

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN DON HARGROVE**, on January 8, 1997, at 10:00 a.m., in Room 331.

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 13 12/30/96, SB 22
12/30/96, SB 24 12/30/96
Executive Action: SB 13 DO PASS, SB 22 TABLE,
SB 24 DO PASS

HEARING ON SB 13

Sponsor: SEN. J.D. LYNCH, SD 19, BUTTE

Proponents: Debra Fulton, Administrator
General Services Division
Montana Department of Administration

Opponents: John Kuglin, Bureau Chief
The Associated Press

Jim Fall, Executive Director
Montana Newspaper Association

Opening Statement by Sponsor:

SEN. J.D. LYNCH, SD 19, BUTTE explained that SB 13 is an attempt to revise some antiquated laws regarding space allocation in the Capitol. He referred to the restoration of the Capitol building presently underway and indicated that, while it is important the integrity and control of the Legislative rooms are maintained, some spaces have to be taken away. He pointed out that the controversial issue in SB 13 is that the press room on the third floor will be reallocated.

SEN. LYNCH reported that current statute requires a press room be provided on the third floor, free of charge, adding that this should be changed so that they do not discriminate against the electronic media who are currently paying rent for rooms in the basement. He indicated that this bill makes sense, and he hoped the Committee would concur with the Legislative Council and the Department of Administration that SB 13 should be passed intact.

Proponents' Testimony:

Debra Fulton, Administrator, General Services Division, Montana Department of Administration. She read written testimony which is included as (EXHIBIT 1) to these minutes.

{Tape: 1; Side: A; Approx. Time: 10:13 a.m.; Comments: None.}

Opponents' Testimony:

John Kuglin, Montana Bureau Chief, Associated Press. He read written testimony which is included as (EXHIBIT 2 AND 2A) to these minutes.

James R. Fall, Executive Director, Montana Newspaper Association. He read written testimony which is included as (EXHIBIT 3 AND 3A) to these minutes.

Questions From Committee Members and Responses:

VICE CHAIRMAN KEN MESAROS asked **Ms. Fulton** if, in the proposed plan for renovation of the Capitol, there are indications of moving the press room to a lower level.

Ms. Fulton replied there is currently no space allocated for this purpose, adding that there are no plans to move the television people, but they have not gotten into those details in the basement. She noted that there has been discussion regarding space being allocated on the fourth floor for the press, but that decision will have to be made by the Senate. She indicated that, if directed to find space for the press, they would do so, but they did not want this locked into law so that State departments or Legislative staff have to move out of the building to accommodate other uses. She then stated that currently there is

no set place, but that there is no room on the third floor for a press room.

SEN. VIVIAN BROOKE remarked that, fifty years ago, technology was not what it is today, and asked **Mr. Fall** if most of his colleagues have laptop computers, noting that the print media could be a lot more portable now than they were fifty years ago.

Mr. Fall responded that is true to a certain extent, but that their first line of business is the first-hand coverage of the business of government, and that they are here on a one-to-one basis as that coverage requires. He added that they could operate somewhere else, but that it is a convenience to the media as well as the Legislators that they be located on the third floor of the Capitol, especially during Legislative sessions.

SEN. FRED THOMAS asked **Mr. Kuglin** if the press has always had access to the floor of the two houses, or if that is something that developed over time.

Mr. Kuglin responded that they had access thirty years ago.

SEN. THOMAS asked **SEN. LYNCH** if he could provide any further historical aspect.

SEN. LYNCH responded that he did not go back much further himself.

SEN. DELWYN GAGE asked **Mr. Fall** why some of the newspapers take off on a tirade for or against an issue if they are interested in giving clear, concise and total information to the public.

Mr. Fall responded that there is a separation of the news and an editorial stance, that they are distinct and apart, although they come out in the same publication. He indicated that the reporting of news is done with reporters in the sessions and committee hearings to provide a clear and concise report of the facts, noting that they do not always do that as well as they should.

SEN. GAGE further asked **Mr. Fall** if he would anticipate the other media requesting space on the third floor of the Capitol, noting that would cause real difficulties with the limited available space.

Mr. Fall explained that he could not speak to what their space requirements might be, that apparently they are paying rent on space now but that he did not know the situation and could not answer that question.

SEN. BILL WILSON noted that SB 13 would be effective upon passage and approval and asked **Ms. Fulton** if the media would have to vacate the space immediately.

Ms. Fulton responded that the Capitol renovation is based on a comprehensive overview, space analysis and facility design, and that nothing would change immediately. She explained that they are seeking additional funding in this session, that they do not have the funding to make these changes at this point. She added that nothing would happen immediately and no space changes will be made unless the program is adopted by this session.

{Tape: 1; Side: A; Approx. Time: 10:29 a.m.; Comments: End of Tape 1, Side A}

SEN. WILSON asked **SEN. LYNCH** if he knew what the telephone situation is for room 329.

SEN. LYNCH responded that he has not had the opportunity to research their phone bills but that he could look it up.

SEN. GAGE asked **Ms. Fulton** if the Department had received any requests from the TV or radio people for additional space on the third floor of the Capitol.

Ms. Fulton responded they have not, but that it is a concern, and that one reason they do not charge rent is they would feel an obligation to try to crowd everyone in there. She added that if requests were made, the Department would not know what to do since it is not clear as to which media is supposed to be on the third floor. She explained that if they have the ability to provide space, and the demand is greater than the space available, they could go to a competitive process based on willingness to locate in the available space and pay rent. She added that the current press room causes difficulty in that regard.

SEN. BROOKE asked **Ms. Fulton** if it is because the Legislative Council is made up of all men that it was decided this would be a male restroom.

Ms. Fulton responded that, in fact, it would involve enlarging the women's restroom as well as adding a men's restroom.

SEN. GAGE apologized for being late to the hearing and asked if there was any testimony from either the television or radio media, and if there were any representatives of those media present.

CHAIRMAN HARGROVE responded there had been no testimony from either.

Paul Bergen, Capitol Correspondent, Montana Television Network responded that they did not really like being stuck down in the basement, that they would like to be located on the third floor, but they can accept the fact that the press were there first and that, as long as they are located in the Capitol, they are happy.

SEN. GAGE asked **Mr. Bergen** if he is a neutral party. **Mr. Bergen** responded yes, that they stand neither in support nor in opposition.

CHAIRMAN HARGROVE indicated that he was not sure he understood everything in Section 3, paragraph 2-17-108 regarding the stricken portion "shall continue to occupy and control the rooms", that he assumed the added portions were intended to replace that, and asked **Ms. Fulton** what was meant by an inventory of rooms and offices, if it meant an inventory of the space or an inventory of the items in the rooms.

Ms. Fulton responded it is intended as an inventory of the space.

CHAIRMAN HARGROVE then asked **Ms. Fulton** what she envisioned as "consent of the Legislature".

Ms. Fulton noted there may be an issue with this language as it says consent would be the permission of the Speaker of the House, the Minority Leader, the President of the Senate and the Minority Leader of the Senate, and that whether or not that would be unanimous consent might be debatable from this language, but that is what was anticipated by this. She indicated that the Legislative leadership would be authorized to speak in space allocation decisions.

SEN. LYNCH reported that consent of the Legislature means a Joint Resolution of both houses, not the leadership; that it would require a joint resolution of both houses to reduce space.

CHAIRMAN HARGROVE then asked **Ms. Fulton** what is envisioned by control of the rooms, if it means keys, a written document, or what, noting that it says "the control of the rooms and offices may not be changed."

Ms. Fulton responded that, currently, space is allocated for use by the Legislature but that the Department does not determine how that space is used.

CHAIRMAN HARGROVE indicated that paragraph was not entirely clear and asked **Ms. Fulton** if she would consider an amendment to make it more clear. She responded that they would work with **Mr. Greg Petesch, Legal Director, Legislative Services Division** on an amendment.

SEN. WILSON asked **Ms. Fulton** if the issue is the third floor and that particular room, or if the press room could be relocated in the Capitol, and further asked if the language could be changed from "may" to "shall provide space in the Capitol".

Ms. Fulton responded she did not know, that he would have to ask the press. She then stated that the Department is not opposed to changing it to "shall" if that would make it easier, adding that they are just trying to maintain flexibility.

SEN. WILSON then asked Mr. Fall if it would be such a big issue if the language were changed to say "shall".

Mr. Fall responded that space is what they are looking for and that changing it to "shall", without reference to the third floor would certainly be more palatable than "may".

Closing by Sponsor:

SEN. LYNCH indicated that the Legislative Council is not trying to pick a fight with the press, but that times have changed and this makes sense. He cautioned the Committee not to change the language regarding consent of the Legislature, noting that it has been expanded to make certain it is bipartisan and would include the minority as well as the majority, and that responsible elected leadership will make the determination. He stated that changing the word "may" to "shall" would create a problem in that the electronic media would maintain it should include them, adding that the Legislature would make every effort to find room for the press. He indicated that this bill is common sense, that he respects the press but it is his duty as Chairman of the Legislative Council to propose this bill intact. SEN. LYNCH further cautioned the Committee not to amend the bill without first consulting with Mr. Petesch, noting that this is the way it should be and he would hope it would meet with the Committee's approval.

CHAIRMAN HARGROVE closed the hearing on SB 13 and opened the hearing on SB 22.

{Tape: 1; Side: B; Approx. Time: 10:40 a.m.; Comments: None.}

HEARING ON SB 22

SPONSOR: SEN. RIC HOLDEN, SD 1, GLENDIVE

PROPOSERS: Laurie Koutnik, Executive Director
Christian Coalition of Montana

OPPOSERS: Brad Martin, Director
Montana Democratic Party

Michael Fellows, State Chair
Montana Libertarian Party

INFORMATIONAL

TESTIMONY: Ed Argenbright, Commissioner of Political
Practices

Opening Statement by Sponsor:

SEN. RIC HOLDEN, SD 1, Glendive, stated that SB 22 deals with campaign reform legislation. He indicated that people find a

certain amount of disgust in negative campaigning and SB 22 attempts to take a notch away from negative campaigning in the future, adding that it seems the media focuses a lot of attention on negative campaigning, which takes away from what candidates are trying to present on issues.

He stated that SB 22 addresses one small part of campaigning. He pointed out that NEW SECTION Section 1, Subsection (1) of the bill states "A person, other than a candidate, or a political committee may not distribute campaign literature regarding a candidate" unless first that person has knowledge of what is going to be distributed, adding that you only have to give that person one day. He indicated that Subsection (2), line 28, describes campaign literature as a direct mailing, a poster or handbill that is delivered door-to-door, noting that this does not limit what can be said, that there are no freedom of speech impairments in the bill and, aside from slander or other infractions of the law, a person can say anything they like but they have to give the other candidate a copy of what is being distributed so that person can read it and have a chance to respond, or at least know what is being said about him.

{Tape: 1; Side: B; Approx. Time: 10:45 a.m.; Comments: None.}

Proponents' Testimony:

Laurie Koutnik, Christian Coalition of Montana stated that she supports SB 22. She indicated that the people of Montana do not appreciate negative campaigning; that they want candidates to address the issues so they may make up their minds with the candidates' views in mind when they go to the polls. She reported that this past election cycle was one of the worst on record, noting that Governor Racicot admonished the candidates to clean up their act, and in some cases voting records were distorted to the point where some candidates lost their bid for election.

She indicated that people need to adhere to the law and uphold ethical practices, that the electorate wants ethical people representing them and believe that the candidates want to win because of their positions on the issues, not distortions of facts.

Ms. Koutnik pointed out that some points in the bill need clarification so as not to cross the line of restricting First Amendment rights to free speech. She noted that we must not discourage public participation in the political process, and preserve the right to speak out on candidates and issues without fear of legal repercussions.

She stated that the Christian Coalition distributes nonpartisan voter guides on issues of importance to their members and that the candidates' positions are from responses to surveys, voting records, and verifiable public statements. She reported the

voter guides are distributed by direct mail and through churches prior to the election, adding that they do not endorse candidates, but provide a service to their members.

She referred to NEW SECTION Section 1, line 23, and asked if "political committee" would be defined as a political party, political campaign, the Christian Coalition or the AFL-CIO, noting it is a broad term. She added that clarification is needed regarding campaign literature and asked if "pamphlet" or other words should be included, and if it would be okay to leave a pamphlet on a doorstep, but not a handbill. She then related a case argued successfully in the Supreme Court following the 1992 Presidential Election, in which the national party filed suit because a citizen had failed to put a disclaimer on literature which was distributed, and Supreme Court found in the citizen's favor, stating that a person has a right to distribute information on a candidate's position, as long as that information is accurate. **Ms. Koutnik** indicated she wanted to be sure that this bill would not be abridging on the First Amendment right to free speech. She then pointed out that, in the Olympic Park bombing incident, the media were not made to submit a copy of their stories to Mr. Jewel or his attorneys beforehand.

She closed by asking the Committee to please keep the concerns of the First Amendment, of public participation and the rights of the public to know in mind. She handed out copies of materials the Christian Coalition distributes as voter guides, and which are attached as (EXHIBITS 4 and 5.)

Informational Testimony:

Ed Argenbright, Commissioner of Political Practices, stated that this bill deals with an issue of concern, but that he is not taking a position either for or against it. He referred to the enforcement aspect, pointing out that the one-day notification period and the definition of campaign literature might be questions he could see as troublesome in dealing with this statute, were it to be enacted. He added that his office did not have the resources to keep track of notifications, and that a good deal of investigation could be involved. He noted that enforcement would certainly be a complaint-driven process.

{Tape: 1; Side: B; Approx. Time: 10:53 a.m.; Comments: End of Tape 1, Side B.}

Opponents' Testimony:

Brad Martin, Director, Montana Democratic Party, stated that he is a very, very gentle opponent. He indicated that he understands the good intentions behind this bill, but that there are some difficulties with the issue of free speech in this bill.

He remarked that the best law is one that really works, is effective, meets its goals and accomplishes its objectives,

adding that it is very difficult to write that kind of law, particularly in the area of campaigns and the whole concept of notification. He pointed out the areas of concern are that the cure is larger than the problem, and the cure is too small for the problem. He maintained that most people in the political process struggle to represent issues as accurately as they can but, obviously, it rarely meets the standards of those on the other side of the issue. He then pointed out that the bill does not address newspaper ads, or any other kind of media, and that the problem being addressed can not be solved without severe restraints on free speech.

Mr. Martin pointed out there are laws which require those involved in the political process to do things accurately and fairly, and candidates have a right to use those laws. He stated that the risk of free speech is that people make mistakes, and they sometimes speak in terms less than favorable to our own intentions.

He indicated that the final issue is the difficulty in complying without limiting free speech. He pointed out that if a newspaper ad came out on the Sunday before an election, with no prior notice given, and the group representing the candidate did not agree with what the ad said, they can not distribute literature with volunteers on Monday without breaking the law, and they can not send a copy to the candidate by certified mail to respond to that ad.

He reiterated that he did not know how this could be written without limiting free speech and the political process, and indicated that the best way to solve this problem is already being addressed in that this issue is being discussed; candidates and political committees are being asked to run good, strong, clean campaigns. He noted that the best way to reduce the problem is with the vote and with shame, that you tell people they are doing it wrong, and cast your vote for people who run campaigns the way you like it. He added that he empathizes with the sponsors of this bill, but he does not know how to go about making it work.

Michael Fellows, State Chair, Montana Liberation Party stated that he is an opponent to SB 22, that he does not think this bill does what it is intended to do.

Questions From Committee Members and Responses:

VICE CHAIRMAN MESAROS referred to the language on line 23, "a person", which is singular, "or a political committee", and asked **SEN. RIC HOLDEN** if the intent was to identify just these two entities and what would prevent another group from entering this arena, or if "a political committee" and "a person" is everything it is intended to cover.

SEN. HOLDEN responded by asking **Commissioner Argenbright** to give the definition of a political committee as defined in statute.

Commissioner Argenbright stated that the definition of a person in current campaign finance statute is an individual, corporation, association, firm, partnership, cooperative, committee, club, union or other organization or group of individuals or a candidate as defined in subsection (2), and that a political committee means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure to support or oppose.

VICE CHAIRMAN MESAROS referred to lines 28 and 29 and pointed out that campaign literature has been identified as direct mailing, posters or handbills, noting that there has been some question as to the interpretation of handbill. He asked **SEN. HOLDEN** if it was his intent to limit this to just the three areas identified.

SEN. HOLDEN responded that there is no definition of a handbill in statute, and that they may want to amend the bill to insert the word "pamphlet" following the word "handbill". He indicated that the intent was to keep it very narrow focused, and the bill does not address television, newspapers or anything other than those three items as he felt this would become more involved than necessary if they were included.

SEN. WILSON referred to line 23 of the bill, and asked **SEN. HOLDEN** if the references to "a person other than a candidate or a political committee may not distribute campaign literature regarding a candidate unless the person or political committee" means people or groups outside of the political committee or candidate.

SEN. HOLDEN responded that the bill was designed to address political committees and a person who campaigns on behalf of a candidate, separate from a political committee. He noted that the language "other than the candidate" means the candidate can distribute literature after a newspaper article comes out, that this law would not pertain to the candidate and the candidate does not have to give the one-day notice.

SEN. WILSON asked if the term "political committee" belongs on line 24, noting that he stumbles over it every time he reads it.

SEN. HOLDEN indicated that line 23 identifies who the law pertains to, and line 24 confirms who is required to give the one-day notice.

SEN. THOMAS suggested that perhaps **Mr. David Niss, Legislative Services Division**, could straighten this out, that he thinks it is referring to a person other than the candidate, as well as a political committee, which is two entities who need to do the notification, not three. **SEN. HOLDEN** confirmed that this is correct.

SEN. GAGE noted that perhaps it would be clearer if it read "other than a candidate, a person or political committee." He then indicated that he understands the intent, but is not sure the bill will accomplish it. He pointed out that if he were to distribute literature which simply said "Re-elect Senator Holden", but did not send a copy to the opponent, even if it did not hurt anyone but the opponent complained, he would be guilty of a misdemeanor.

SEN. HOLDEN directed **SEN. GAGE's** attention to line 30 and explained that, because this is complaint-driven, it would have to be a big issue with the opponent for him to contact the Commissioner of Political Practices to file a complaint. He added that the Commissioner has to weigh the validity of each complaint and decide if it is something they want to pursue. He added that, in **SEN. GAGE'S** example, obviously it would probably not warrant the litigation involved in a misdemeanor, and things like that would wash out through the Commissioner's office.

SEN. GAGE remarked that he agreed, that it comes under the heading of harassment, and he realizes the Commissioner's office gets a lot of frivolous complaints. He added that his concern is the one-day notice, and how they would determine what is one day.

CHAIRMAN HARGROVE asked **Commissioner Argenbright** to explain what would happen in the case of a clear violation of this law.

Commissioner Argenbright replied that, if the complaint meets all the requirements, they would determine what the alleged violation is, as well as the penalty for that violation, and if there is cause, noting that this is a criminal statute and it would have to have been done knowingly, his office would investigate and issue a statement of the facts and a summary of the findings, which would be sent to the local County Attorney, who would either prosecute or return it to him for prosecution.

CHAIRMAN HARGROVE asked how **Commissioner Argenbright** would prosecute. **Commissioner Argenbright** replied that he would file it in District Court.

SEN. GAGE pointed out that a strict reading of the bill would indicate that if notice was not given, regardless of whether any harm was done to anyone, the law still would have been violated, and asked **Commissioner Argenbright's** opinion.

Commissioner Argenbright responded that he enforces the law as it is written and, if the Legislature saw fit to make this a misdemeanor penalty for failure to notify, then it would be a violation of the law.

{Tape: 2; Side: A; Approx. Time: 11:12 a.m.; Comments: None.}

Closing by Sponsor:

SEN. HOLDEN indicated that, if it is interpreted strictly by law, they would have to look at the criminal statutes as well. He stated that he did not see how posters would enter into it because candidates distribute posters themselves or give them to the campaign staff to distribute, and this bill would not affect anything the candidate does.

He indicated that he expected the issue of freedom of speech to be brought up, but maintained that the bill does not deal with the quality of the information or what is being said, that the First Amendment right to free speech is not dealt with in this bill. He explained that it just says in a good neighborly fashion to give the other guy a copy of what is being distributed, that he thinks people would recognize that and generally agree. He stated that he hoped the Committee would pass SB 22.

CHAIRMAN HARGROVE closed the hearing on SB 22 and opened the hearing on SB 24.

HEARING ON SB 24

Sponsor: SEN. WALTER McNUTT, SD 50, Sidney

Proponents: Brigadier General Gary Hindoin, Assistant Adjutant General, Department of Military Affairs

Roger A. Hagan, Officer and Enlisted Association
of the Montana National Guard

Opponents: None

Informational

Testimony: Lt. Col. McCabe, Judge Advocate

Opening Statement by Sponsor:

SEN. WALTER McNUTT, SD 50, Sidney, stated that SB 24 was being introduced at the request of the Department of Military Affairs to adopt the most recent versions of the Federal Laws, Regulations, Forms, Precedents and Usages, including the Uniform Code of Military Justice, for use by the State of Montana. He explained that this is a housekeeping bill which came about in the 1995 Session as a result of the Supreme Court decision in Lee vs. State of Montana, and helps to define and clarify the Military Court System within the State of Montana.

Proponents' Testimony:

Brigadier General Gary Hindoin, Assistant Adjutant General, Department of Military Affairs stated that SB 24 is an Act to adopt the most recent Uniform Code of Military Justice (UCMJ) and

other Federal laws and regulations of the armed services. He explained that, because of the Supreme Court ruling in Lee vs. State of Montana, they cannot adopt future Federal rules and regulations and must ask each Legislative Session to adopt the current ones. He indicated that an alternative would be for them to write their own, but that would be redundant in that they would be repeating the Federal laws already in effect. He noted that the National Guard recruits members with prior service in other military branches, and it makes sense to use established laws, rules and regulations familiar to all service members. He explained that, simply put, this bill adopts the current Federal laws and regulations, including the UCMJ upon the effective date of this Act, and stated that the Department of Military Affairs urges the Committee to adopt this legislation.

Roger A. Hagan, Officer and Enlisted Association of the Montana National Guard reported that members of the U.S. Air Force and Army are schooled in the requirements of the UCMJ and their responsibilities for that code and, when they return to Montana and operate as the militia of Montana, they need to have a similar uniform code to provide the continuity necessary between Federal active service, which they perform under one mission, and State active service which they perform under other obligations. He urged the Committee's support of the bill. **(EXHIBIT 6)**

Questions From Committee Members and Responses:

SEN. GAGE asked **Brig. Gen. Hindoin** if this would also be presented in the 1999 Session and, further, if there was a method of structuring it to adopt those regulations as they exist, so long as they are not in conflict with the State Constitution, or rules in the Department.

Brig. Gen. Hindoin responded that the Department made the assumption when the Constitution was rewritten in the 70's that this was current but, when the Supreme Court decision was reached, they discovered there had been a lot of changes. He explained that they do adopt all the Federal rules and regulations in accordance with Title 10 of the Montana Code, but they cannot adopt Federal rules and regulations to be passed in the future, and the only way to keep current is to go through this process in order to abide by the Federal rules and regulations.

{Tape: 2; Side: A; Approx. Time: 11:20 a.m.; Comments: End of Tape 2, Side A.}

SEN. GAGE pointed out that legislation often includes the phrase "or as amended", and asked **Brig. Gen. Hindoin** if that would solve the problem.

Brig. Gen. Hindoin explained the Supreme Court's decision in Lee vs. State of Montana which said the State could adopt rules and regulations which existed at the time, but that it is

unconstitutional and an abrogation of State's rights to make the State's rules and regulations subject to whatever the Federal government decides to do in the future. He indicated that he was not sure the phrase "or as amended" would suffice, but that he would have **Mr. Niss** or **Lt. Col. McCabe, Judge Advocate** look at it. He added that it seems redundant to have to come before the Legislature every two years but, based on the information they have received, in order to stay current this is the way it has to be done.

CHAIRMAN HARGROVE asked **Brig. Gen. Hindoin** what has changed in the last two years in the UCMJ.

Brig. Gen. Hindoin displayed a sizable book which he identified as the UCMJ and explained that changes made to the UCMJ normally are a result of an appeal to the Court of Military Appeals. He noted that some of the changes involved sentencing, some new offenses which are punishable under the UCMJ, as well as some pretrial and posttrial administration action. He indicated that, although changes have been limited over the past two years, the Court of Military Appeals may make decisions which set a precedent or make changes and, if they do not keep current, it could affect their enforcement of the Military Rules and Regulations or the use of the UCMJ.

CHAIRMAN HARGROVE asked **Brig. Gen. Hindoin** if he could envision some significant changes being made in the next two years which the Department would not wish to adopt.

Brig. Gen. Hindoin responded that it is unlikely that would happen, adding that in order to run a military operation, this seems to have good order and discipline and that because the rules and regulations apply across the board, it simplifies things for them.

VICE CHAIRMAN MESAROS asked if either **Lt. Col. McCabe** or **Mr. Niss** could explain if there is any way to pass legislation which would eliminate the redundancy every two years.

Lt. Col. McCabe responded that a recommendation from the Legislative Services Division prompted them to do this in 1995. He indicated that the language in the Supreme Court decision in *Lee vs. State of Montana* states that it is an unconstitutional, blatant hand-over of the sovereign power of this State to the Federal jurisdiction when the Legislature enacts laws which adopt Federal laws or regulations to occur in the future. He indicated that, although he may not be as well schooled in Legislative concerns as **Mr. Niss**, this language would indicate that unless they do this every two years, or even if they opt to do it every four or six years and hope they do not have a problem with conformity to the law, they are not going to satisfy the Supreme Court decision.

Closing by Sponsor:

SEN. MCNUTT closed his testimony on SB 24.

CHAIRMAN HARGROVE closed the hearing on SB 24.

Committee Business and Discussion:

CHAIRMAN HARGROVE announced that on Monday, January 13, the Committee would not have a hearing of bills and, instead, would meet jointly with the House State Administration Committee for a briefing on GABA, the Guaranteed Annual Benefit, retirement.

(Note: In actuality, this meeting was to provide Committee members an overview of the retirement issues and bills before the Legislature in this Session, and was not to discuss GABA.)

EXECUTIVE ACTION ON SB 24Discussion:

CHAIRMAN HARGROVE asked Mr. Niss if there was any way to do this in perpetuity, or if the way it was proposed is the only solution.

Mr. Niss responded that this problem is not unique, that there have been attempts to adopt by reference, including what the U.S. Congress enacts in the future, in several places throughout MCA and that, to his knowledge, the Department of Military Affairs is the only agency handling this situation correctly under the Supreme Court decision referred to in testimony.

He reported that he discussed an alternative with Ms. Judy Browning, Chief of Staff, Governor's Office, but she felt it would not adequately solve this problem. He explained that the alternative would be that the Department of Military Affairs could, in an agency rule, be given legal authority to adopt a rule which would do the same thing. He further explained that they can not do in rule what the Legislature can not do in statute, which is to adopt it as amended, but they could do in rule what this bill is attempting to do, although it could be somewhat inconvenient in that they would have to go through this process every year or two, which is exactly the same as is required here. Mr. Niss reported that Ms. Browning felt that at some point, the knowledge the proponents have assimilated on this issue may be lost when those persons retire, and the agency might then attempt to adopt future amendments to federal law, that they would be right back in the same place, and it would be best to let them come to the Legislature every two years.

SEN. GAGE stated that, under current law, rules can be adopted as long as they are not inconsistent with the State Constitution, except as otherwise provided by title or by rule adopted by the

Department. He indicated that the Department of Military Affairs evidently has the authority right now to make rules and exempt themselves by rule, and he would assume if they had that kind of authority there would be nothing wrong with giving them authority to adopt the UCMJ in accordance with the rules they have adopted.

CHAIRMAN HARGROVE asked **Mr. Niss** to comment.

Mr. Niss stated that the Department could do it by rule, but that they would have to do it every year, or every two or three years, however often they felt it necessary, and, again, they can not do by rule what the Legislature can not do by statute, which is adopt it prospectively. He reiterated that he discussed the alternative with **Ms. Browning**, and she felt it could eventually become misused and that it would be better to keep it in the legislative arena to keep track of it.

CHAIRMAN HARGROVE asked **Mr. Niss** if, in his opinion, the Legislature would be faced with a lot of this type of situation.

Mr. Niss responded that there is no in-house program to educate agencies, other than the courts, and related a hypothetical situation which could result in a law suit, thereby educating an agency on the principles set out in the Lee vs. State of Montana Supreme Court decision. He indicated that the Legislative Council, which is responsible for reviewing administrative rules adopted by all agencies under the Montana Administrative Procedure Act, does make an effort to teach agencies what they can and can not do by rule but, at the time the Lee vs. State of Montana decision was handed down in 1982, there were numerous attempts existing in agency rules to do exactly what the Supreme Court said could not be done. He added that, gradually, these rules have been cleaned up.

SEN. GAGE stated that his concern was the number of bills they have each year. He indicated that he did not know the UCMJ and that there may be some abuses if it is done by rule, but that they may be abusing it already for all he knows. He further stated that those people who know what these things are should make those judgements, thus getting rid of some of the bills before the Legislature.

CHAIRMAN HARGROVE replied he could not imagine that they would not want to continue this every two years, and maintain their operation under the UCMJ, but he was not sure if that is an easy way to do it. He stated that, if they could avoid the time spent on these bills, that would be a good idea, and an easy way would be to just pass this bill.

SEN. THOMAS indicated to **Mr. Niss** that, for the future, if there are other issues from other groups which are the same, perhaps one bill could contain two dozen of these things of a similar nature.

Motion/Vote:

SEN. THOMAS moved SB 24 DO PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 22Discussion:

SEN. GAGE stated that he agreed with Mr. Martin who testified that they are killing a fly with a gatling gun, although he would say they are killing a fly with a sledge hammer, and noted that maybe somewhere along the way they need to address this whole thing, but that he is tired of trying to solve a problem created by a few people by making everyone comply.

VICE CHAIRMAN MESAROS stated that, at first glance, this looks like something they should do something about but, the more he looked at it, the more he had doubts about its enforceability. He added that he thinks they are headed in the right direction, but it misses the mark in his estimation and he has serious questions about this being effective legislation.

SEN. THOMAS indicated that he would also agree that the bill addresses a particular problem, that they know there are problems there, but this is either too small or too big, and he would move to put SB 22 on the table as there may be additional legislation dealing with this issue and they may want to review this bill again in the future.

CHAIRMAN HARGROVE pointed out that to put it on the table is the best way to give them the option of looking at it again, noting that it will stay on the table unless the Committee wants it to go to the floor.

Motion: SEN. THOMAS moved to TABLE SB 22

DISCUSSION:

SEN. THOMAS indicated that he believes there will be other legislation dealing in this area and they may wish to utilize this bill later.

CHAIRMAN HARGROVE pointed out that a vote to table SB 22 would at least give them the option of looking at it again.

SEN. WILSON noted that he thinks the language is loose. He said that he hears how tired people are of negative campaigning but that, in his community, it amounted to the poll numbers being bad and when a comparison piece was done, the race was decided on that basis. He indicated that something needs to be done, but the language in this bill is too loose. He added that he questioned the Great Falls Tribune how late a candidate could respond to a negative ad, and that they would have allowed him to run an ad in the newspaper the day before the election.

{Tape: 2; Side: B; Approx. Time: 11:42 a.m.; Comments: End of Tape 2, Side B.}

CHAIRMAN HARGROVE commented that this seems to be in the realm of "feel-good" legislation, that he thinks they all support the intent, but pointed out that, in the last session, **Commissioner Argenbright** often indicated that he was not going to do a whole lot about a whole lot of things.

VICE CHAIRMAN MESAROS commented that he was sure they would be reviewing similar legislation and it would seem appropriate to place this bill on the table so that they could review it later, and maybe pull similar bills together to accomplish something which hits the mark a little more direct.

SEN. THOMAS indicated that he felt the disclosure required in this bill made it attractive, noting that it would not fix anything, but disclosure allows the public to have knowledge, which is a good thing, and that, although the bill does not work, it is an attempt to get more disclosure.

CHAIRMAN HARGROVE called for a vote on the motion to table SB 22.

Vote: The motion to **TABLE SB 22** carried **UNANIMOUSLY**.

CHAIRMAN HARGROVE asked **Mr. Niss** if a motion to table is non-debatable. **Mr. Niss** responded that he thought so, that it certainly is so in the House. **CHAIRMAN HARGROVE** reported that the Committee Rules did not say anything about it, and asked **Mr. Niss** to find out.

There was general discussion among the Committee members about a motion to table being non-debatable.

EXECUTIVE ACTION ON SB 13

Motion: **SEN. THOMAS** moved that **SB 13 DO PASS**

Discussion:

SEN. WILSON stated that he would like to offer a substitute motion, indicating that he did not see in the testimony any pressing, dire need, that the arguments were not compelling enough. He indicated that, in his opinion, it is important the press have immediate access, that it is important to the process. He noted that the proponents stated they could find no other states which did not allow the press to be in the immediate vicinity in a designated room.

SUBSTITUTE MOTION: **SEN. WILSON** moved that **SB 13 DO NOT PASS**

SEN. THOMAS pointed out that the proponents did not testify that other states specifically allocate space to the press, that the testimony was that other states allow the press close access,

adding that this would be the case here; they would still have access to the floor. He then stated that this deals solely with that room, that it does not deal with TV, radio or anyone else, that it is an issue of should they be there forever and the Department needs to have the ability to put them where they can. He noted that a lot of Senators are located in the basement, that the press is not more important than Legislators and could be located anywhere. He stated that he thinks the bill should pass.

SEN. WILSON indicated that, in Section 2, line 8, he would like to insert the language "shall" instead of "may", noting that it was his understanding they would be willing to pay rent for space.

VICE CHAIRMAN MESAROS stated that this bill comes from the Legislative Council, that they have reviewed it extensively in concert with the Capitol Renovation and the Master Plan of the building, and indicated that he thinks this would give them the flexibility necessary to carry out their functions and maximize the space utilization of the building. He added that he did not see anything in the bill which said they were going to kick the press out of the building, that he thinks every effort is going to be made to accommodate the press, they will have access to the floor, and urged that the Committee pass SB 13.

CHAIRMAN HARGROVE pointed out that there are really two issues in this bill, that one is more or less control of the space by the Department of Administration, and the other being the press. He noted that one may drive the other.

SEN. GAGE remarked that, having served as Majority Floor Leader, one of the toughest jobs was getting office space for every Senator. He noted that it is difficult to get enough space now, and it is going to get worse as more personnel are hired, not just in the Legislative branch but also the Executive branch.

{Tape: 3; Side: A; Approx. Time: 11:55 a.m.; Comments: None.}

CHAIRMAN HARGROVE stated that perhaps there is an element of unfairness between the various types of media and, to some extent, the language in current statute is archaic as it was written before there was television and electronic media. He indicated that the Committee should consider making sure that all the media has the same thing, whether that is more or less than some of them have now.

VOTE: The DO NOT PASS SUBSTITUTE MOTION for SB 13 FAILED with SENATORS BROOKE, GAGE, THOMAS, MESAROS and HARGROVE voting NO.

DISCUSSION:

SEN. THOMAS remarked that this bill does eliminate the discrimination currently being exercised in favor of the print

media, noting that, when this law was originally passed, the press was under the control of Lee Newspapers which was owned by the Standard Oil Company, which provides a little historical perspective as to why the law is the way it is.

CHAIRMAN HARGROVE asked **Mr. Niss** if he felt the wording was clear in that consent would be by a Joint Resolution of the House and Senate. **Mr. Niss** responded that it was not clear to him, adding that a resolution would work but that it is not clear to him that it is required.

CHAIRMAN HARGROVE then asked the Committee if anyone felt they should change the language to make it more clear, or if they should just say "the consent of the Legislature", and figure out how to do it later.

SEN. THOMAS asked if the language should read "by consent of the Legislature per joint resolution." **CHAIRMAN HARGROVE** asked if he thought that was necessary, and **SEN. THOMAS** responded that the consent of the Legislature does not come about without a vote from the Legislature, that the officers are not granted authority to do anything unless the rules give them that authority.

Vote: The DO PASS MOTION on SB 13 CARRIED with SENATOR WILSON voting NO.

ADJOURNMENT

Adjournment: 12:01 p.m.



SEN. DON HARGROVE, Chairman



MARY MORRIS, Secretary

DH/MM