

**MINUTES**

**MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION**

**CONFERENCE COMMITTEE ON SENATE BILL 367**

**Call to Order:** By **CHAIRMAN KEN MESAROS**, on April 22, 1997, at 1:00 p.m., in Room 413.

**ROLL CALL**

**Members Present:**

Sen. Kenneth "Ken" Mesaros (R)  
Sen. Vivian M. Brooke (D)  
Sen. Fred Thomas (R)  
Rep. Hal Harper (D)  
Rep. Matt Denny (R)

**Members Excused:** Rep. Larry Hal Grinde (R)

**Members Absent:** None

**Staff Present:** Sheri Heffelfinger, Legislative Services Division  
Val Palmer, Committee Secretary

**CONFERENCE COMMITTEE HEARING ON SB 367**

**CHAIRMAN KEN MESAROS** I tried to schedule the Conference Committee so it would work for everyone on the committee, but **REP. LARRY HAL GRINDE** has a conflict. He has another Conference Committee at this time and in all fairness, I think that through discussions, I'd like to wait for any executive action until we can have all members present or at least review what has been discussed. This is a Conference Committee to discuss the amendments that were placed on SB 367 by the House.

**Sponsor:**

**REP. HAL HARPER** The Secretary of State's Office requested amendment **#AC SB 367-04** that I placed on SB 367. They sponsored the bill in the Senate and the amendment was just to get the bill back into basic shape. The amendment also included independent contributions towards your limit. Of course, independent contributions is something you don't have any control over, so your opponent could make an independent contribution and put you over the limit. That's on page 6; all of the stricken language.

**Questions From Committee Members and Responses:**

**SEN. FRED THOMAS** You took out the first line on page 6, then you took out the (B) clause and added the (B) clause below that?

**REP. MATT DENNY** No, the (B) clause below that was my amendment #AC SB 367-04.

**REP. HARPER** Amendment #AC SB 367-01 is **REP. RICK JORE's** constitutional reference and if you don't know it, **REP. JORE** is pretty much a "constitutionalist" and can recite these sections by heart. I support his amendment.

**CHAIRMAN MESAROS** I have a question on your amendment striking language on page 6, section (B). Basically, that had to do with holding funds from a primary to a general. Would you expand on the rationale of striking that?

**REP. HARPER** These are statewide races. If you have an opponent in the primary, you could spend the combined total of the primary and the general amounts in the bill. The problem with that was the way it could be manipulated. For example: If I could get a friend of mine to file for the primary who didn't put any time or money or effort in, and I know he's going to win, all of a sudden my totals get rolled into the general.

**CHAIRMAN MESAROS** Just referring back and reviewing that amendment, what would happen when there was only a primary opposition and no general? **REP. HARPER** Then you'd have that much to run in the primary.

**CHAIRMAN MESAROS** Then you couldn't roll it together? **REP. HARPER** Not unless we were to concoct some way, if that was the situation, they could spend the whole amount. I can't imagine how you would want to spend that whole amount in the primary. As long as the playing field would be level, I don't see why you'd have any problem with it. I don't know how filing of an independent candidate would fit in there.

**CHAIRMAN MESAROS** Is there any further discussion on those amendments?

*{Tape: 1; Side: A; Approx. Time Count: 1:04; Comments: None.}*

**REP. DENNY** It's a very interesting prospective you brought up that didn't come before us on the House Floor regarding that particular provision. That provision as it's written does not address races where you only have a primary and no general election opposition. I think maybe that's why it was struck. That's beyond the scope of this committee and perhaps it's something that should be looked at because this could become a concern. You have a statewide race for OPI and there are two Republicans running and no Democrats. They still have to get their message out to folks to gain a certain amount of name recognition.

**REP. HARPER** Also there are very few races at a statewide level that don't have some candidate file from the major funds. It happens at the legislative level a lot and that's why we allow

them to be combined at the legislative level. But it doesn't at the statewide level.

**CHAIRMAN MESAROS** If I recall, this was the reason it was inserted because of the question I raised as far as primary opposition.

**SEN. VIVIAN BROOKE** I do remember that discussion in the Senate State Administration committee. Would there be a way to provide a different spending level figure in this amendment? Perhaps to answer your concerns - change the actual numbers to a higher specified amount. It's probably not in the scope of this amendment and we'd probably have to put it in with the other amounts.

*{Tape: 1; Side: A; Approx. Time Count: 1:10; Comments: None.}*

**REP. DENNY** It seems to me, changing the amendment to get to the intent of the Senate so that it specifies there is no other major party candidate would suffice. Then saying they could use just their general election portion. That would lower the amount, being this is just a conference committee.

**REP. HARPER** I don't think we should confine ourselves strictly to the limit of a Conference Committee. It's pretty obvious if this bill is to come out, there's probably going to be something besides the combination of these amendments. I think we should feel free to discuss it as we'd like to see it.

**CHAIRMAN MESAROS** If we go outside of the text of the amendments, we'd have to request the Conference Committee be dissolved and a Free Conference Committee be appointed. If that's your desire we can certainly discuss other options and keep that in mind. Let's proceed then with page 6, lines 14 through 16, for discussion purposes of that amendment.

**REP. DENNY** This was my amendment on the Floor and the purpose of the amendment was to allow some flexibility on the part of campaigns because of the way the bill was written. The basic idea was not to hamstring candidates and tell them how to run their campaigns. If they did not use it in the primary, our thinking in the House was that they should be allowed to use it in the general. The overall spending for the campaign is still limited by the same amount as in the bill and I think it stays with the intent of the bill.

**REP. HARPER** As I remember the discussion on the floor, it also included something like this: Two people are running against each other, expending the full amount, getting their name recognition out. Then the unopposed campaign person is sitting back not doing anything. So whoever wins that primary may have a head start and depending on how nasty that campaign is that could be true, it might cut both ways. Also, just a note for the record. Commissioner Ed Argenbright of Political Practices and

Steve Bullock from the Secretary of State's Office are present and I don't know if they have anything to add.

**CHAIRMAN MESAROS** As chairman, if there are questions we can direct them to those in attendance for any clarification.

**REP. DENNY** Something just occurred to me that is along the same lines. In a recent federal race, one of the candidates didn't have an opponent and proceeded to campaign just so that they had their name out there before the primary. There was some negative reaction to that. Obviously this isn't a federal issue here, but I think this kind of an amendment might help to avoid that kind of interference in another primary, etc.

**REP. HARPER** I might ask Steve if he has any comments because he has been working on this bill all along. It may be quicker.

**CHAIRMAN MESAROS** Steve, would you specifically address the amendment on page 6, line 14 through 16?

Proponents' Testimony:

**Steve Bullock, Secretary of State's Office (SOS)** I think as it is written and as suggested by **REP. DENNY**, it does make quite a bit of sense. Much more than previously stricken. The intent was to try to ensure there would be some kind of parity or equality. For example, if there are five or six Republicans running in a primary, and one Democrat, we wanted to make sure there was a limit post primary to make sure there is a balance playing field in between the primary and the general. That's also when most electorate people tune in. **REP. DENNY's** amendment makes a lot of sense, in as much as for those individuals that are unopposed being able to carry some of that money over. I didn't have a chance to speak with **SEN. SUE BARTLETT** about it but I know that Secretary of State Cooney is just fine with this amendment.

**SEN. THOMAS** So the way this would work is that if you had one party that had three candidates in it and the other party had one, they can spend over here in the primary and this guy can not. **Mr. Bullock (SOS)** No, this guy over here can still spend but if it's like for the Governor's race, if this guy over here only spends \$200,000, he can take that \$50,000 and then he has altogether \$800,000 between primary and general. Whereas, those with three only have \$750,000.

**CHAIRMAN MESAROS** **SEN. THOMAS** would like to address the stricken language at the top of page 6.

**SEN. THOMAS** Why was this taken out? **REP. HARPER** Because you have no control over an independent committee and it's going to be held against your limit.

**SEN. THOMAS** Steve could you answer a couple of questions in that

stricken language where it refers to a committee referred to in 13-37-226? I found that to be for filing reports. Is there a committee in here somewhere? **Mr. Bullock (SOS)** I think it's in subsection 4, subsection 5, where it talks about political parties. I believe that's the only real solid reference in the Code and there are some references in the rules to independent committees.

**SEN. THOMAS** Potentially, could a candidate fund an independent committee as referred to? **Mr. Bullock (SOS)** By definition and by all legal precedence, there can be zero coordination between the candidate and an independent expenditure.

**SEN. THOMAS** Let's say I'm the candidate and I say Steve why don't you head up this independent committee of mine and obviously you're going to probably work on my campaign behalf and I'm going to give you \$250,000 to do it. Why couldn't I do that? **Mr. Bullock (SOS)** You couldn't do that if it was properly reported out. Right there, that would be considered coordination for campaign contributions.

**SEN. THOMAS** What if you were the council for Greater Government? I give you \$250,000 and then you somehow miraculously decide to spend it on my campaign. **Mr. Bullock (SOS)** Potentially that probably could occur. But again it wouldn't be occurring in the structures of the confines of the law. What's scary, is that I could decide to run an independent campaign for you just to ensure that you exceed the limit.

*{Tape: 1; Side: A; Approx. Time Count: 1:21; Comments: None.}*

**SEN. THOMAS** Mr. Argenbright, in this area that we were just discussing with that independent committee being in or out, I think we've kind of put the pluses and the minuses to it. What's your thoughts on that amendment being in or out? The aspects that a candidate could fund an independent committee, him/herself, and/or, an independent committee could spend somewhat on your behalf to exceed your limits?

**Ed Argenbright, Political Practices Commission (PPC)** The whole area of independent committee is difficult in a sense that you've got your freedom of speech and if you're independent, you may run a campaign for somebody or you may run a campaign against them. There can be no coordination or prior consultation. If there was anyway to prove it, then they would cease to be an independent committee.

**SEN. THOMAS** With all these independent expenditures we see, certainly in a lot of them, there is input or outside influence or however we want to say it. I think this last election we saw some ads that were not helping. They were hurting the candidate and he couldn't shut them off, so those were probably independent. How much connection do you see in those things? **Mr. Argenbright (PPC)** Myself and my four staff are certainly not

going to be able to go out and police independent expenditures. The only way we would get involved in that sort of thing would be if a complaint was filed and there was some indication that there was in fact some coordination between the folks. In that case, it would not be an independent committee, it would be a contribution or an expenditure that would indeed count against the candidate.

**SEN. THOMAS** For the record, you have no disagreement with the Secretary of State's Office on the thought that a candidate could not donate to an independent committee and help fund his or her own campaign. You see that as completely outside of being legal. **Mr. Argenbright (PPC)** I have not coordinated in any great degree with the Secretary of State's Office in this endeavor but in just thinking about it right at this point, we have a specific rule in place right now that specifically talks about to be independent it cannot include coordination or consultation and there's a lot of language that deals with that. So if a candidate, funded another organization, that would be part of the candidate's organization as far as I can see.

**CHAIRMAN MESAROS** On the top of page 5, section (B), INDEPENDENT EXPENDITURES MAY NOT EXCEED \$500 BY A POLITICAL COMMITTEE ON A PRIMARY OR GENERAL ELECTION CAMPAIGN OR \$250 BY AN INDIVIDUAL PERSON ON A PRIMARY OR GENERAL ELECTION CAMPAIGN, there again we're talking about independent expenditures. I guess what my question is enforceability surrounding that segment of that amendment. Would you respond to that? **Mr. Argenbright (PPC)** Certainly the ice is very thin there, in terms of being constitutional on a challenge under the free speech amendment. One of my fears with this, is that I may not have enough money in my legal budget to defend things and you'd better be ready for a supplemental. But who's to say. Right now I'm in court over the limitations on contributions in Federal District Court in Billings. We are in Federal District Court relative to the prohibition on election hearing on election day. So there are lots of things happening. Whether this is constitutional or not, my attorneys say no, but who's to tell?

**REP. DENNY** If this particular provision is unconstitutional, did they give you an opinion on the bill itself which also limits the free speech of candidates? **Mr. Argenbright (PPC)** This particular one is the one that was the most emphasized. **REP. DENNY** It seems to me in this amendment there are two different aspects. There's limits on the political committees which to my mind seems a little less unconstitutional and probably easier for your office to enforce and the individual limitations. Do you care to comment on the difference between the two? **Mr. Argenbright (PPC)** I think the political committees are already required to report both contributions and expenditures that operate within the framework of existing law. The independent expenditure limit by Mr. Jones out there, who is on a ranch and wants to run an ad in the Billings Gazette for or against somebody. That would be the most difficult part of it.

**SEN. BROOKE** If I understand it right, there was discussion about your office writing rules around this particular amendment. Is that within your capability in this bill? **Mr. Argenbright (PPC)** I would certainly need it if it doesn't. **REP. DENNY** In the Statement of Intent it only grants rulemaking for adjusting campaign expenditure limits and so perhaps that might have to be changed for this amendment or part of this amendment.

*{Tape: 1; Side: A; Approx. Time Count: 1:31; Comments: None.}*

**CHAIRMAN MESAROS** We are scheduled to be on the Floor here shortly and I'm going to try and briefly review just some of the questions I see that have been raised. There are concerns about enforceability and the dollars wrong as far as funding. I believe **REP. DENNY** expressed the possible language change on an amendment that was stricken on section B of page 6 and we didn't get through all of the amendments. Were there any other concerns, or have I properly described those that we've discussed?

**SEN. THOMAS** We have rulemaking to address. I'd like to and I know you're on a time frame here, but would it be possible to ask Steve of the Secretary of State's Office to address this constitutional area? In general in this area.

**Mr. Bullock (SOS)** We worked with conservative legal scholars and liberal legal scholars as far as what's the best bill one could draft. We think this is it. There is potential the whole bill could get struck down. If anything was to get struck down first, it would be the independent expenditures. There's not a lot of independent expenditure campaigns going on at the statewide level in Montana. Our view was to put this through without the independent expenditures. That wasn't the view of the Chair so the thought is we'll put independent expenditures in. I think it'll get struck down, but the rest of bill will probably be upheld and then we'll look at it much closer and could we can readdress independent expenditures next time.

**REP. HARPER** This is a low limit. If the limit on independent expenditures were put on a par with the limits for the other offices, would that level play? **Mr. Bullock (SOS)** There's a better chance. What happened in Buckley is they tried to limit independent expenditures and the court basically said, "you're not even giving somebody enough to buy a half page ad." If you bumped it up to like \$15,000 for a governor's race, now you can buy your ads. So it would have a substantially better chance.

**CHAIRMAN MESAROS** We're due on the Floor and it is my intent to recess this Conference Committee and call it subject to the Chair. I'm not exactly sure what the schedule is for the remainder of the afternoon and I surely will try to get back to the members of the committee so we can reconvene.

**Recess:** 1:36 p.m.

**MINUTES**

**MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION  
CONFERENCE COMMITTEE ON SENATE BILL 367**

**Reconvene:**

**Call to Order:** By **CHAIRMAN KEN MESAROS**, on April 23, 1997, at 8:00 a.m., Room 413.

**ROLL CALL**

**Members Present:**

Sen. Kenneth "Ken" Mesaros (R)  
Sen. Vivian M. Brooke (D)  
Sen. Fred Thomas (R)  
Rep. Hal Harper (D)  
Rep. Matt Denny (R)

**Members Excused:** Rep. Larry Hal Grinde (R)

**Members Absent:** None

**Staff Present:** Sheri Heffelfinger, Legislative Services Division  
Val Palmer, Committee Secretary

**CONFERENCE COMMITTEE HEARING ON SB 367**

**CHAIRMAN MESAROS** We do have a quorum present. **REP. LARRY HAL GRINDE** sent his proxy (**EXHIBIT #1**) with **REP. MATT DENNY**. When we recessed there were a couple of areas that we were discussing. One of which was the top of page 5, amendment subsection (B). There was some concern about the enforceability, constitutionality and cost surrounding that amendment. There were some questions and discussions on the stricken language on page 6, subsection (B), relative to a noncontested general election and a contested primary. We will open up the discussions.

**Discussions:**

**REP. HARPER** On the top of page 5, I know there is a lot of interest in doing something on amending independent expenditures. I probably think the best thing to do would be to leave it alone, but the reality is some people have some real concerns. I'd like to know how much it would cost if you bought a full page ad in every major daily? This is such a small amount. I just wonder if



we would be challenged right off the bat. If we gave them a big enough amount to cover at least one major effort, like some taxpayer or citizen that had the money could take one shot without violating this act, if we're going to leave it in. **SEN. THOMAS** It costs about \$10,000.

**REP. DENNY** I think that points out a problem with the whole bill. For example: We limit state representative candidate expenditures to \$10,000 when they might be in a media market that is more expensive than one across the state, even though the districts are similar. I understand that there is concern not only that the limits are too low, but that trying to track individuals making independent expenditures is probably going to prove to be very difficult to enforce as well as potentially toxic. At the same time, I feel the limits on political committee expenditures should probably remain in the bill. Personally, I don't have a problem with creating a schedule like the laws for candidates for the independent committees as **SEN. BROOKE** suggested yesterday in the committee. You'll recall **REP. MATT BRAINARD** said he wasn't wedded to the flat amounts of \$500 or \$250 in the first place. If I were an individual walking door to door for a candidate for example, there are only so many doors I could knock on and that is really the physical limit of my free speech. But, if we're going to define money as free speech, just because I have more money, do I get more free speech. I think that's the point of the bill and that's why the amendment was offered by **REP. BRAINARD**. I kind of concur with what you said. I think we could segregate this into two different parts and pitch one and create a schedule for the other.

**SEN. BROOKE** I'm not very supportive of doing that and I've got a few reasons. One, that as the bill came to us in the Senate and was amended in a few places, it tried to address a specific thing with regard to what a candidate could spend. If we branch out into independent expenditures, I think we are really getting into another field that is fairly murky and hard to control at this point in time. I don't say that we don't need to be able to control independent expenditures and what can be given, but in this form it almost seems like it's not very easily done to just tack it into this bill. We have trouble with the Political Practices Commissioner having the ability to create rules around this and I think there needs to be rules. If we amend it with another figure rather than \$500, if we had \$10,000 say, I think that would draw more people to create independent expenditures. It would be an attractive way of funding campaigns for people who perhaps might not have otherwise done that.

*{Tape: 1; Side: A; Approx. Time Count: 8:08; Comments: Reconvened at 8:00 a.m.}*

*{Tape: 1; Side: B; Approx. Time Count: 00; Comments: None.}*

**CHAIRMAN MESAROS** We're expanding into an area that certainly needs review. When we heard this in the Senate State

Administration Committee, we felt at that time we should stay within the original intent of the bill and that separate schedules relative to independent expenditures should probably be pursued independently on another piece of legislation. I would support deleting that portion from this bill at this time.

**REP. DENNY** I have a concern when we get into election law like this and start talking about spending and contribution limits, etc. You'll recall earlier in the session we had HB 575. That was brought about because of some problems that were recognized with Initiative I-125. That's where we said: "A certain group of people are limited on what they can spend, but you other people, you can do whatever you want." I think if we were to pass this bill without some sort of control on independent expenditures, I think we would see more independent expenditures because they would be unlimited. Frankly, if we're going to limit the spending of individuals running for office, we should also nip the independent expenditures in the bud.

**SEN. THOMAS** Steve would like to comment on that. **Mr. Bullock (SOS)** First of all, I probably agree that it would be cleaner if we waited until like next session to deal with independent expenditures. Only in as much as there's not a real history in Montana of independent expenditure campaigns at the state level. We haven't seen that much of it. I looked at what would be the cleanest legal challenge, the cleanest bill, and where does political reality settle out. If political reality settle outs that the only way that we can get this bill through the House and the Senate, is to have either language as it is in there right now, or language more extensive setting up a tiered system. I'm sure the Secretary and Senator Bartlett would say, "Let's put something in on independent expenditures if that is what we need. That's not our first choice, but if that's what it's going to take to get this bill out, I think that we should have it in there."

**REP. HARPER** May I suggest a compromise. **SEN. THOMAS** who has run statewide campaigns says \$10,000. That happens to be the same number as for a state representative. Could we raise that \$500 limit to \$10,000? Some people would argue that is arbitrarily low, but still high enough for someone to make a splash and call it good. I'm concerned about a schedule that tracks everything because then we sort of set targets. If we're going to set a target for an independent limit, I'd like to set it lower, rather than higher. We probably wouldn't be faced with this problem then until some independent committee spent more than \$10,000 in the state. I think it's fair to put a limit on independent expenditures if we put a limit on the candidates.

**REP. DENNY** I think that would probably be workable if we distinguish between statewide races and non statewide races. We have different levels of spending for equivalent territory offices in the bill. I had some concerns about that on the floor and the committee. The attorney general can spend \$160 but OPI

can only spend \$100 and they both have to go after the same number of votes. We should probably have at least two tiers, or as **SEN. BROOKE** suggested and withdrew today, a schedule by race. I don't think that would be too hard to come up with. It could be a percentage of what the candidate can spend. But I do agree with you mostly.

**SEN. BROOKE** Just to clarify what you're talking about is taking this language and really expanding it but still not putting any rulemaking or anymore definitive language other than perhaps a schedule or list expenditures. **REP. DENNY** Not necessarily, as long as we address a difference between statewide races and non-statewide races. Perhaps a \$1,000 limit for non statewide races and \$10,000 for statewide. Then a change to the Statement of Intent would be appropriate because the Commissioner would have to add a column to the pack report as a means of totalling those kinds of expenditures but that should be relatively simple.

**CHAIRMAN MESAROS** What you are proposing is \$10,000 statewide and \$1,000 non statewide? **REP. DENNY** I think perhaps we might have some discussion on \$1,000. I don't know if that's too high for a House race. From my own perspective, I've only run in the House district. \$1,000 is a heck of a lot of money and I know there is some danger of say five different independent expenditure committees getting together and wiping someone out. I think it would be appropriate to up it from \$500 because we also have the PSC races which are districts and district court races, etc.

**CHAIRMAN MESAROS** I guess in my view, you're strengthening my argument where it is difficult to arrive at a schedule at this time without comprehensive review. To expand on this issue which was just added on in an amendment to this bill, maybe \$1,000 is too high for a House race but for a Senate race it's different.

**REP. DENNY** I agree, and that's like I said before, these limits in the bill already are somewhat arbitrary along those lines. I know there was some research that was done on how much aggregate spending happened in the past. I think a \$1,000 is the right amount, regardless of what the race, and I think that if we're going to do something like this we're going to have to change the nature of this particular conference committee. That might afford us some time to look into that.

*{Tape: 1; Side: B; Approx. Time Count: 8:12; Comments: None.}*

**REP. HARPER** Maybe we should probably pass it over, but I think it will be necessary to get the House to accept it. **REP. DENNY's** idea is workable and we should say something like this: "independent expenditures may not exceed a total of \$10,000, or 10% of the combined amount of the limits in section 3." That would put the \$10,000 limit statewide, \$1,000 for a House race, \$2,000 for a Senate race, etc., with a \$10,000 cap. I guess that would be a more balanced approach and I really wouldn't have a problem with that. **SEN. THOMAS** 10% of \$10,000 or which ever is

less? **SEN. HARPER** Yes, which ever is less.

**SEN. BROOKE** This bill also addresses if there are violations of the spending limits. Since you want to include an independent expenditure, are we going to then have penalties attached?

**Mr. Bullock (SOS)** Right now there's nothing in the law that would go after the independent expenditure campaign and one of the problems with the amendment as it is so instead of \$500 limit or a \$15,000 limit, or what ever it might be, I go out and spend \$100,000, yet there's nothing in the way the bill is currently written. The Commissioner doesn't even have the rulemaking authority to try to set those penalties. I propose that a simple amendment to take care of that problem would be something to the affect that if a person or a committee exceeds the expenditure limitation, the Commissioner shall impose a civil penalty of three times the excess or five times the excess of expenditure. In that way you would have set what the Commissioner can impose. It's a civil penalty and that would be against the independent committee. That would take care of anybody's concerns that you have a provision in here without teeth.

**REP. HARPER** I suggest that we add that on page 6, section 3, to the penalty section where we would say "a candidate or an independent committee who exceeds the aggregate expenditure limits provided in running for office or opposing or supporting a candidate" would just be included in that same penalty. I also had a rules amendment for the Commissioner on the front page. First to allow the Commissioner of Political Practices to adopt rules to implement this act and rules to adjust the campaign expenditure limits.

**CHAIRMAN MESAROS** As far as going into the rules section of this bill, that would be outside the scope of this Conference Committee's responsibility. **SEN. HARPER** I know that people have become stricter with these Conference Committees and in the "good old days" when we knew we had to have a Free Conference Committee, we would just discuss them and then we'd finally make the motion, even prepare a committee report. I'm not suggesting we do that but that we could discuss it, have it already to go, make the motion, and then appoint a Free Conference Committee to make it all legal. You, as the Chair, if you would allow us to discuss these things, there's certainly no violation of trust here.

**CHAIRMAN MESAROS** We can discuss them but we cannot act beyond the scope of a Conference Committee. We are on a time line that is quite tight and it may be difficult to take this and switch to a Free Conference Committee and come back to meet. **REP. DENNY** I agree with that, however, like I said before, I still need some rumination on those limits; discuss those with the other member of the Conference Committee just to make sure it's in line with his desire.

**SEN. BROOKE** I'd like to go back to address the penalties idea if the House is serious about trying to have something that would have some teeth in it and if we do open this up to a Free Conference Committee. One of the questions that I have, in some cases, there are situations where the penalty is much cheaper than what's at stake for a particular independent expenditure campaign. I don't know if this has been well thought out either. You can have some pretty deep pockets who want to influence an election and they're willing at any price to put in the money and if they go over those expenditures, so be it! They'll pay the fine. I don't know if there is any real well thought out way, which goes back to my original concern about tacking this in at this time of the session and how much thought has been given putting something in place that doesn't look at all ramifications of what we're trying to do. **REP. DENNY** That could be a concern and that's exactly why we brought forward the amendment to limit their expenditures. Obviously we can't hold the candidate responsible for violations if they're truly independent. Amending the bill so that they have to pay the penalties and the publicity that would go along with such violations would be a sufficient deterrent. If not, in the end they wouldn't be helping their cause at all by such blatant violations. Especially if the limits are as generous as we have so far proposed.

*{Tape: 1; Side: B; Approx. Time Count: 8:21; Comments: None.}*

**CHAIRMAN MESAROS** We need to try and move this along to bring some resolution to this issue. The discussion focusing around independent expenditures, whether we want to expand it and redefine that in the amounts through various campaigns? That's a question within the confines of this Conference Committee.

**SEN. THOMAS** I recommend we go to motions and vote on what has been proposed.

**CHAIRMAN MESAROS** There have been various ideas discussed and just to move it along we need to address this issue at this time. Is there any suggested language to put in the form of a motion or are you prepared to do that at this time? **REP. HARPER** I agree with **SEN. BROOKE** to leave the whole thing out, but secondly, if the House is going to insist that it be in, I think that **REP. DENNY** has a reasonable compromise and I support that as a way to bring the bill loose. I think it's reasonable and as long as the severability clause stays in the bill.

**SEN. BROOKE** Are we to review and recommend action on each of these amendments? Perhaps we could come to a certain level of consensus on everything other than this one, and if you're serious about trying to fix this, I would like to see the language in writing before I vote on it.

**CHAIRMAN MESAROS** We don't have to bring a resolution to this one particular amendment at this time. This is the one we were discussing and this was the one I was trying to focus on. There

are other amendments within the confines of this Conference Committee surely that we can review and we can proceed on to those areas and come back to this one if you wish. **SEN. BROOKE** Just to follow-up on that, it seems to me that this is the sticky one and I don't know if the other ones will be too difficult to come to some consensus on.

**CHAIRMAN MESAROS** This is the one that struck me to have the highest level of concern and this one I thought would need the most review in my estimation. But certainly the duties of a Conference Committee are to review the amendments rejected by the one house.

**Motion/Vote:** **SEN. THOMAS MOVES TO STRIKE THE LANGUAGE REFERENCED IN THE TOP OF PAGE 5, SECTION (B), LINES 2, 3 AND 4; IN ITS ENTIRETY; LANGUAGE IN REFERENCE TO INDEPENDENT EXPENDITURES. THE MOTION FAILED WITH REP. DENNY VOTING NO AND REP. GRINDE VOTING NO BY PROXY.**

**Questions From Committee Members and Responses:**

**SEN. HARPER** **SEN. THOMAS's** motion is a legitimate motion for a Conference Committee because it involves one of the amendments. However, if there was an agreement about some areas that require a Free Conference Committee, maybe we could treat those like an informal motion. Then Shari Heffelfinger could prepare it so we can look at it later and we wouldn't have to replot this ground for **REP. GRINDE**.

**CHAIRMAN MESAROS** I've indicated that any discussions can be noted but this is a Conference Committee and it would be my belief we would have to have it dissolved and have a Free Conference Committee appointed. At that time there would be some preliminary work done so that we could come back in as a Free Conference Committee. Certainly we need to go through the motions to do that.

**REP. DENNY** I just want it indicated that there's a section in this title that deals with expenditures or contributions over and above the limits that are in the title. **Mr. Bullock (SOS)** It says "any person who intentionally or negligently violates any of the reporting provisions of this chapter, shall be liable in a civil action brought by the Commissioner or County Attorney, pursuant to the provisions outlined for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures which ever is greater." **REP. DENNY** That says reporting requirements. Is an expenditure limit a reporting requirement or an expenditure limit? **Mr. Bullock (SOS)** I would think you would have to report out even today, all of the contributions you receive AND your expenditures. **REP. DENNY** If I spend \$30,000 on an independent expenditure campaign, in violation of the limits, when I report that, I'm not in violation of the statute?

**REP. HARPER** I think **REP. DENNY's** suggestion is probably a good idea and we should go with a Free Conference Committee as a compromise.

**CHAIRMAN MESAROS** That would be to modify the language on the top of page 5 which is within our context at this time, but also go into the penalty sections? **REP. HARPER** Yes, because I think **REP. DENNY** thinks that we have to be clear, although probably rulemaking authority to the Commissioner would be sufficient to make sure that reporting violations included collecting too much money. **Ms. Heffelfinger (LSD)** If you need to expand rulemaking authority or desire to do that in a motion, you don't have to put it in the Statement of Intent. You can put it in the statute. You wouldn't have to get hung-up on whether you're a Conference or Free Conference Committee.

**CHAIRMAN MESAROS** Correct me if I'm wrong but we'd be going into the rulemaking portion of this bill? **Ms. Heffelfinger (LSD)** You could place the rulemaking authority within that subsection (B) language at the top of page 5 and rather than expanding rulemaking authority to the entire bill, you just say "the Commissioner shall adopt rules to implement this subsection."

**CHAIRMAN MESAROS** I'm toying with the idea if we need to go to a Free Conference Committee or can we handle it in a Conference Committee. If it's at all possible, I would like to address our concerns within this Conference Committee at this time because of the scheduling difficulties ahead.

**SEN. BROOKE** If possible, we can stick to this one amendment if we put the rulemaking authority in this amendment and give the Commissioner the tools to attach penalties. We need to have clear penalties and whether those penalties mean anything, I still say with my original skepticism. **REP. DENNY** I think we would have to go into the body of the bill as far as the penalties are concerned.

*{Tape: 1; Side: B; Approx. Time Count: 8:38; Comments: End of Tape 1.}*

*{Tape: 2; Side: A; Approx. Time Count: 8:39; Comments: None.}*

**CHAIRMAN MESAROS** Is there further interest in modification language to address this concern? **REP. HARPER** I would propose that any amendment include rulemaking ability in this disputed section and I think that's a decent compromise. **REP. DENNY** It seem's to me the best way to do this would be as **REP. HARPER** suggested earlier and go to the penalty section and insert on line 25, candidate or independent expenditure committee and whatever the official term is to who accedes the aggregate expenditure limits, etc., so they are penalized in a similar way of the candidates.

**CHAIRMAN MESAROS** There again, if we go to that section of the bill, we're going to have to dissolve this committee and go into a Free Conference Committee. **REP. DENNY** I understand that but I think that's the best way to address the problem.

**SEN. THOMAS** Could I get Steve to address this question before us on penalties? **Mr. Bullock** I think in **REP. DENNY's** amendment, if you just put a line in at the end of whatever we're setting the actual limits for, "the independent expenditure limits are reporting requirements for the purposes of enforcement." It's currently the case, independent expenditure and the independent expenditure campaigns have to report with the Commissioner. We already have that in the law. If we have that you exceed that limit, and that limits reporting requirement, it ties back to the code section that **REP. DENNY** and I were speaking about earlier. I wouldn't foresee that the Commissioner would even need additional rulemaking authority, so you could get around expanding the bill.

**CHAIRMAN MESAROS** How would you interject this? It's not quite clear. **REP. HARPER** Put the last sentence on the end of Section 3, subsection (B). The first part would read: (B) "INDEPENDENT EXPENDITURES MAY NOT EXCEED \$10,000 OR 10% OF THE COMBINED ALLOWED LIMITS WHICH EVER IS LESS BY A POLITICAL COMMITTEE ON A PRIMARY OR GENERAL ELECTION CAMPAIGN OR \$250 BY AN INDIVIDUAL."

**CHAIRMAN MESAROS** Then add the suggested language at the end of that. **REP. HARPER** Yes.

#### Discussion:

**REP. DENNY** Again, we have a totally different approach here that the 10% amount is something that is a major decision on this and part of the purpose of this amendment. I understand there is a segregation clause in this bill, and I'm concerned that if we treat these independent committees differently as far as punishments etc. from the candidates committees, that might be an argument for striking this particular part of the statute. I feel pretty strongly that we ought to go into the other section of the bill and coordinate it there. **SEN. BROOKE** I don't understand what your concern is about this. You started saying the 10% is not the level it should be? **REP. DENNY** I don't necessarily have a problem with the 10%, I think that's something I need to think about. I know **REP. GRINDE**, unfortunately who is not here, would probably want to examine it at least briefly. But further and probably more important is the idea we're going to treat these committees differently than a candidate committee. This part of the bill, because of the segregation clause in there which I think is pretty important, might be more easily struck down. It may even affect the whole bill as far as the court might be concerned.

**SEN. BROOKE** Going back to the original intent of the bill, we're talking about what a candidate can spend and we're talking now about these independent expenditures. I would prefer we have a



separate bill some other time to deal with this. If we can only do it in this way to get this bill through, I would think that this is as good as it's going to get. **REP. DENNY** With a bill of this magnitude and importance to the political scene of Montana, perhaps it would be best to revisit this whole issue in the next session. I think this is very important and we have to be very careful what we do. The kind of long term affects this may have; whether or not this is going to stand up to judicial scrutiny; and, what we can do to improve the chances of that happening. It's unfortunate this bill came out of committee as late as it did in the session. Now we're sitting here with a HORRIBLE time crunch and yet we're being asked to make decisions that are pretty sweeping.

*{Tape: 2; Side: 1; Approx. Time Count: 8:58; Comments: None.}*

**REP. HARPER** It was my hope that we could finally put a bill like this on the books. No one in their wildest dreams thinks that we will pass a bill like this without having to work a few bugs out. But it's also possible that **REP. DENNY's** idea that he came up with, is a great idea and one that will prove workable in most all circumstances. Once again, as long as that severability clause is in there, this may be the compromise that breaks this bill loose and allows the state of Montana to enjoy the benefits of a bill like this. I'd rather put this in for a test run when we don't have all the big offices up. Once again, if this legislature passes this legislation, we're going to get credit for some of the most beneficial sweeping changes that this state has ever made to campaign laws. I can't see how this could do anything but bolster the image that this legislature seems to be slipping away from in these last few days. I really HOPE we can do something **THIS** time.

**CHAIRMAN MESAROS** My only comment is, this bill originated in the Senate, passed to the House, it was amended in the House, passed the House and back to the Senate. There were some questions on amendments, so it was referred to this Conference Committee to work out the details. Whether or not any individual at this table supports or doesn't support this bill, I think we need to work with that in mind and try to bring some resolution, if possible, to that degree.

**SEN. THOMAS** I think it should be taken out. Although there isn't a motion with the \$10,000 and the 10%, I say it's a very reasonable compromise.

**SEN. BROOKE** **REP. DENNY** has expressed a desire to have **REP. GRINDE** review the language and I would like to have other people review it as well, so I don't know if we can get any further on this at this point. I think we could spend some time taking that language and reviewing it with some people and coming back at another time and see where we are and making sure that perhaps it's cleaned up a bit.

**CHAIRMAN MESAROS** The Chair certainly wants to act when all members are comfortable in discussing and voting on the issues at hand and I'll certainly take that into consideration. Is there other portions of the amendments within the confines of this Conference Committee you wish to address or discuss.

**Discussion:**

**REP. DENNY** First of all I'd like to make it clear for the record that this bill got wide bipartisan support in the House and including my own and I still support the bill. I just feel it needs some fine tuning. There was some discussion yesterday, a Senate amendment that struck in the House on page 6, line 7 through 10, and I believe it was you **MR. CHAIRMAN** that suggested that perhaps there was a way to change this amendment as well so that it addressed the concern of not having an opponent. Perhaps we want to revisit that and we could certainly discuss it now.

**CHAIRMAN MESAROS** I believe the rationale for that amendment was that when a candidate has a contested primary and noncontested general, it should apply regardless if it's legislative or at a state level to make it consistent.

**REP. HARPER** I have two words written after the stricken language and that's "provided that". I sort of lost the thought but I think it was provided that they face no other opponent in the general election. Whether it was a write-in or whatever.

**REP. DENNY** There was some discussion of the difference between a major candidate and a third party candidate. Perhaps provided that there is no other major party, I don't know if that's defined in statute however. Perhaps staff knows. **Ms. Heffelfinger** No.

**SEN. THOMAS** I wouldn't encourage us to define a major party. I understand why we would think that but we don't know what's out there and what might come along. **REP. DENNY** What about write-ins? Do you feel the same way about that? **SEN. THOMAS** Some write-ins are dead serious, most aren't. **REP. DENNY** In the case of a legislative race, where you see more write-in candidates, they already have their limits combined into one in the bill. I don't recall for the statewide races it's been extremely rare that there's been a serious write-in candidate who was able to challenge a major party candidate. For a small amount of money you can stop or you can file a write-in candidate in a statewide race and stop this provision from being effective.

**REP. HARPER** I suggest we say "that provided that no opposing candidate's name appears on the ballot." **SEN. BROOKE** I think that just looking at the intent of the bill, it is to keep spending down and that there's a short time frame from the filing deadline to the June primary. If you combine those spending limits in that particular time frame, that's a lot of money to be spending over the course of April and May essentially. Is that

what we're talking about, combining the two? We're looking at how much for a governor's race, so that would be \$500,000 each month?

**REP. DENNY** If we were to leave in my amendment on lines 14 through 16, which allows a candidate whatever spending authority they didn't use in their primary could be used in their general. I think if we could work out something that would make those two sections consistent, we're going to keep one of them. It's not a terribly important thing, I just think for the purpose of the statutes being consistent.

**REP. HARPER** I think they would work together. The way we are talking about amending the currently stricken section, it's something that will very seldom, if ever, come into play in this state. If it ever gets to the point where a major, or an independent or a libertarian party can't fill the candidate, then this is an exception that is not going upset the apple cart. It could have possibly happened in the Governor's race this time. People thought there was no sense in beating Marc Racicot, let's field Natelson or something like that. In that case, Mr. Natelson would have wanted to spend a million dollars to try to make his niche. But this will probably seldom if every be used. If the situation does arise, then we would have had the foresight to allow this possibility. I think it works well with your amendment, Matt.

**CHAIRMAN MESAROS** I think that the two sections can work together with some minor modifications in language. Are there any other amendments that we should review at this time.? If not, I would highly suggest that anyone wishing to make modifications, to pursue those amendments, have them prepared, drafted and ready to go. Not knowing the schedule of today, which in these final days are very, very hectic, it is very difficult schedule a committee meeting. I'm doing my best to try to jockey schedules and anticipate agendas. It is my intention to recess, subject to call of the Chair, and hopefully at the call of the Chair when we reconvene later today, we will be prepared to address this.

*{Tape: 2; Side: 1; Approx. Time Count: 9:13; Comments: None.}*

**REP. DENNY** Perhaps it would help the process, if we dissolve the committee and ask the President and the Speaker to form a Free Conference Committee so we can get beyond my particular problem.

**CHAIRMAN MESAROS** Is that agreeable with the committee? **SEN. BROOKE** I guess I need clarification. Are we going to tinker with more than what has been discussed when we open it up? **REP. DENNY** I have no plans at this time to do any tinkering. I don't know if any other members of the committee do? **SEN. BROOKE** The reason why I question that is because that I do know that the bill was passed over to the House at the end of February and was tabled in the House State Administration Committee and I'm not sure what the future is for this bill? I know it got bipartisan

support when it got out of the committee, but I would hope that we would just stay within the areas of the independent expenditures and the uncontested general race.

**REP. HARPER** It's a point of caution that probably needs to be noted. If the House balks at appointing a Free Conference Committee, maybe we can still meet as a Conference Committee and make these changes as we have talked about. It would be most pleasing if could hammer this bill out.

**REP. DENNY** Your comments bring one thing to mind. There are limits in the bill on the statewide offices that differ between Attorney General and OPI. It seems to me, that since those offices both require the same number of votes, why do they have different spending limits? That's just something that perhaps if we're going to have a Free Conference Committee, we might want to look at. **SEN. THOMAS** If we do go to a Free Conference Committee, it is just that. So, we could have somebody else come in and they could amend this bill.

**CHAIRMAN MESAROS** I want to remind everyone as Chair, that once you dissolve a Conference Committee and establish a Free Conference Committee, the whole bill can be reviewed. There is no major interest at this point in time from those present to do that but you never know. Is there a motion to dissolve the Conference Committee and to establish a Free Conference Committee?

**REP. HARPER** I want it to be understood that I think we can accomplish what we need to accomplish under the constraints of a regular Conference Committee but, I just want to keep this bill moving and that if it would please **REP. DENNY** and **REP. GRINDE**, I will certainly accede to that request.

**Motion/Vote:** **REP. HARPER MOVED TO DISSOLVE THE CONFERENCE COMMITTEE AND APPOINT A FREE CONFERENCE COMMITTEE ON SB 367. MOTION CARRIED UNANIMOUSLY.**

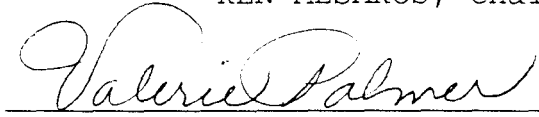
**CHAIRMAN MESAROS** I want the committee to understand that I'm doing everything I can to keep this bill moving. It's very difficult as chairman, at this point in the session for scheduling. We will try to reschedule sometime today if the motions are successful. I would encourage the members to review what we've discussed and have amendments drafted to our concerns. Hopefully, we won't spend a lot of time plowing new ground and we'll act on those areas we've discussed.

ADJOURNMENT

Adjournment: 9:20 a.m.



KEN MESAROS, Chairman



VALERIE PALMER, Secretary

KM/VP