

## MINUTES

### MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN ETHEL HARDING, on January 24, 1995,  
at 10:00 AM

#### ROLL CALL

**Members Present:**

Sen. Ethel M. Harding, Chairman (R)  
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)  
Sen. Mack Cole (R)  
Sen. Mike Foster (R)  
Sen. Don Hargrove (R)  
Sen. Bob Pipinich (D)  
Sen. Jeff Weldon (D)

**Members Excused:** Sen. Vivian M. Brooke (D)

**Members Absent:** N/A

**Staff Present:** David Niss, Legislative Council  
Gail Moser, Committee Secretary

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

**Committee Business Summary:**

Hearing: HB91 HB188 SB105  
Executive Action: N/A

{Tape: 1; Side: A; Approx. Counter: 52.3}

#### HEARING ON HB91

**Opening Statement by Sponsor:**

REP. MARIAN HANSON, House District 1, Billings, related a personal experience that instigated HB91 regarding mail service in rural areas and the 24 hour reporting requirement for campaign contributions of \$100 or more. HB91 initially changed the 24 hour requirement to 48 hours. In the House committee hearing, Representative Rehbein amended it to 72 hours. On the House floor, Representative Kadas amended it back to 24 hours.

REP. HANSON said she would like this Senate committee to amend HB91 back to a 48 hour reporting requirement. REP. HANSON stated

HB91 does not include state-wide candidates, only Representatives and Senators in the last filing period before the Primary or General Elections.

Proponents' Testimony: None

Opponents' Testimony:

Ed Argenbright, Commissioner of Political Practices, stated his objection to the suggested option that a telephone call be considered a report of contributions. Mr. Argenbright stated, however, he would have no objection to a fax followed by a hard copy. Mr. Argenbright likened the phone call suggestion to the IRS stating people could just call in and report how much they made last year.

Questions From Committee Members and Responses:

SEN. BOB PIPINICH asked Mr. Argenbright if he was opposed to a 48 hour requirement. Mr. Argenbright said that would be better than 72 hours, but it would diminish the quality of information that would be available.

SEN. PIPINICH stated there are outlying areas in his district that receive mail only three times a week, and the 24 hour requirement makes timely reporting impossible. Mr. Argenbright stated that no one has been prosecuted under this statute, but if a situation came down to a prosecution, he believes the postmark would be the critical piece of information. Mr. Argenbright added that obviously, a person must go to town to deposit the contribution and could report at that time.

SEN. KEN MESAROS asked Mr. Argenbright, because of the many rural mail situations, if a phone call followed by a letter would meet the reporting requirement. Mr. Argenbright stated that the amount of information included on the report would be too much to take down over the telephone, thereby, affecting the accuracy of the information.

SEN. DON HARGROVE asked Mr. Argenbright to clarify when the 24 hour clock starts. Mr. Argenbright stated that the clock starts from the time the contribution is received. SEN. HARGROVE commented, as an example, that a contribution may arrive in his mailbox when he is not at home and it may sit there for days. SEN. HARGROVE said his campaign chairman believed the clock to begin when the candidate receives the money, i.e., deposited in the bank. SEN. HARGROVE said he didn't know whether that is actually the intent. Mr. Argenbright said the intent is timely reporting.

**SEN. MIKE FOSTER** asked Representative Hanson for her opinion on a proposed amendment which would strike "by telephone or" and change the "24 hours" to "48 hours". **SEN. FOSTER** explained this would essentially state a candidate has 48 hours to report by fax or mail. **REP. HANSON** said she would fully support such amendments.

**SEN. MACK COLE** asked Mr. Argenbright if he believed CI118 would cause this reporting to become more strict or less strict.

**Mr. Argenbright** stated that CI118 limits contributions to \$100, therefore, there will be more contributors and more transactions to record.

**Closing by Sponsor:**

**REP. HANSON** stated there are many rural areas in Montana, especially in Eastern Montana, where mail service occurs only once a week.

**CHAIRMAN HARDING** closed the Hearing on HB91.

**HEARING ON SB188**

**Opening Statement by Sponsor:**

**SEN. SUE BARTLETT, Senate District 27, Helena,** stated SB188 proposes a Constitutional Amendment to ensure there is a thorough review of state government once every twenty years.

**SEN. BARTLETT** related history and background for SB188 starting in 1969 and the implementation of the Executive Reorganization Committee through Governor Racicot's implementation of the Task Force to Renew State Government. **SEN. BARTLETT** stated that, like any Constitutional Amendment, SB188 would require voter approval and, if successful in this Legislature, would appear on the November 1996 ballot. **SEN. BARTLETT** explained that the language in SB188 is general in nature as the details of how a review would be conducted should be in statute and not in the Constitution. SB188 also requires the Legislature to appropriate funds for the review, at least some of which must be public funds. This provision ensures involvement by the Legislature and guarantees at least some public funds are included.

**SEN. BARTLETT** explained the purpose of lines 15 through 19 is to require that a review be conducted within two fiscal years after one of the following circumstances takes place:

- If the people vote NO on holding a Constitutional Convention.
- If a Convention is held and the people *reject* proposed changes in the Constitution.
- If a Convention is held and the people *adopt* proposed changes in the Constitution.

**SEN. BARTLETT** explained that the "fiscal year" provision contemplates the voters decision in November, the Legislature meeting in January and appropriating funds for the review, the review beginning in July to be completed within the biennium, and recommendations being submitted to the Legislature in the following regular session.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses:

**SEN. MESAROS** asked Senator Bartlett if she could estimate the amount of the appropriation of funds for the review.

**SEN. BARTLETT** said she did not have a dollar figure, but that is something the Legislature appropriating funds should decide.

**SEN. MESAROS** asked Senator Bartlett if SB188 is a necessary mandate considering that thorough review is occurring (the Governor's Task Force and the amount of work they have done over the past year). **SEN. BARTLETT** stated that as things stand now, there is no insurance that the Executive Branch of State Government will be thoroughly reviewed, that review is left to the discretion of both the Legislature and Governor.

**SEN. FOSTER** asked Senator Bartlett to explain why a review of the Executive Branch is necessary if the voters say NO to having a Constitutional Convention. **SEN. BARTLETT** said that provision covers situations when the question of whether or not there should be a Constitutional Convention automatically goes to the ballot. Currently, that takes place once every twenty years.

**SEN. FOSTER** asked Senator Bartlett to clarify that it is possible there could be a proposal for a Constitutional Convention every election cycle, and if that proposal failed every time, it would trigger an analysis of the Executive Branch. **SEN. BARTLETT** said that is true, but added that between 1972 and 1992 when the proposal automatically went to the ballot, there were no intervening issues on the ballot that would have triggered a review.

**SEN. JEFF WELDON** commented that one of the conclusions of the Governor's Task Force was that some manner of reform should be an on-going process. **SEN. WELDON** asked Senator Bartlett what sort of entity would act as the catalyst or vehicle for the review.

**SEN. BARTLETT** said it would seem most logical that a commission be formed similar to the Governor's Task Force, but she added that those kinds of decisions would be left to the Legislature if SB188 is passed.

**CHAIRMAN HARDING** closed the Hearing on SB188.

HEARING ON SB105Opening Statement by Sponsor:

**SEN. LOREN JENKINS, Senate District 45, Big Sandy,** stated that often, after the legislative session is over, constituents complain that the legislature has passed "dumb laws". However, he believes the problem lies in rule-making authority and the adoption of "dumb rules". SB105 will hopefully put some teeth back into the Administrative Code Committee who reviews rules. SB105 basically states that if a member of the Code Committee objects to a proposal notice from a department, that proposal notice may not be adopted until publication of the last issue of the register that is published before the expiration of the six-month period during which the adoption notice must be published, unless prior to that time the Code Committee meets and does not make the same objection. **SEN. JENKINS** stated if SB105 is passed, the Code Committee will need a strong and committed membership as well as funding in order to meet at least once every six months. If the Code Committee does not meet, the rule will go into effect. The new section on page 3, line 23 provides the opportunity for the rule being objected to, to be reviewed by the full body of the Legislature. If the next Legislature does not review it, the rule will automatically go into effect on May 1. This section also provides that if the Code Committee withdraws or substantially modifies its objection to the proposal notice, then the rule can be adopted. **SEN. JENKINS** said he is attempting to ensure rules are adopted with the intent of the laws passed during the legislative session.

Proponents' Testimony: None

Opponents' Testimony:

**Martin Jacobson, Montana Public Service Commission,** stated there is not a substantial need for SB105, and it carries the potential for impractical effects and inefficiencies. The Legislature has created administrative agencies to gain expertise and properly administer legislation that generally pertains to relatively complex public interest matters. **Mr. Jacobson** summarized some of the current procedures under the Montana Administrative Procedures Act regarding the rule-making process. **Mr. Jacobson** also discussed the composition and authority of the Administrative Code Committee. **Mr. Jacobson** said SB105 delegates to one person, the power to delay implementation of agency authority and an attempt to administer the underlying directive of the Legislature as a whole for a period of up to six months. **Mr. Jacobson** commented that in many instances, timing is important, and delays can be costly to both the public and industry. **Mr. Jacobson** said, given the extensive procedures currently required and the review process already available,

further controls on the administrative process of rule-making diminish the ability of an agency to respond to the public in a timely and efficient manner.

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**Questions From Committee Members and Responses:**

**SEN. HARGROVE** asked Senator Jenkins for clarification that the purpose of SB105 is to provide one more check in the system in the form of the Code Committee and allow adequate time for review. **SEN. JENKINS** stated that is a fair summary of SB105 and added that the purpose for the timing issue is to allow that the full body of the Legislature review any rules that have been objected to.

**SEN. HARGROVE** asked Mr. Jacobson to clarify his contention that not only does that check by the Code Committee already exist, but there are additional checks in the current system. **Mr. Jacobson** stated he does not contest the assertion that the Code Committee, as it exists today, does not have the power to stop an administrative agency from making rules, but otherwise agrees with Senator Hargrove's statement.

**SEN. WELDON** said he understood a check and balance system was set up for rules essentially to remove the legislative process so that rules did not go through statutory considerations and asked Senator Jenkins if that is correct. **SEN. JENKINS** said the Administrative Code Committee was also set up as a check and balance to provide Legislative review. **SEN. JENKINS** described a rule-making situation that occurred with the Board of Education and their Project Excellence while he was on the Code Committee. He stated that SB105 is trying to put some teeth back into the rule-making authority and to gain some control of the departments during the interim.

**SEN. WELDON** asked Senator Jenkins if the same objective could be reached by being more explicit in statements of intent.

**SEN. JENKINS** answered "yes" and added that the Administrative Code Committee is there to watch that the intent of the original law as it was passed is not lost.

**SEN. WELDON** asked Mr. Jacobson if he was familiar with some of the cases that "took the teeth" from the Administrative Code Committee and could he summarize the issues involved.

**Mr. Jacobson** stated he was not familiar with those cases.

**CHAIRMAN HARDING** asked Senator Jenkins to clarify the language on page 2, lines 20-26. **SEN. JENKINS** explained the reason for allowing six months is that the Code Committee does not meet

every month or every other week, so they essentially can meet at any time during that six month period.

**CHAIRMAN HARDING** asked how often the Code Committee meets.

**SEN. JENKINS** stated that in 1993, funding for the Code Committee meetings had been cut back, and he believes they have only met once or twice since that time.

**SEN. FOSTER** asked Senator Jenkins how it was decided to allow just one member to object to a rule rather than half or a majority of the Committee. **SEN. JENKINS** stated that because the Code Committee is bipartisan, it seemed reasonable that one member could begin the objection process.

**Closing by Sponsor:**

**SEN. JENKINS** stated the Administrative Code Committee represents checks and balances in the system and provides legislative protection for rules. However, the Code Committee doesn't possess a great deal of power. Essentially, the goal is to put the bite back into the Code Committee and keep agencies responsible to the Legislature. **SEN. JENKINS** added that implementation of emergency rules is covered on page 3, lines 18-22.

**CHAIRMAN HARDING** closed the Hearing on SB105.

**EXECUTIVE ACTION ON SB94**

**Discussion:** **David Niss** explained that the way the statutes amended by SB94 are written, only section 1 of the bill needs to specify the names or nicknames under which a candidate files. He explained that sections 2 and 3 of the bill need only refer to the names used in section 1.

**Mr. Niss** put several name alternatives or combinations (using his own name as an example) on the chalk board in the committee room to demonstrate the possible names that a candidate could file under. He explained that a secondary issue, in addition to the issue of what form of first name, last name, initials, and nicknames were to be allowed, was whether those variations to be chosen by the Committee and specified in section 1 of SB94 were to be the only names or name variations that a candidate could file under. In other words, if a candidate used a form of his or her name other than those to be specified in section 1, and a person voted for that name, the issue was whether that other alternative not specified in section 1 was to be allowed and therefore, whether the vote was to be counted. **Mr. Niss** said his personal feeling was that the SB94 should prevent any other form of the candidate's name, other than the form or forms filed

pursuant to section 1, from being used and, therefore, prevent a vote for that other form of the name from being counted.

**SEN. FOSTER** asked for clarification that when a person files to be write-in candidate, whether they are expected to include their last name as well as any derivative and nickname and initials.

**SEN. COLE** suggested it would be easier just to require their official name and any other names they may use. **SEN. PIPINICH** stated that's the current requirement.

**SEN. MESAROS** said he believes there is agreement to require the last name as well as some other identification.

The Committee worked through the many examples on the board.

**SEN. MESAROS** said he would like to add that a last name alone would not be acceptable. **SEN. WELDON** said that Senator Foster had some reservations with this suggestion, but **SEN. WELDON** said he agrees with Senator Mesaros for the purpose of clarity.

**SEN. PIPINICH** addressed the issue of instances where a form is filled out last name first, i.e., Niss, David. **SEN. WELDON** clarified that the discussion concerns allowing a single last name. **SEN. PIPINICH** said he had understood that Mr. Marsh had lost on recount because all the last name votes were thrown out. **SEN. WELDON** said that was correct, that's what the Committee was trying to decide -- whether state law would allow just last name votes to count. **SEN. PIPINICH** stated he believes that last name votes should be counted if that is the person who has filed as the candidate.

**Motion:** **SEN. MESAROS** moved to NOT ALLOW A LAST NAME ONLY TO STAND ALONE AS IDENTIFICATION.

**Discussion:** **SEN. FOSTER** stated his opposition to the motion because if that person has filed as the candidate, he believes the average voter knows they want "Niss for Commissioner," but they may not be completely familiar with the candidate.

**SEN. WELDON** gave an example from Missoula County where probably 70% of the Deschamps family has held public office at some point. If a voter writes in "Deschamps," it would not be completely clear that they mean just the one that has filed. **SEN. PIPINICH** disagreed with Senator Weldon's "Deschamps" example and said the issue should be who has filed for the position. **SEN. PIPINICH** then asked if this issue should be under such consideration since it was brought about only by the one incident - Mr. Marsh. **CHAIRMAN HARDING** stated the Committee would discuss the issues and figure it out.

**Vote:** The MOTION CARRIED UNANIMOUSLY on oral vote.



**Discussion:** **SEN. HARGROVE** stated his concern that by striking the word "sufficiently" ("sufficiently identifies a candidate" being too subjective) and trying to add the specifics now under discussion, the intent of SB94 is being changed. **SEN. HARGROVE** said that perhaps some subjectivity should be maintained and asked who would make a determination in the event the election is contested. **CHAIRMAN HARDING** answered that election judges make the original determination and if there is a contest, then there is a recount.

**SEN. HARGROVE** stated if there is already a procedure for final determination in a contested election, he agrees with Senator Pipinich's concern whether SB94 is actually needed.

**CHAIRMAN HARDING** added if there is a contest, it is contesting what the judges have ruled. Then a recount board composed of the County Commissioners and, possibly, the Superintendent of Schools, and some other elected officials would make a determination. If the recount board makes a determination different than the election judges, the case could go to District Court. **SEN. HARGROVE** then clarified that this is a system that is currently in place.

**SEN. MESAROS** agreed that the word "sufficiently" opens up some question as to what is sufficient, and added that the major issue has been addressed by eliminating the last name standing alone.

**SEN. WELDON** said he believes clarification is needed as to what exactly is the candidate's name, other than just the last name, as it is not clearly identified in state law. **SEN. PIPINICH** said he believes it is clearly identified as being the name you register. **SEN. WELDON** agreed that the registration declaration must contain the candidate's name, but WHAT IS the candidate's name? **SEN. PIPINICH** stated he does not believe SB94 is necessary.

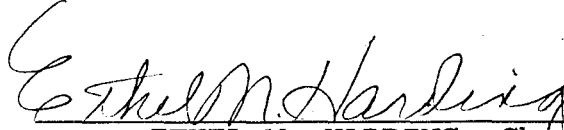
**COMMITTEE MEMBERS** continued discussion regarding amendments to page 1, line 19 and page 2, lines 16-17. It was decided that Mr. Niss would draft amendments regarding the appropriate identification of a candidate's name, and the Committee will consider SB94 again.

#### DISCUSSION ON SB120

**Dave Niss** stated he has worked with Dan Anderson, his Department, their legal counsel, and Andree Larose. **Mr. Niss** said he would have amendments prepared for the Committee to work on by tomorrow.

ADJOURNMENT

Adjournment: 11:30 AM

  
ETHEL M. HARDING, Chairman

  
GAIL MOSER, Secretary

EMH/gem

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SENATE COMMITTEE ON STATE Admin

BILLS BEING HEARD TODAY: SB105 / SB188 / HB91  
↳ Dec Act ~~SB89~~

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Check One

Name	Representing	Bill No.	Support	Oppose
Martin Jacobson	Mont Psc	105		✓
Ed Argenbright	Com. Pol Practices			X
J.V. Bennett	Mont PERG	SB-89 → HB-91	✓	X
Gretchen Bingman	Administrative Rules	SB105		

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY