

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By DICK SIMPKINS, CHAIRMAN, on January 29, 1993,
at 8:30 a.m.

ROLL CALL

Members Present:

Rep. Dick Simpkins, Chairman (R)
Rep. Wilbur Spring, Vice Chairman (R)
Rep. Ervin Davis, Vice Chairman (D)
Rep. Beverly Barnhart (D)
Rep. Pat Galvin (D)
Rep. Bob Gervais (D)
Rep. Harriet Hayne (R)
Rep. Gary Mason (R)
Rep. Brad Molnar (R)
Rep. Bill Rehbein (R)
Rep. Sheila Rice (D)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Norm Wallin (R)

Members Excused: Rep. Carolyn Squires

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Council
Dorothy Poulsen, Committee Secretary

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

Committee Business Summary:

Hearing: HB 247; HB 239; HB 227
Executive Action: SB 90; SB 36; HB 292 (postponed); HB
166; HB 247

EXECUTIVE ACTION ON SB 90

Motion: REP. WALLIN MOVED SB 90 BE CONCURRED IN.

Discussion:

REP. WALLIN stated he had spoken to a retired teacher who was very pleased that protection of the retirement systems was being considered.

REP. REHBEIN asked whether a fiscal note was required. REP. SIMPKINS responded that the bill does not involve the shifting of any benefits.

Vote: SB 90 BE CONCURRED IN. Motion carried unanimously with REP. SQUIRES voting by proxy.. EXHIBIT 1

EXECUTIVE ACTION ON SB 36

Motion: REP. SPRING MOVED SB 36 BE CONCURRED IN.

Motion/Vote: REP. RICE moved to amend SB 36 to include the coal board and the hard-rock mining impact board. EXHIBIT 2
Motion carried unanimously with REP. SQUIRES voting by proxy.

Motion/Vote: REP. MASON moved to amend SB 36 to change the implementation date to July 1, 1993. Motion carried unanimously with REP. SQUIRES voting by proxy.

Motion/Vote: REP. RICE MOVED SB 36 BE CONCURRED IN AS AMENDED.
Motion carried unanimously with REP. SQUIRES voting by proxy.

EXECUTIVE ACTION ON HB 292

Discussion:

Sheri Heffelfinger recounted that Mr. Evilsizer, staff attorney for the Public Service Commission (PSC), had testified against an amendment offered by the utilities on the basis the amendment was unconstitutional. The amendment sought to change "may adopt" to "shall adopt" which Mr. Evilsizer seemed to suggest was unconstitutional because it mandated the PSC adopt rules. Ms. Heffelfinger stated that the unconstitutional aspect was the "revised editions." She said the Legislature cannot delegate authority to an agency to adopt editions which have yet to be published. She concluded the committee has two options: (1) keep the original language of the bill; or (2) amend the bill and mandate the PSC to adopt specific editions of the National Electrical Safety Code (NESC). EXHIBIT 3

REP. MASON asked whether killing the bill would have the same effect. REP. RICE responded that without HB 292 the PSC is restricted to the 1977 edition of the Safety Code.

REP. REHBEIN expressed his concern that uniform codes be adopted by the PSC. REP. SIMPKINS referred to lines 21-23, page 1, of the bill which states "The commission may also adopt other requirements either more or less stringent than the national safety code." The committee agreed their distress with HB 292 stems from this sentence. REP. SIMPKINS asked whether the sentence could be eliminated.

Ms. Heffelfinger responded that giving the PSC discretionary authority to "may adopt" rules means allowing them to adopt rules more or less stringent than the standards. The discretionary authority, however, also allows them to update the standards.

REP. SIMPKINS asked whether it was possible to allow the PSC to adopt the most current edition of the Safety Code without giving them the discretion to adopt more stringent standards.

REP. MASON clarified the problem with the bill is that it seems to give the PSC the authority to adopt requirements other than those specified by the NESC.

REP. ROSE declared he did not want the PSC to have so much latitude.

REP. SIMPKINS summarized the committee discussion on HB 292. He noted the primary problem is the use of an outdated safety code. The committee wants the PSC to adopt the most current version of the Safety Code, but not to have the discretion to adopt more stringent standards. He postponed action on HB 292 until an acceptable amendment could be drafted.

EXECUTIVE ACTION ON HB 166

Motion: REP. MASON MOVED HB 166 DO PASS.

Motion: REP. MOLNAR MADE A SUBSTITUTE MOTION THAT HB 166 DO NOT PASS.

Discussion:

REP. SPRING spoke in support of HB 166. He noted that currently some legislators must live in their districts whereas others do not. With reapportionment underway, he stated, the bill was timely. REP. SPRING acknowledged differences between rural and urban districts; he suggested in cities a small group of individuals could control several districts.

REP. DAVIS asked for someone to explain the objections to HB 166.

REP. REHBEIN said he thought the public would pass the amendment proposed by HB 166. He suggested the only people who object to the bill are legislators.

REP. SQUIRES asked whether there was residential criteria already established for multi-county House and Senate districts.

Ms. Heffelfinger responded that the criteria is constitutional and is addressed by the bill. She explained that for multi-county districts, legislators must live in their district; for single-county districts, the legislator may live anywhere in the county.

REP. SQUIRES asked REP. SPRING what would happen if no one living within the district was willing to be a legislative candidate; would the district have no representation? REP. SPRING responded that with 8,000 people in the district, he could not imagine no one would be willing to run for office.

REP. SIMPKINS claimed the problem with HB 166 is that it affects legislators in large cities to a greater degree than legislators in rural areas. The bill would preclude a legislator who might only live across the street from the district boundary.

REP. SQUIRES contended the important aspect of being a candidate in a district is to campaign and address issues. She stated she did not think candidates should be precluded from running within a district.

REP. ROSE said he thought HB 166 promoted good government.

REP. STOVALL pointed out the current system ensures large rural districts of representation by someone within the district rather than 200 miles away. In cities, however, candidates could live across the street or next door to the district boundary and thus the requirement to live within the district seems less pressing. He stated voters should be allowed to decide who can best represent them.

REP. MOLNAR stated he agreed with REP. SQUIRES that people in the district should decide who they want to represent them.

REP. BARNHART supported REP. MOLNAR'S position. She reported she lives two and one-half blocks away from her district; and when she ran for office, her constituents knew she lived out of the district. She suggested voters were capable of choosing their representation.

REP. GERVAIS compared the current discussion to yesterday's discussion of community of interest in reference to districting and apportionment. He suggested the issues were the same.

REP. SQUIRES commented that voters were not receiving due respect.

REP. REHBEIN said reapportionment affected representatives in rural districts and excluded some as candidates in their districts. In urban districts, however, boundary adjustments would not preclude representatives from being candidates. He

stated that, as far as he was concerned, HB 166 addressed a fairness issue.

REP. WALLIN declared diversity is the key to good legislation and HB 166 would increase the diversity of representation.

REP. GALVIN noted in Great Falls at least three representatives do not live in their districts.

REP. ROSE argued that living across the street from a district boundary does not preclude candidates from running in the districts in which they do live. He suggested the argument being presented was self-serving.

REP. STOVALL explained that through reapportionment he will be moved from the district he currently represents. If HB 166 were passed and he ran in the district in which he resides, he would be representing people 50 miles away rather than his current constituents who live within 10 miles.

REP. MOLNAR said he could support an amendment which did not require anyone to live in their district.

REP. SPRING said REP. MOLNAR'S suggestion would be action in the wrong direction. He said speakers were recommending that voters be given the choice and HB 166 would do exactly that. He said, as others had pointed out, arguments against the bill were self-serving, and committee members were protecting their own turf.

REP. SPRING said his intent was to do what was best for the public and he was willing to let the voters decide the issue.

REP. SIMPKINS said the issue between members was the difference between rural and urban areas. The concern in the large rural districts is that legislators represent their districts. In the small urban districts, geographic distance is not a significant issue.

Vote: HB 166 DO NOT PASS. The motion passed 10 to 6 on a roll call vote with REPS. SPRING, HAYNE, MASON, REHBEIN, ROSE, and WALLIN voting no. EXHIBIT 4

Motion/Vote: REP. SQUIRES MOVED TO TABLE HB 166. The motion passed 10 to 6 on a roll call vote with REPS. SPRING, HAYNE, MASON, REHBEIN, ROSE, and WALLIN voting no. EXHIBIT 5

HEARING ON HB 239Opening Statement by Sponsor:

REP. HAL HARPER, House District 44, Helena, stated HB 239 was the result of over two years of work with the Secretary of State's office and seeks to respond to citizens' concerns about limiting campaign expenditures. He said the bill was drafted to avoid limiting constitutional rights and to avoid giving any candidate an advantage. He distributed amendments for the bill. **EXHIBIT 6**

REP. HARPER stated the purpose of the bill was to limit campaign costs at all levels in the state of Montana. The bill establishes a system whereby candidates voluntarily agree to limit campaign expenditures. He explained that candidates who agree to limits would pay lower filing fees whereas those who exceed limits would be fined. REP. HARPER reviewed the sections of HB 239.

Proponents' Testimony:

Mike Cooney, Secretary of State, urged support of HB 239. He said, since a similar bill was introduced last session, political campaigns have become even more expensive and public confidence in the legislature's ability to pass meaningful reform had eroded greatly. Mr. Cooney described the bill as a creative, responsible effort to ensure that candidates (1) disclose the amount they expect to spend on campaigns; (2) agree to voluntarily limit their campaign spending; and (3) are encouraged to tell the truth about their campaign expenditures. He asserted, in order to maintain Montana's grassroots style of campaigning, expenditure limits need to be encouraged. He concluded the public wants campaign reform.

Amy Kelley, Director, Common Cause of Montana, provided written testimony in support of HB 239. She maintained unlimited campaign spending results in limiting candidates to individuals who can raise large sums of money, turns off voters, and gives undue influence to large contributors. **EXHIBIT 7**

Tootie Welker, Montana Alliance for Progressive Policy, supported HB 239. She suggested politicians are perceived as corrupt by the public and the bill would help correct that image. She stated public trust needs to be regained and urged passage of HB 239 toward that end.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. GALVIN asked Secretary Cooney whether a candidate could exceed the limit in the last day of the campaign and win the election. Secretary Cooney responded such a situation could occur; but based on his experience, few expenditures could be made at the last minute. He reported that purchases for media and printed materials must be made well in advance. He stated laws already exist for reporting any large contributions a candidate receives at the end of a campaign. He concluded it is the public who will ensure that candidates abide by the rules.

Doug Mitchell, Deputy, Secretary of State, explained they had tried to think of scenarios such as that presented by REP. GALVIN. He stated candidates who deliberately choose to violate their voluntary limit pledges will never be prevented from doing so by law; however, he suggested the electorate would hold such a candidate accountable in the next election.

REP. ROSE asked REP. HARPER whether HB 239 addressed limits on PAC money. REP. HARPER stated a legislator would be limited in the amount of money they could receive. REP. ROSE asked whether the limitation would put a challenger at a disadvantage. REP. HARPER said in many instances, the challenger reaches the PAC limit before the incumbent. He maintained a more germane point to the bill was the closing of the in-kind loophole.

REP. SIMPKINS clarified that HB 239 does not address contributions from PACs.

REP. ROSE asked about "laundering agencies." REP. HARPER said using laundering agencies would be a violation of current law. He noted the problem with independent committees is they are difficult to limit; however, if there is collusion between the candidate and an independent committee, then the action is illegal.

REP. BARNHART asked whether HB 239 restricted the acceptance or the spending of money. REP. HARPER said the bill restricts the spending of money over the voluntary limit. He pointed out if an opponent is spending vast amounts of money, a candidate can choose to pay a higher filing fee and increase their voluntary spending limit.

REP. MOLNAR described his campaign experience during which the AFL-CIO distributed materials which were either generally opposing him or were specifically supporting his opponent. He asked REP. HARPER whether this kind of independent expenditure could continue under HB 239. REP. HARPER confirmed that so long as there was no collusion or cooperation between the union and the opposing candidate, the actions were legal.

REP. MOLNAR asked how someone would know if there was collusion. Doug Mitchell responded that the question presented a disturbing

issue. He noted independent committees could not be limited; to do so would violate the exercise of their first amendment rights. He reported current law strictly defines independent as no cooperation or communication between parties; if there was cooperation or communication, then the parties are no longer independent and campaign law is violated.

REP. REHBEIN stated he thought he could support HB 239, but the \$7,500 limit for legislators should include PAC money. **REP. HARPER** stated PAC money is included in the \$7,500.

REP. STOVALL asked **REP. HARPER** how candidates would monitor their opponents' spending. **REP. HARPER** stated the current reporting deadlines are not changed; candidates have access to their opponents' campaign finance reports.

REP. MOLNAR asked **Secretary Cooney** whether there was a constitutional problem with requiring independent committees to report their spending. **Secretary Cooney** stated that independent committee expenditures do have to be reported. The constitutional prohibition arises in efforts to limit the actions of independent committees. He pointed out candidates cannot prohibit independent groups who campaign on their behalf even when they want no connection with the group.

REP. MOLNAR asked **Secretary Cooney** whether he thought HB 239 would make candidates less dependent on contributions from PACs and more dependent on independent committees. **Secretary Cooney** said he did not expect much of an effect; candidates would continue to accept PAC money. He said the intent of the bill is to reign in campaign expenditures.

REP. GALVIN asked **Secretary Cooney** about unsolicited endorsements. **Secretary Cooney** responded he did not think endorsements were considered contributions.

REP. SIMPKINS asked **Secretary Cooney** whether political party materials which target a particular candidate should be counted as an expenditure by the opponent's campaign. **Secretary Cooney** responded that generic materials distributed by political parties would not be counted as an expenditure; however, materials which name a candidate and which were produced in collaboration with the candidate would not be considered an independent expenditure.

REP. SPRING asked **Secretary Cooney** whether signing a petition constituted communication with a group. **Secretary Cooney** said he would not think signing a petition was sufficient to qualify as collaborating with a group.

REP. SIMPKINS asked **REP. HARPER** how volunteer help from politically-oriented groups would be counted toward expenditures. **REP. HARPER** suggested this was a gray area. He said the Legislature had been hesitant to restrain how much time someone contributes voluntarily. If the group provides a service, such

as consulting, for which a monetary value can be assigned, however, then the value should be counted as a campaign expenditure. **REP. HARPER** stated HB 239 tries to close the in-kind loophole by requiring contributed good and services which have monetary value be counted against the expenditure limit.

REP. SIMPKINS asked whether consultant services would be counted as an expenditure. **REP. HARPER** said he considered those services to be covered by current law.

REP. SIMPKINS asked about the limits which have been assigned to the various elected positions in HB 239. He suggested a \$7,500 limit would be too low for county commissioners in Cascade County and \$20,000 for judges would be too high. He asked whether the bill would preclude two candidates from agreeing to a higher spending limit. **REP. HARPER** stated candidates can voluntarily subscribe to a higher limit. He said the committee should not consider the spending limits listed in the bill as unalterable; he expressed his willingness to work with the committee to make changes.

REP. MOLNAR asserted differences in the size of districts would require different spending limits and asked how these differences were accommodated in HB 239. **REP. HARPER** responded that candidates would likely choose different campaign strategies, depending on the size of their districts. He pointed out that candidates within the district would have the same campaign limit, and he contended the electorate would judge more positively the candidate who worked within the limit.

Closing by Sponsor:

REP. HARPER maintained Montanans want meaningful campaign reform including accountable candidates and controlled campaign expenditures. He asked for support for HB 239.

HEARING ON HB 227

Opening Statement by Sponsor:

REP. HOWARD TOOLE, House District 60, Missoula, introduced HB 227 to generally reform government ethics. He reviewed the provisions of the bill which include: (1) prohibiting the "revolving door" for public officials and employees; (2) requiring mandatory disclosure of conflicts of interest; (3) providing for penalties for violations including reprimands and suspensions; (4) banning state officers from lobbying for a period of two years; (5) requiring mandatory financial disclosure; (6) moving enforcement of the ethic codes to the Commissioner of Political Practices; and (7) defining "minimum gift" for improper influence.

Proponents' Testimony:

Mark O'Keefe, State Auditor and Commissioner of Insurance and Securities, stated he was a strong proponent of HB 227, particularly the provisions related to the rules of conduct and ethical principles for public officials. He stressed the opportunity which public officials have to use their knowledge in private business and enrich themselves. He suggested private interests have, in recent decades, manipulated public officials with a detrimental effect on the public interest. He described HB 227 as recognizing the difference between private and public interests and restraining public officials from using knowledge gained in their public positions. He recommended the committee pass HB 227.

Doug Mitchell, Office of the Secretary of State, stated he appeared on behalf of **Secretary of State Mike Cooney,** and read **Secretary Cooney's** written testimony. He stated the district court had ruled that enforcement of ethical standards by the Secretary of State, a partisan, elected official, was inappropriate and enjoined the office from activity related to the enforcement of ethics. Thus, at a minimum, legislation is needed to provide a mechanism for the enforcement of ethical standards. He also contended strong, meaningful, enforceable ethics laws would not only represent good policy, but would demonstrate responsiveness to the concerns of the people of Montana. He urged passage of a meaningful ethics bill in the current legislative session. **EXHIBIT 8**

Ed Argenbright, Commissioner of Political Practices, spoke in support of HB 227, stating it could potentially increase public confidence in the integrity of Montana government. He noted his office would be heavily impacted by the provisions of the bill, and he would require additional staff to fulfill the bills' requirements.

Amy Kelley, Executive Director of Common Cause/Montana, presented written testimony in support of HB 227. She stated the bill attempts to address four problems: (1) disclosure of financial conflicts of interest; (2) closing the "revolving door" between the public and private sector; (3) enforcement; and (4) transfer of investigatory authority to the Commissioner of Political Practices. **EXHIBIT 9**

Jim Jensen, Executive Director, Montana Environmental Information Center (MEIC), stated he spoke as an uneasy proponent of HB 227. He explained that because of the salary structure for employees, state government served as a training ground for individuals in natural resources, particularly in the areas of air and water quality and mining. Thus, for example, Pegasus Gold Corporation has hired an individual who worked for the hard-rock mining bureau of the Department of State Lands and who was involved with Pegasus projects. This individual then represented Pegasus on those projects to the department and former colleagues. **Mr.**

Jensen stated he personally was not sure whether this was a significant problem, but MEIC members did consider it a serious problem. He still questioned, however, the state's ability to restrict employees' career paths.

Mr. Jensen also suggested the ban on lobbying by state officials was overly broad. As an example, he described the case of Dennis Casey, former Commissioner of State Lands, who now lobbies for the gaming industry. His work as a lobbyist has no relationship to his experience at State Lands. He suggested the lobbying ban should be limited to companies or issues which had been regulated by the former public employee. **Mr. Jensen** reported MEIC members feel strongly about the need for legislation. He suggested lobbyists and legislators alike would benefit from changes in the law which demonstrate to the public a recognition of their concerns about ethical standards.

Keith Colbo, Montana Assessors Association, spoke on behalf of himself as a former state official and the association. Speaking on his own experience, **Mr. Colbo** said in the four years since he served as a state official, the "revolving door" had never presented a problem. He noted he had not found the opportunities to enrich himself suggested by **State Auditor Mark O'Keefe**. **Mr. Colbo** said he agreed with **Mr. Jensen** with regard to the lobbying ban. He suggested the ban was unduly restrictive and denies both legislators and private interests good input into the process. **Mr. Colbo** reported the Assessors Association's concern was the financial disclosure provisions of HB 227. He said they felt the provisions might discourage well-qualified people from running at the local level. He suggested one alternative would be to have a triggering mechanism for financial disclosure, such as a complaint filed with the Commissioner of Political Practices.

Don MacIntyre said he was an attorney with the Department of Natural Resources but was speaking on HB 227 on behalf of himself only. He stated he supported the philosophy of HB 227, but he was concerned with the "revolving door" provision. Specifically, he questioned whether the word "represent" in line 2, page 6, limited the bill to attorneys. He noted attorneys are already regulated by other sections of law. He suggested the bill would prohibit both attorneys and their law firms from lobbying.

Amy Pfeifer said she was an attorney in the Child Support Enforcement Division, Department of Family Services but, like **Mr. MacIntyre**, was representing herself. She said she had the same concern as **Mr. MacIntyre** and felt that HB 227, as currently written, would prohibit her from a family law practice. She recommended changing the language to limit the prohibition.

Opponents' Testimony:

Bob Wood, Assistant City Attorney, City of Helena, expressed his concern about the financial disclosure provisions of HB 227. He said local candidates would find such financial disclosures to be extremely personal and suggested the reporting requirements may present an onerous burden to them. He asked the committee to consider these provisions a serious problem with the bill.

Bruce Moerer, Montana School Boards Association, said the association does not oppose HB 227 in its entirety, but they are concerned about its application to school board trustees. He reported that school board trustees are already restricted by other conflict of interest statutes. He objected to the two-year ban on lobbying as unduly restrictive for trustees who are prohibited from conducting any private business with the school district during their time in office. Finally, he said they were concerned about requiring extensive financial disclosure from individuals who serve on volunteer boards. He asserted the extensive reporting requirements would discourage potential candidates.

Don Waldron, Montana Rural Education Association, agreed with earlier speakers and asked that school board trustees be exempted from HB 227.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. GERVAIS expressed two concerns to REP. TOOLE: (1) provisions of HB 227 might limit the quality of or eliminate potential candidates; and (2) restrictions would discourage applications for state jobs from Montana residents. REP. TOOLE said he had not considered the possibility that only nonresidents would apply for state jobs. He noted some employees become very much in demand after state employment. He acknowledged the financial disclosure requirements could affect finding potential candidates. He agreed a triggering mechanism needs to be included and suggested two possibilities: (1) financial disclosure could be required in response to a complaint to the Commissioner of Political Practices; or (2) all candidates make the required disclosures, but the documents remain confidential until a complaint is filed. He said he did not want the reporting requirement to be onerous to candidates.

REP. MOLNAR asked Mr. Argenbright if there was some way to implement HB 227 without the paperwork requirement so additional staff would not be needed. Mr. Argenbright said that, from his limited experience, the increase in recordkeeping would require the increase in staff indicated by the fiscal note.

REP. REHBEIN asked Mr. Argenbright whether the Secretary of State formerly had responsibility for ethical standards. Mr.

Argenbright recounted that Secretary of State Waltermire had been in the process of establishing a commission to enforce ethics in the mid-1980's and was stopped by court order. REP. REHBEIN asked whether the Secretary of State's Office had the staff to carry out the provisions of HB 227. REP. SIMPKINS responded they would not have the resources at this point in time. Garth Jacobson, Chief Legal Counsel, Secretary of State's Office, responded that the function was eliminated in 1981 and presently no FTE's were dedicated to this purpose. He reported earlier efforts were much less comprehensive than the proposed legislation and had never contemplated the staff requirements recommended for HB 227.

Closing by Sponsor:

REP. TOOLE closed by noting the increases in staff for the Commissioner of Political Practices' office were due to the financial reporting provision of HB 227. He stated removing local officials from the requirement would eliminate the pressure on the Commissioner's office. He contended the bill has a great deal of merit, and it was time to implement an ethics code. He said he disagreed with the objections expressed by Mr. MacIntyre and Ms. Pfeifer. He concluded by reporting that amendments to the bill were being drafted and asked action be postponed.

HEARING ON HB 247

Opening Statement by Sponsor:

REP. DAVID EWER, House District 45, Helena, introduced HB 247 by request of the Office of Political Practices. The bill changes the deadline for filing certain reports with the Commissioner from the tenth day to the twelfth day preceding the date of an election.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Ed Argenbright explained the change in the date would avoid confusion by those people who are required to file the reports.

Questions From Committee Members and Responses: None.

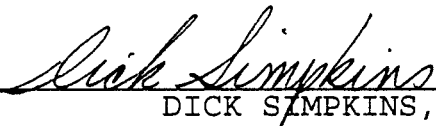
Closing: None.

EXECUTIVE ACTION ON HB 247

Motion/Vote: REP. DAVIS MOVED HB 247 DO PASS. Motion carried
unanimously with REP. MASON voting by proxy. EXHIBIT 10

ADJOURNMENT

Adjournment: 11:07 a.m.



DICK SIMPKINS, Chair



DOROTHY POULSEN, Secretary

DS/DP

HOUSE OF REPRESENTATIVES
STATE ADMINISTRATION

COMMITTEE

ROLL CALL

DATE

1/29/93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK SIMPKINS, CHAIR	✓		
REP. WILBUR SPRING, VICE CHAIR	✓		
REP. ERVIN DAVIS, VICE CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. PAT GALVIN	✓		
REP. BOB GERVAIS	✓		
REP. HARRIET HAYNE	✓		
REP. GARY MASON	✓		
REP. BRAD MOLNAR	✓		
REP. BILL REHBEIN	✓		
REP. SHEILA RICE	✓		
REP. SAM ROSE	✓		
REP. DORE SCHWINDEN	✓		
REP. CAROLYN SQUIRES			✓
REP. JAY STOVALL	✓		
REP. NORM WALLIN	✓		

January 29, 1993
Page 2 of 2

1993
of 2
rt
ed
air
han
RD"


e 11, line 2.
ing: "effective"
: "on passage and approval"
: "July 1, 1993"

HOUSE STANDING COMMITTEE REPORT

January 29, 1993

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that Senate Bill 90 (third reading copy -- blue) be concurred in .

Signed: 
Dick Simpkins, Chair

Carried by: Rep. Davis


Committee Vote:

HOUSE STANDING COMMITTEE REPORT

January 29, 1993

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report
that House Bill 247 (first reading copy -- white) do pass .

Signed: 
Dick Simpkins, Chair

1/29/93

I give my proxy on
all bills and amendments
and tabling motion to Exo
slaves

Carolyn Guener

EXHIBIT 1

DATE 1/29/93

HB SB 90, SB 36, HB 166, HB 2

Amendments to Senate Bill No. 36
Third Reading Copy

For the Committee on State Administration

Prepared by Greg Petesch
January 29, 1993

1. Title, line 9.

Strike: "AND"

Following: "REGENTS"

Insert: ", THE COAL BOARD, AND THE HARD-ROCK MINING IMPACT BOARD"

2. Title, line 15.

Following: "AN"

Strike: "IMMEDIATE"

3. Page 5, line 4.

Strike: "and"

4. Page 5, line 5.

Following: "education"

Insert: "; and

(iii) at least one but not more than two from each
district provided for in 5-1-102"

5. Page 5, line 25.

Following: "7"

Insert: "at least one person from each district provided for in 5-
1-102;"

6. Page 6, line 1.

Following: "<e>"

Insert: "(c)"

Renumber: subsequent subsections

7. Page 11, line 2.

Following: "effective"

Strike: "passage and approval"

Insert: "July 1, 1993"

EXHIBIT 2
DATE 1/29/93
HB SB 36

HB 292 - PSC rules

Summary of constitutional question

The testimony of Mr. Evilsizer seemed to suggest that the PSC cannot be mandated to adopt rules, when, in fact, the PSC can be mandated to adopt rules. However, what Mr. Evilsizer was attempting to point out was that, based on Montana's constitution and the court's findings in Lee v. State, it is unconstitutional to mandate that the PSC adopt rules to implement a Code that has not yet been published.

In other words, the proposed amendment is, in fact, unconstitutional.

Nevertheless, the Committee has two basic options:

1. Amend the bill to mandate that the PSC shall adopt by rule a certain specified and published version of the National Electrical Safety Code (for example, the 1977 edition of the Code); or
2. Keep the original language of the bill providing that the PSC may, in its discretion, adopt by rule revised editions of the National Electrical Safety Code (which is the current language of HB 292).

EXHIBIT 3
DATE 1/29/93
HB HB 292

HOUSE OF REPRESENTATIVES

STATE ADMINISTRATION

COMMITTEE

ROLL CALL VOTE

DATE 1/29/93 BILL NO. HB 166 NUMBER

MOTION: Do not pass HB 166.

NAME	AYE	NO
REP. DICK SIMPKINS, CHAIR	✓	
REP. WILBUR SPRING, VICE CHAIR		✓
REP. ERVIN DAVIS, VICE CHAIR	✓	
REP. BEVERLY BARNHART	✓	
REP. PAT GALVIN	✓	
REP. BOB GERVAIS	✓	
REP. HARRIET HAYNE		✓
REP. GARY MASON		✓
REP. BRAD MOLNAR	✓	
REP. BILL REHBEIN		✓
REP. SHEILA RICE	✓	
REP. SAM ROSE		✓
REP. DORE SCHWINDEN	✓	
REP. CAROLYN SQUIRES	✓	
REP. JAY STOVALL	✓	
REP. NORM WALLIN		✓
TOTAL	10	6

EXHIBIT 3 4
DATE 1/29/93
HB 166

HOUSE OF REPRESENTATIVES

STATE ADMINISTRATION

COMMITTEE

ROLL CALL VOTE

DATE 1/29/93 BILL NO. HB 166 NUMBER _____

MOTION: Move to table HB 166.

NAME	AYE	NO
REP. DICK SIMPKINS, CHAIR	✓	
REP. WILBUR SPRING, VICE CHAIR		✓
REP. ERVIN DAVIS, VICE CHAIR	✓	
REP. BEVERLY BARNHART	✓	
REP. PAT GALVIN	✓	
REP. BOB GERVAIS	✓	
REP. HARRIET HAYNE		✓
REP. GARY MASON		✓
REP. BRAD MOLNAR	✓	
REP. BILL REHBEIN		✓
REP. SHEILA RICE	✓	
REP. SAM ROSE		✓
REP. DORE SCHWINDEN	✓	
REP. CAROLYN SQUIRES	✓	
REP. JAY STOVALL	✓	
REP. NORM WALLIN		✓
TOTAL	10	6

EXHIBIT 5

DATE 1/29/93

HB 166

Amendments to House Bill No. 239
First Reading Copy

Requested by the Secretary of State
For the Committee on House State Administration

Prepared by Sheri S. Heffelfinger
January 29, 1993

1. Page 1, lines 17 through 20.

Following: "expenditures" on line 17

Strike: "and" through "family" on line 20

Following: "." on line 20

Insert: "An expenditure, as defined in 13-1-101, that is subject to voluntary limitation includes an expenditure made by the candidate's committee and any in-kind expenditures made by a person or political committee on behalf of the candidate."

2. Page 1, line 24 through page 2, line 2.

Following: "law." on page 1, line 24

Strike: "The" through "candidacy." on page 2, line 2

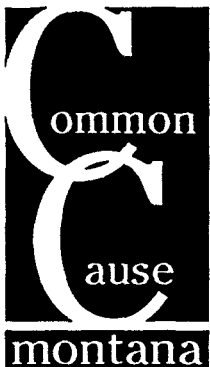
3. Page 2, line 5.

Following: "state"

Strike: "on"

Insert: "within 30 days after"

EXHIBIT 6
DATE 1/29/93
HB 239



COMMON CAUSE TESTIMONY
IN SUPPORT OF HB 239
JANUARY 29, 1993

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

Mister Chairman, members of the Committee, for the record my name is Amy Kelley, Executive Director for Common Cause/Montana. Common Cause/Montana is a nonpartisan, nonprofit citizen organization of more than 800 members working to promote open and accessible democratic government in Montana.

In behalf of those members, I want to register our support for HB 239, setting voluntary campaign spending limits tied to filing fees paid to the office of the Commissioner of Political Practices.

It is acknowledged by politicians and voters alike that campaign spending is increasing at alarming rates, particularly in national and statewide races. According to a study by a University of Southern California professor, candidate spending for statewide and state legislative offices has increased 450% nationwide in the past 12 years.

Such unbridled campaign spending has, in our opinion, several negative effects:

1. The ability to raise large sums of money becomes a prerequisite to running for office. Thus, many potential candidates are discouraged from even attempting to enter the race.
2. Voters are turned off before election day after having been bombarded by candidate TV ads -- often with a negative focus -- in the weeks preceding the election.

Journalist David Broder commented of the 1990 elections that, as negative campaigning increases,

...more and more voters are opting out...people are saying "I don't care to participate if this is all that politics is about."

Many blamed the low 35.6% voter turnout in the 1990 national election on such negative campaigning.

EXHIBIT 867
DATE 1/29/93
HB 239

3. As the need to raise large amounts of money increases, large contributors -- primarily PACs funded by special economic interests -- play a greater role than citizens in financing elections. Thus, the potential for undue influence by special interests over the prospective officeholder is increased, and public trust is undermined.

For these reasons, we find it critical that our government take whatever steps possible to limit campaign spending in order to preserve the public interest in the election process.

A 1976 U.S. Supreme Court case, Buckley v Valeo, determined that spending limits, when voluntary and when combined with some form of public financing, are constitutional.

HB 239 makes campaign spending limits voluntary. The greatly reduced filing fees awarded to those who agree to such limits provides, in essence, a subsidy or form of public financing to those candidates.

* * * * *

It is the Common Cause's position that, in order to be successful, a campaign finance reform package must include voluntary campaign spending limits tied to public financing, limits on contributions received, full financial disclosure, and strict enforcement of campaign finance laws.

HB 239 is a huge step in the right direction. I agree with its sponsors that the bill is a creative and positive means toward achieving the goal of bringing our election process back into the hands of the voters.

Common Cause urges a "DO PASS" on HB 239.

Mr. Chairman and members of the Committee, good morning. For the record, my name is Mike Cooney and I appear before you today in my capacity as Secretary of State.

The bill before you today addresses an area in Montana law that is seriously in need of repair. As you are no doubt aware, state statute currently vests the Secretary of State with the responsibility of enforcing ethics laws in Montana. However, the district court, in a case brought against then Secretary of State Jim Waltermire, found that the enforcement of ethics by a partisan elected official was inappropriate and enjoined the office from any further activity regarding the enforcement of ethics.

At a minimum, legislation is necessary to remedy this problem and to create a mechanism for the review and enforcement of ethics standards in Montana. Further though, all of us in this room are well aware that public confidence in politics and politicians is at an all time low. Strong, meaningful and enforceable ethics laws make not only good policy but will show Montanans that we are listening to them.

For too long we've collectively made excuses about why a certain bill or other won't work, or is too cumbersome. It's time for us to figure out how to make something work in the area of ethics. I know that there are at least two other ethics bills before this body, and I encourage this committee and the legislature to work diligently to pass a meaningful ethics bill during this session.

Thank you.

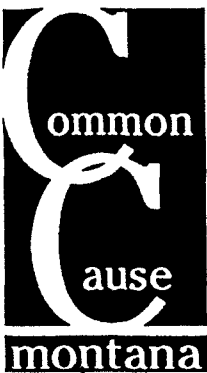


EXHIBIT 9
DATE 1/29/93
HB 227

COMMON CAUSE TESTIMONY
IN SUPPORT OF HB 227
JANUARY 29, 1993

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

Mister Chairman, members of the House State Administration Committee, for the record my name is Amy Kelley, Executive Director of Common Cause/Montana. Common Cause/Montana is a nonpartisan, non-profit citizen group of over 800 members working to promote open, accessible democratic government in Montana.

On behalf of those members, I would like to register our support for HB 227.

This is a time of profound crisis of public confidence in government. At stake is the health of our democratic system, for self-government rests upon the people's trust and confidence in public officials.

Federal prosecutions of state and local officials nationwide has increased tenfold in the last decade. Even here in Montana, recent newspaper headlines have raised questions concerning ethics in government (see attached editorials).

Article XIII, section 4 of the Montana Constitution mandates the enactment of such a code of ethics:

Code of ethics. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Despite this mandate, the legislature has not, to date, established real ethics legislation. HB 227 is an attempt to help form that code for public officials. Many of its provisions are based on recommendations put forward by Greg Petesch in a March 1990 Legislative Council study analyzing Montana's governmental ethics laws. The four problems with current statute that this bill attempts to address are:

1. Disclosure of Financial Conflicts of Interest.

This bill would make such disclosure mandatory rather than voluntary, as it is in current statute. In the words of U.S. Supreme Court Justice Louis Brandeis: "*Sunlight is said to be the best of disinfectants; electrical light is the most effective policeman.*"

2. Closing the "Revolving Door" between the Public and Private Sector. Much like a business might protect itself by requiring that new employees promise not to betray the company by exporting confidential information or products for personal financial gain, this bill would prevent an individual who is deeply involved as a government regulator of private interests from immediately turning around to use that inside knowledge to help promote a private interest before that public agency.

Current law under 2-2-105 is vague, providing that "...within the months following the voluntary termination of his office or employment, [a public officer or employee should not] obtain employment in which he will take direct advantage...of matters with which he was directly involved..." This bill strengthens that ethical principal by mandating a 2-year ban both on specific employment and on lobbying.

On a national level, the Ethics Reform Act of 1989 imposes a one-year ban from lobbying for members of Congress and high-level Congressional staff (who may not lobby the congressional committees on which their employer served). Top executive branch officials are prevented for one year from returning to lobby their former agency or their former high-ranking colleagues.

3. Enforcement. This bill puts teeth into current law by allowing the Commissioner of Political Practices, county attorneys or private citizens to bring legal actions, and by specifying that a public official violating these principles may be reprimanded or suspended.

4. Transfer of Investigatory Authority. Currently, the Secretary of State is empowered to enforce ethics laws. However, a 1982 Montana District Court decision ruled this power to be an unconstitutional delegation of legislative authority to the Secretary of State. This bill would transfer enforcement to the independent office of the Commissioner of Political Practices.

In closing, I do want to acknowledge to this Committee that ethics is an extremely difficult subject to discuss, let alone legislate. It is not the intent of this bill to imply that Montana's public servants are corrupt or self-serving. It is not to create an onerous set of new rules and regulations or to dissuade people from working for the state. The intent of this bill -- the spirit of this bill -- is to protect the public interest, to prevent potential abuse by those who would improperly seek private economic gain in violation of the public trust.

The Montana Legislature is long overdue in meeting its constitutional mandate of providing "a code of ethics." HB 227 may not provide the ultimate solution. It is, however, an important step in the right direction. To that end, we compel this Committee to give this bill its close consideration, and urge its passage.

OUR OPINION

Earning the public trust

Some folks in Helena seem to need a lesson on ethical behavior

Folks in Helena must be a little slow on the uptake. Not a week after a couple of public service commissioners-elect hung their heads in shame and returned campaign contributions raised at a party attended by utility officials, the state Board of Oil and Gas Conservation was still planning to go ahead with an industry-financed Christmas party.

The party was called off at the last minute only after a newspaper reporter inquired about the event. A spokesperson for the board and several board members said that, while the money for the party — scheduled for Wednesday afternoon — would be returned, they saw nothing wrong with the event.

This is doubly perplexing.

If those involved truly see no impropriety, real, potential or perceived, in the notion of an industry footing the bill for a bash for the people who regulate that industry, then they owe it to us all to stand by that conviction, attend the party, have a ball and teach those pesky newspaper reporters a lesson about meddling in affairs that are none of their business.

But of course that won't happen, because those involved know full well that to carry on like that would bring down on their heads a mother lode of criticism and questions about fitness to serve.

A board member sniffed at the suggestion that attending the party compromised his impartiality.

"If I was going to be influenced by being there and shaking hands with those people, then I shouldn't be on the board," he said.

That smacks of naivete. For

state officials to accept any kind of gratuities from those they regulate creates a sense of obligation. And obligation — real or perceived — compromises the ability of those officials to conduct themselves in the public interest. In the realm of public service, there's no difference between real and perceived. Once the seeds of doubt are planted, an elected or appointed official's ability to serve is impaired.

In justifying the industry-sponsored party, the same board member said it's a good way to get acquainted with industry staff members not ordinarily in attendance at board hearings. If it is a legitimate and necessary Board of Oil and Gas Conservation function to meet these staff members for purposes of establishing working relationships, then let the board pay for those functions at which these meetings take place. Having the industry pick up the tab for the event is simply unacceptable.

President-elect Bill Clinton is setting precedent in Washington by enforcing the strictest code of ethics on record for appointees.

Those named to high office in the Clinton administration are required to take a pledge that — among other things — severely restricts their eligibility to lobby federal agencies after they leave public service. Skeptics say the code will discourage talented people from seeking public office. The Clinton transition team says it has not been a problem, and perhaps those who find it an impediment are not really wanted for public service anyway.

Gov.-elect Marc Racicot could go a long way toward earning the public trust by adopting a similar code.

EXHIBIT 9
DATE 1/29/93
HB 227

Chairman Lumpkin

Rep. Spring may vote for me as
he sees fit on 1-29-63

Gay W. Mason

EXHIBIT 10
DATE 1/29/93
HB 247

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

State Administration

COMMITTEE

BILL NO.

HB227

DATE 1/29/93

SPONSOR(S)

Rep. Toole

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Don Waldron	mt Rural Ed Assn		<input checked="" type="checkbox"/>
Toho Welker	MAPP	X	
Amy Pfeifer	Self + other state attorneys	w/ amendment	
Bruce W. Meyer	MSBA		X
Ed Tuganowski	Commissioner of Public Safety	X	
Keith Colbo	MT Assessors Assoc	w/ Amend	
ANN LEBES	COMMON CAUSE	X	
Robert Wood	Mont. of Health		X
M. D. [unclear]	State Archivist	X	
Terry Minnow	MFT		X
S. O. S.	TOUG MURKELL	X	
Jim Jensen	MEIC	w/ amend	
Ron McCutcheon	DLA	w/ amend	
Tom Schneider	MT [unclear]		X

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

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

State Administration

COMMITTEE

BILL NO. H/B 247

DATE 7/29/93

SPONSOR(S) Rep Ewen

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Lt. Arguebright</i>	<i>Commissioner of Public Safety</i>	<i>X</i>	

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

State Administration

BILL NO.

H/B 239

DATE _____

1/29/93

SPONSOR (S)

На ~~ррр~~ ррр

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

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