from those audits that the boards reduce the level of fees contained in their rules for that reason. The same process would result here.

Mr. Niss said there is a substantive change to the material that Garth Jacobsen provided for these amendments, page 2, section 14 amendment to MCA 1-5-404. Rather than to allow the Secretary of State to revoke a notary's commission for any cause which the Secretary deems sufficient, we have substituted just cause for that language.

Sen. Weldon asked if there should be a provision for notaries to not be able to notarize for himself.

Mr. Niss said he was not aware of the specific provision which prohibits a notary from doing that but it's more than custom even though he has never seen the statute.

Vote: SB 84 carried 9 to 1 with Senator Hockett voting no.

Motion: Sen. McClernan moved SB 84 DO PASS AS AMENDED

Discussion:

Vote: SB 84 CARRIED 9 to 1 with Senator Hockett voting no.

#### EXECUTIVE ACTION ON SB 69

Motion: Sen. Burnett moved SB 69 DO PASS.

Discussion:

Vote: Motion failed 9 to 1 with Sen. Burnett voting yes. Sen. Vaughn will carry the adverse committee report.

ADJOURNMENT

Adjournment: 11:15 a.m.

  
\_\_\_\_\_  
SENATOR ELEANOR VAUGHN, Chair

  
\_\_\_\_\_  
DEBORAH STANTON, Secretary

EV/ds

# ROLL CALL

SENATE COMMITTEE

STATE ADMINISTRATION

DATE 1-12-93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Eleanor Vaughn	✓		
Sen. Jeff Weldon	✓		
Sen. Jim Burnett	✓		
Sen. Harry Fritz	✓		
Sen. John Hertel	✓		
Sen. Bob Hockett	✓		
Sen. Henry McClernan	✓		
Sen. Bob Pipinich	✓		
Sen. Bernie Swift	✓		
Sen. Larry Tveit	✓		
David Niss	✓		

F08

Attach to each day's minutes



ADVERSE

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 12, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Bill No. 69 (first reading copy -- white), respectfully report that Senate Bill No. 69 do not pass.

Signed: Eleanor Vaughn  
Eleanor Vaughn, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 4  
January 12, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Bill No. 84 (first reading copy -- white), respectfully report that Senate Bill No. 84 be amended as follows and as so amended do pass.

Signed: Eleanor Vaughn  
Eleanor Vaughn, Chair

That such amendments read:

1. Title, line 5.

Following: "RELATING TO"

Insert: "COMMISSIONING OF NOTARIES AND TO"

2. Title, line 6.

Following: "SECTIONS"

Insert: "1-5-401, 1-5-402, 1-5-403, 1-5-404, 1-5-405, 1-5-408, 1-5-417,"

3. Title, line 7.

Following: " ; "

Insert: "AND"

4. Title, line 11.

Strike: " ; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

5. Page 1.


Following: line 11

Insert: "Statement of Intent

It is the intent of the legislature that the secretary of state adopt rules establishing fees commensurate with the costs of reviewing the applications for and bonds of those persons submitting applications to become notaries public and with the costs of preparing their certificates of commission. The fees adopted by the secretary of state should reflect the cost of maintaining or upgrading the recordkeeping system used in the filing of the commissions."

6. Page 12.

Following: line 3

  
Amd. Coord.  
Sec. of Senate

071444SC.San

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 12, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Joint Resolution No. 8 (first reading copy - white), respectfully report that Senate Joint Resolution No. 8 do pass.

Signed: Eleanor Vaughn  
Eleanor Vaughn, Chair

Testimony in Opposition to Senate Bill 95  
Office of the Secretary of State  
Doug Mitchell, Chief Deputy  
January 12, 1993

SENATE STATE ADMIN.  
EXHIBIT NO. 1  
DATE 1-12-93  
BILL NO. SB 95

Madam Chair and members of the Committee, good morning. For the record, my name is Doug Mitchell. I serve as the Chief Deputy in the office of the Secretary of State and appear before you to oppose Senate Bill 95.

The public's confidence in politics and politicians is already alarmingly low. A recent study by the Kettering Foundation showed that people overwhelmingly believe that politicians make laws to protect themselves and that they are incapable of policing themselves.

While I am confident that this Secretary of State could and would conduct the office of the Commissioner of Political Practices in a professional and honorable manner, the transfer of the function from an independent office to a partisan one sends completely the wrong signal to the public, and hampers the viability of any prosecution that might take place.

If this bill were to become law, any prosecution by any Secretary of State of a candidate of the opposing party, no matter how well founded, would be fodder for political warfare. Accusations of partisanship would fly and the public perception of the process would be tarnished beyond recognition.

Madam Chair, in the interests of time I will end my testimony here, but will, of course, be available for any questions. I thank the Committee for its time and urge a Do Not Pass vote on Senate Bill 95.



SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 1-12-93

BILL NO. SB 95

COMMON CAUSE TESTIMONY  
IN OPPOSITION TO SB 95  
JANUARY 12, 1993

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

Madame Chair and members of the Senate State Administration Committee, for the record my name is Amy Kelley, Executive Director for Common Cause/Montana. Common Cause/Montana is a nonpartisan, non-profit citizen organization of more than 800 members working to promote open and accessible democratic government in Montana.

On behalf of our members, I register our strong opposition to SB 95. The Office of the Commissioner of Political Practices was established to be the independent, non-partisan enforcer of Montana's political practices laws. Turning that mandated duty over to the partisan office of the Secretary of State, with all due respect to the abilities of that office, would absolutely undermine any enforcement efforts and erode public confidence in the political process.

History of the Commissioner's Office

The 1973 Legislature established an interim committee to study campaign financing and campaign practices and to develop "a draft bill providing for comprehensive campaign regulation to the 1974 session of the 43rd Legislature." In its final report, the committee stated:

Nationwide attention has been given to the fact that campaign regulatory laws fail at the enforcement level because elected officials and political appointees are loath to endanger candidates from their own party and may fear reprisals from the opposite party. The intrusion of partisan politics into this area of criminal law can be expected to subvert the intent of the law and confuse the issues.

In response to that committee's recommendations, the 1975 Legislature established the Commissioner of Campaign Finances and Practices, now known as the Commissioner of Political Practices, as part of the Campaign Practices Act of 1975.

The fundamental mandate of the new office was well-expressed by the very first Commissioner, John Hanson:

The Campaign Practices Act of 1975 was enacted...as a means of restoring and maintaining public confidence in candidates and identifying money influence in politics.

Several other studies have come to the same conclusions drawn by the 1973 Montana legislative interim committee: that campaign enforcement placed in the hands of an elected official instead of an independent commission becomes highly susceptible to political pressure and can deadlock. In a 1987 survey of state campaign finance laws, attorney Christopher Cherry concluded that elected officials cannot strictly administer campaign finance laws because:

First, an elected official with a personal need to finance his own campaign oversees the monitoring. Second, the elected official may be loath to report a violation by a member of his own party.

A 1990 report by the North Carolina Center for Public Policy Research comparing campaign reporting laws in 50 states also concluded that, "*[I]ndependent agencies have a significantly better record for enforcing campaign finance laws than do agencies housed under an elected official.*"

It has been argued that the Commissioner's office has perhaps inadequately fulfilled its mandated duties. The problem, however, is not the structure of the Office of the Political Practices -- it is lack of resources necessary to do an effective job. In a time of fiscal restraint, we must find creative ways to make our agencies work -- not abolish them.

The need for an independent agency to review campaign finance reports and to investigate and prosecute potential violations of campaign laws has only increased since the establishment of the Commissioner's office -- dramatically. Since 1984, the amount of money spent by lobbyists has more than doubled, to over \$3 million in 1991. The amount of money contributed to legislative candidates has risen from \$700,000 to more than \$1 million in the same time period.

The Legislature has already established the office of the Commissioner of Political Practices as an independent agency to serve as the public's watchdog over the political process. Much thought was given to the structure and duties of that office. Common Cause has in the past and will continue to advocate ways of improving that office, making it a more effective enforcer of our state's political practices laws. With the help of the Legislature, we will make those improvements.

For these reasons, we strongly urge this committee to recommend a "do not pass" to SB 95.

# MONTPIRG

Montana Public Interest Research Group

360 Corbin Hall □ Missoula, MT 59812 □ (406)243-2907

1/12/93

SENATE STATE ADMINISTRATION

EXHIBIT NO. 3

DATE 1-12-93

Testimony in Opposition to SB 95 BILL NO. SB 95

Dear Chairman Vaughn and Members of the  
Senate State Administration Committee:

The Montana Public Interest Research Group (MontPIRG) is a non-profit, non-partisan research and advocacy organization located on the University of Montana campus. MontPIRG represents 2500 student members and 1500 community members statewide.

MontPIRG opposes SB 95 because it takes away all credibility in the enforcement of Montana's campaign laws. The role of the Commissioner of Political Practices is, in part, to ensure ethical practices among legislators and public officials. In that way, the Commissioner ensures the upkeep of the public trust.

What is the public to think if this legislature abolishes that office, moving its duties over to the partisan office of the Secretary of State? The public will feel that legislators do not really care about ensuring the public trust.

The Office of the Commissioner of Political Practices helps build public confidence in our elections and elected officials. We are in an era when the Office is becoming increasingly more important in the regulation of fair campaign practices in Montana.

For that reason, the Office of the Commissioner of Political Practices needs to be strengthened, not weakened. We urge a "do not pass" on SB 95.

Sincerely,



Daniel Ray Stahly  
MontPIRG Student Board Member

Amendments to Senate Bill No. 84  
First Reading Copy

Requested by Senator Halligan  
For the Committee on State Administration

Prepared by David S. Niss  
January 11, 1993

1. Title, line 5.

Following: "RELATING TO"

Insert: "COMMISSIONING OF NOTARIES AND TO"

2. Title, line 6.

Following: "SECTIONS"

Insert: "1-5-401, 1-5-402, 1-5-403, 1-5-404, 1-5-405, 1-5-408, 1-5-417,"

3. Title, line 7.

Following: ";"

Insert: "AND"

4. Title, line 11.

Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

5. Page 1.

Following: line 11

Insert: "Statement of Intent

It is the intent of the legislature that the secretary of state adopt rules establishing fees commensurate with the costs of reviewing the applications for and bonds of those persons submitting applications to become notaries public and with the costs of preparing their certificates of commission. The fees adopted by the secretary of state should reflect the cost of maintaining or upgrading the recordkeeping system used in the filing of the commissions."

6. Page 12.

Following: line 3

Insert: "Section 11. Section 1-5-401, MCA, is amended to read:

"1-5-401. Appointment. The ~~governor~~ secretary of state may appoint and commission as many notaries public for the state of Montana as in ~~his~~ the secretary of state's judgment may be deemed best."

{Internal References to 1-5-401: None.}

Section 12. Section 1-5-402, MCA, is amended to read:



"1-5-402. Qualifications -- residence. Every person appointed as notary public ~~must~~ may not, at the time of his appointment, be a convicted felon, must be a citizen of the United States and of the state of Montana for at least 1 year preceding his appointment, and must continue to reside within the state of Montana. Removal from the state or conviction of a felony vacates his the office and is equivalent to resignation."

{Internal References to 1-5-402: None.}

Section 13. Section 1-5-403, MCA, is amended to read:

"1-5-403. Term of office. The term of office of a notary public is ~~3~~ 4 years from and after the date of his ~~commission~~ commissioning."

{Internal References to 1-5-403: None.}

Section 14. Section 1-5-404, MCA, is amended to read:

"1-5-404. Revocation of commission. Upon 10 days' notice, the ~~governor~~ secretary of state may revoke the commission of any notary public for any just cause ~~he may deem sufficient~~."

{Internal References to 1-5-404: None.}

Section 15. Section 1-5-405, MCA, is amended to read:

"1-5-405. Bond and commission. Each notary public ~~must~~ shall submit an application and give an official bond in the sum of \$5,000. The bond must be approved by the secretary of state. Upon the approval of the bond, the payment of fees, and the filing in the office of the secretary of state of the official oath of ~~such~~ the notary public, the ~~governor~~ secretary of state may issue a commission."

{Internal References to 1-5-405: None.}

Section 16. Section 1-5-408, MCA, is amended to read:

"1-5-408. Fees for filing commission and issuing certificates. The secretary of state shall ~~receive for each certificate of official character issued, with seal attached, \$2 set by rule the fees for filing or issuing certificates. The fees must be commensurate with costs. The secretary of state shall use application forms soliciting the information required by this part.~~ The county clerk of any county in this state shall receive a fee as provided in 7-4-2631 for filing a copy of the commission and certifying to the official character."

{Internal References to 1-5-408: None.}

Section 17. Section 1-5-417, MCA, is amended to read:

"1-5-417. Authority of notaries who are stockholders, officers, or employees of corporations. It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by such bank or other corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee where such notary is a party individually to such instrument, either individually or signs the instrument as a representative of such bank or other corporation, or to protest any negotiable instrument owned or held for

collection by such bank or other corporation where such notary is individually a party to such instrument."

{*Internal References to 1-5-417: None.*}

Renumber: subsequent sections

7. Page 13, line 20.

Strike: section 15 in its entirety

I vote no on SB 69

Sen Truitt

51st Legislative Session

STATE ADMINISTRATION COMMITTEE

PROXY VOTE

I, Senator FRITZ do hereby grant my proxy vote to Chairman Vaughn or Secretary Harris as follows:

BILL NUMBER 69

MOTION

Do Pass  
Yes \_\_\_\_\_ No X

Do Not Pass  
Yes X \_\_\_\_\_ No \_\_\_\_\_

Indefinitely Postponed  
Yes X \_\_\_\_\_ No \_\_\_\_\_

Tabled  
Yes \_\_\_\_\_ No X

Date 1/12/93

A. Fritz  
Signature

DATE 1-12-93

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: SB 95, SB 96

Name	Representing	Bill No.	Check One	
			Support	Oppose
Ed Argenbright	Commissioner of Pol Practices	95		X
Dulcy Hubbert	" "	95		X
Hawell Holzer	MT. ST AFL-CIO	95		X
Janeth Mott	SELF	95, 96		X
Amy KELLY	COMMON CAUSE	95		X
Dan STAHLY	Mount PIERCE	95		X
Tooke Welker	MAPP	95		X
Steve Brown	SELF	95		X
Jim Jensen	MEIC	95		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY