

MINUTES

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

Call to Order: By CHAIRMAN DON HARGROVE, on January 23, 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. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Delwyn Gage (R)

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: HB 48, 1/20/97;
HB 26, 1/20/97
Executive Action: SB 42 DPAA; SB 88 DPAA;
SB 104 DPAA; SB 125 DPAA;
SB 152 DP; HB 26 BCI;
HB 48 BCI

HEARING ON HB 48

Sponsor: REP. JOE QUILICI, HD 36, BUTTE

Proponents: Gary Hindoiien, Assistant Adjutant General, Air
National Guard, State of Montana Department of
Military Affairs

Opponents: None

Opening Statement by Sponsor:

REP. JOE QUILICI, HD 36, BUTTE, stated that HB 48 is a simple
bill, that it will bring State law into conformance with Federal
law regarding the retirement age for Montana National Guard

members. He explained that, currently, members of the Montana National Guard are required to retire when they reach the age of 60, but the Age Discrimination Act passed in the early 1970's prohibits discrimination based on age. He related the example of a physician who was forced to retire at age 60, but has since joined the North Dakota National Guard, where he will be allowed to serve until he is 70 years old.

Proponents' Testimony:

Gary Hindoiien, Assistant Adjutant General, Air National Guard, Department of Military Affairs, (EXHIBIT 1) reported that this legislation was proposed by the Department to eliminate what they feel could be challenged as discrimination. He indicated that they could not find a legitimate non-discriminatory reason for this age requirement in statute, and that it is logical for them to propose to change the statute. He related the same story regarding the physician that REP. QUILICI told the Committee about, adding that, if this legislation is passed, this individual has expressed a desire to return to the Montana Air National Guard. He distributed copies of written testimony from Roger Hagan, Officer and Enlisted Associations of the Montana National Guard (EXHIBIT 2).

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. QUILICI noted that this will keep them from discriminating based on age, and he thinks it should be passed.

HEARING ON HB 26

Sponsor: REP. JOHN COBB, HD 50, AUGUSTA

Proponents: Joe Kerwin, Deputy Secretary of State for Elections

Opponents: None

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, AUGUSTA, indicated that HB 26 offers two methods for nominating an individual to the Presidential Primary. He reported that current Montana law requires 2,000 signatures to qualify a candidate for the primary, stating that it is difficult for candidates to obtain that many signatures and only candidates of the top organizations can be successful. He pointed out that other states have more candidates because it is easier to get on the ballot, adding that it is possible Montana will participate in the Western Primary in the future, and there needs to be an easier way for candidates to qualify for the ballot. He

distributed a list of the requirements from a number of other states (**EXHIBIT 3**), and, displaying a large book which he identified as a list of requirements from other states, reported that most states use a fee plus some kind of petition as requirements for candidates to qualify for the ballot in the Presidential Primary, and pointed out that some states only require that the candidate be eligible, according to Federal law, for Presidential Primary matching funds, and still others allow the Secretary of State to select candidates for the Primary.

REP. COBB reported that HB 26 would require only 500 signatures, or, as outlined on page 2, lines 17 through 20, qualification, under Federal law, for Presidential Primary matching funds, to qualify for the Montana Presidential Primary. He explained that, in order to qualify for matching funds, a candidate must receive a set amount of money from twenty different states, adding that, if that candidate fails to garner 10% of the votes in two primary elections, they are automatically out of the race. He indicated that candidates who do not have the resources will not spend time in Montana to get the required 2,000 signatures, and this bill would give them the option of either getting 500 signatures, or qualify by being eligible for the Federal matching funds. He added that the bill, as originally presented, would have allowed the Secretary of State to determine that an individual was qualified for the Montana ballot based on public recognition of the individual as a candidate through the news media, but that section was stricken from the bill, noting that he still thinks it is a good bill, and will make it easier for a candidate to qualify for the Montana ballot.

Proponents' Testimony:

Joe Kerwin, Deputy Secretary of State for Elections, stated that they support this bill. He indicated that this bill will make it easier for candidates to qualify for the Presidential Preference Primary, stating that, under the current system, the front-runner has the advantage. He pointed out that the petition to qualify for the 1996 June primary was due March 14, 1996, that the national candidates were directing their resources to running their Super-Tuesday Primary campaigns during February and March, and to divert those resources at that critical time to qualify for a state like Montana may not always be practical for some challengers. He indicated this results in candidates whose campaigns got started late, or those without the resources, to forego qualifying for Montana's ballot, and that this legislation would give Montana voters a good chance to vote on different candidates without putting excess numbers of candidates on the ballot.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

SEN. COBB had no closing statement, but asked SEN. FRED THOMAS to carry HB 26 in the Senate.

{Tape: 1; Side: A; Approx. Time: 10:14 a.m.; Comments: None.}

EXECUTIVE ACTION ON SB 42

Amendments: SB004201.adn (EXHIBIT 4)
SB004202.adn (EXHIBIT 5)
SB004204.adn (EXHIBIT 6)
SB004205.adn (EXHIBIT 7)
SB004206.adn (EXHIBIT 8)

Discussion:

David Niss reported that he has two additional amendments to SB 42, one of which would apply an immediate effective date, noting that the Committee previously adopted Amendment SB004204.adn, which strikes Section 2 of the bill entirely, removing the provision that the Department of Fish, Wildlife and Parks would be allowed to use the money from the sale of real property to acquire other real property. He indicated that Amendment SB004202.adn, previously distributed to the Committee, would require individual mailed notices to adjoining landowners regarding the sale of property to a government entity, that it retains the requirement for the published legal notice, but does not require advertising for the purposes of bid, as this section applies to direct sales of land to government entities.

CHAIRMAN DON HARGROVE asked if the term "real" notice, a legal term meaning actual notice, would be appropriate in this situation.

Mr. Niss explained that "actual" notice is distinguished from "legal" notice in that "actual" notice is when the party is notified by any means, and "legal" notice fulfills a requirement of law that notice be given, but not necessarily that it be received. He gave the example of "legal" notice as publication in a newspaper, noting that there is no way the party publishing the advertisement can guarantee that it will be read.

SEN. KEN MESAROS pointed out that there is another amendment focusing on the same area, and asked if they would be talking about similar amendments.

CHAIRMAN HARGROVE asked which amendment that is. Mr. Niss indicated it is one that has not been distributed to the Committee yet. CHAIRMAN HARGROVE asked that this other amendment be discussed before action is taken on either of them.

Mr. Niss explained that Amendment SB004205.adn, previously distributed to the Committee, amends new subsection (7) of

Section 1, and deletes the authority for the exchange of real property. He then distributed copies of Amendment SB004201.adn, which provides an immediate effective date, and Amendment SB004206.adn, which amends the same section in similar places as does Amendment SB004202.adn. He pointed out that Amendment SB004206.adn strikes all of the language on page 2, lines 10-11, dealing with the sale of land to private parties, with the exception of the acreage and value limitations, which applied to sales to private parties, and that the effect of this amendment is to apply those limitations to sales of land to government entities.

CHAIRMAN HARGROVE asked if there is a conflict between the two amendments. **Mr. Niss** replied that they are not in conflict.

There was discussion regarding the compatibility of the two amendments. **Mr. Niss** read the section as it would appear if both amendments were adopted.

CHAIRMAN HARGROVE asked if everyone understands the amendments.

SEN. VIVIAN BROOKE indicated that, if the amendments were adopted, the Department would have authority to convey small parcels to government entities, but that no sales to private entities would be allowed, and that the provision regarding using money from sales of land to acquire other property would be stricken from the bill. She added that it is her understanding that the intent of the amendments is to have the bill address situations for schools and other governmental entities, specifically, and not deal with other circumstances.

Motion: **SEN. MESAROS** moved that **SB004206.adn** **BE ADOPTED**

Discussion:

SEN. BROOKE stated that she opposes the restriction imposed by the amendment, indicating that the Department explained there are situations where they have the opportunity to make transactions with private parties which would be advantageous to their purposes. She added that private, non-profit organizations may wish to enter into a transaction with the Department, and she would resist this restriction of the Department's abilities.

SEN. MESAROS pointed out that, as the bill was presented, it was his understanding the Department wanted to focus on land transfers to school districts, and to accommodate the inadvertent infringement on the Department's land involving small parcels.

CHAIRMAN HARGROVE related a conversation he had with a gentleman from Big Sky regarding a possible land transaction between the Department and Big Sky Lumber that could result from this legislation, and noted that land issues are emotional issues in Montana. He stated that he supports the amendment.

Vote: SB004206.adn was ADOPTED, with SEN. MESAROS, SEN. WILSON, SEN. THOMAS, SEN. GAGE AND CHAIRMAN HARGROVE voting YES, and SEN. BROOKE voting NO.

Discussion:

Mr. Niss explained that Amendment SB004202.adn would allow the Department to ignore subsection (3)(c) in sales to private owners, pointing out that (3)(c) requires notice for bid, and that the bid process would be invalid in sales to private individuals addressed in this section. He noted that the amendment calls for subsection (3)(b) to be stricken, and indicated that, because of the structure of the sentence, the effect of this will be that the Department can ignore only subsection (3)(c). He added that the new language to be inserted would require mailed notice to adjoining property owners regarding transactions with government entities.

Motion/Vote: SEN. BROOKE moved that SB004202.adn BE ADOPTED.
The motion CARRIED UNANIMOUSLY.

Discussion:

CHAIRMAN HARGROVE asked if there was some reason for an immediate effective date. SEN. BROOKE pointed out that it would expedite a resolution to the Ophir School District situation.

CHAIRMAN HARGROVE noted that they have worked on that problem for a long time, acknowledging this might short-cut that process, and indicated he has no problems with an immediate effective date.

Motion/Vote: SEN. MESAROS moved that SB004201.adn BE ADOPTED.
The motion CARRIED UNANIMOUSLY.

Discussion:

Mr. Niss explained that SB004205.adn will delete the language in subsection (7) on page 3, which is the Department's authority to exchange property.

Motion: SEN. MESAROS moved that SB004205.adn BE ADOPTED

Discussion:

SEN. MESAROS explained that, as this bill was introduced, it was focused on smaller land exchanges, and the ability of the Department to convey small parcels to the schools. He indicated that, as it is written, however, it extends beyond what he would call smaller parcels to 100 acres or \$100,000 in value, with review by the Commission only, and that the Department could conceivably make an unlimited number of transactions of 99 acres.

CHAIRMAN HARGROVE concurred, indicating that he recalls, in testimony, it was affirmed that, while no one would suggest the Department would intend to do that, they could actually convey 99 acre parcels forever, without approval. He added that, if there is a legitimate reason, there is a mechanism for doing that.

Vote: The motion that SB004205.adn BE ADOPTED CARRIED
UNANIMOUSLY

Motion/Vote: SEN. THOMAS moved that SB 42 DO PASS AS AMENDED.
The motion CARRIED UNANIMOUSLY.

SEN. THOMAS pointed out that, if Amendment SB004205.adn had not been adopted, the language of the bill could be contrary to the possible findings in the Land Board issue currently before the Supreme Court.

EXECUTIVE ACTION ON SB 75

Amendments: SB007501.adn (EXHIBIT 9)

Motion: SEN. THOMAS moved that SB 75 DO PASS

Discussion:

SEN. THOMAS reported that he asked Mr. Niss to prepare Amendment SB007501.adn, but asked him why the language "unless allowed by a vote of two-thirds of each House" was included, indicating that it was not necessarily his intention.

Mr. Niss responded that this was his understanding from their discussions. He indicated that, if SEN. THOMAS wishes, the Committee could consider the amendment, without that language, orally.

SEN. THOMAS noted that he and Mr. Niss had confused two different subjects, that the discussion regarding a vote of two-thirds of each House was in reference to bringing in a bill outside the call. He explained that, if they adopted stricter language on a budget session, and then a general session, it had been decided in previous discussions that there had to be rules to bring in legislation outside of that session call. He indicated that this amendment will address what was specified as the problem with annual sessions adopted in the 1972 Constitution, that a bill tabled in one session can be revived in the next session.

Motion: SEN. THOMAS offered a substitute motion that
SB007501.adn BE ADOPTED.

{Tape: 1; Side: A; Approx. Time: 10:43 a.m.; Comments: End of
Tape 1, Side A.}

Discussion:

SEN. BROOKE asked if the amendment is intended to address a bill being introduced outside the call. **SEN. THOMAS** responded that is not addressed in this amendment, but indicated there are other amendments.

Vote: The motion that SB007501.adn BE ADOPTED CARRIED with **SEN. THOMAS, SEN. GAGE, SEN. WILSON, SEN. MESAROS AND CHAIRMAN HARGROVE** voting YES, and **SEN. BROOKE** voting NO.

Mr. Niss reported that he did not have any other amendments prepared for SB 75, but indicated that the Committee could adopt **SEN. THOMAS'** proposed amendments orally. He then pointed out that the bill, as it stands, whether amended or not, does not restrict the introduction of general legislation during the budget session, that it just says the session in odd-numbered years has to adopt the budget. He then cautioned the Committee regarding the language relative to specifying the call of a session, pointing out that the Legislature convenes pursuant to the Constitution and statute, and there is no call.

SEN. THOMAS indicated that this poses a significant question in that this is an annual session bill which specifies setting a biannual budget. He stated that he likes the proposal to split one session into two, one being a budget session and the other being a general session, but that language needs to be included which restricts another bill coming in from outside that call.

CHAIRMAN HARGROVE asked why they should limit the Legislature's ability to deal with issues that need to be addressed, providing the budget is adopted.

SEN. THOMAS indicated that the thought is to establish rigor to the subject matter the Legislature will deal with so that only substantial subjects would be brought in to be addressed. He pointed out that, obviously, in the second year of the biennium, during the general session, they would address budget issues such as supplementals, but that, during the budget session, general legislation would be restricted so the Legislature can deal primarily with the budget.

SEN. MESAROS stated that he thinks there are some significant questions that need to be answered, and he would be more comfortable if **Greg Petesch, Legislative Services Division**, as well as the sponsor could be available to answer some questions.

CHAIRMAN HARGROVE indicated that is fair, and announced that executive action will be postponed on SB 75. He added that he has some significant concerns over the basic concept of this bill.

SEN. THOMAS concurred, indicating that he intended to suggest further discussions with SEN. SPRAGUE.

EXECUTIVE ACTION ON SB 104

Amendments: SB010401.adn (EXHIBIT 10)

Discussion:

CHAIRMAN HARGROVE asked Mr. Niss to explain the proposed amendment.

Mr. Niss stated that Amendment SB010401.adn would provide that the Banking Division of the Department of Commerce have the authority to examine the books and records of a holding company only if an examination of the bank held by the holding company reveals there is a serious regulatory concern that could jeopardize the safety and soundness of the bank because of its transaction with the holding company.

Motion/Vote: SEN. MESAROS moved that SB010401.adn BE ADOPTED.
The motion CARRIED UNANIMOUSLY.

Motion/Vote: SEN. THOMAS moved that SB 104 DO PASS AS AMENDED.
The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 88

Amendments: SB008801.adn (EXHIBIT 11)

Discussion:

Mr. Niss indicated that Amendment SB008801.adn will clarify what the Committee understands to be the intent of the language on page 2, line 11, which is to limit it to infrastructure that would result in construction of low-cost housing. He pointed out that the amendment reverses the structure of the sentence, but the language is clearer in its meaning that it is only for government or non-profit entities and only for infrastructure for housing projects.

Motion/Vote: SEN. THOMAS moved that SB008801.adn BE ADOPTED.
The motion CARRIED UNANIMOUSLY.

Motion: SEN. THOMAS moved that SB 88 DO PASS AS AMENDED.

Discussion:

SEN. BROOKE indicated that she thinks this is a really good idea, but pointed out that it does give her pause to realize the amount of power being moved into the Governor's office. She stated that the Governor is an elected official, that these are substantial benefits to communities, and she thinks, when elected officials and infrastructure projects are mixed, it can take on a negative

appearance. She added that she tried to devise a method to involve the Legislative Finance Committee but that they really do not have the power or authority that the Legislature does.

SEN. BROOKE then stated that she does not want to kill the bill, that she thinks it is a good idea and will go forward, but that she wanted to voice her concerns. She referred to page 1, line 26, and pointed out that the Governor has final approval authority, noting that she understands why that needs to be there, but it does give that office holder an incredible amount of power to move things around. She reiterated that she wanted people to be aware, and noted that, as Legislators, they need to consider that.

SEN. MESAROS indicated he appreciates her comments and concerns, but stated that he believes in order to have the flexibility to deal with those projects over the interim, as well as on-going projects, he would like to see more involvement, and the ability to be more responsive.

CHAIRMAN HARGROVE noted that he thinks they all share her concerns, and indicated that, from his standpoint, as a Legislator, he often finds conflicts in his own philosophy, that it applies one place, but does not in another. He added that the business of allowing government to work is one thing, and another is recognizing the separation of powers, and what the Legislature should do, can do, and can not do. He noted that, in this case, he finds himself in a little bit of conflict, but that testimony was that this is the way it is done, and no one really has the background or expertise to stop the process and go in and look at it.

Vote: The motion that SB 88 DO PASS AS AMENDED CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 125

Amendments: SB012501.adn (EXHIBIT 12)

Discussion:

Mr. Niss reported that he asked **Neil Peterson, Montana Department of Revenue** to be available to answer questions, noting that they have discovered a small change that needs to be made in paragraph 3 of the amendment, which can be done orally. He then explained that paragraphs 1, 3 and 5 address an exception to the Unclaimed Property Act for patronage refunds from rural electric or telephone cooperatives which are used for educational purposes, noting that **Mr. Peterson** could perhaps answer any questions the Committee may have about why the rural electric and telephone cooperatives are allowed this exemption. He then pointed out that the language on the last line of paragraph 3, reads "on the date", and that it should be changed to read "five years from".

CHAIRMAN HARGROVE asked **Mr. Peterson** to explain the reason for this exemption.

Neil Peterson, Department of Revenue, explained that the 1993 Legislature granted this exemption from the Uniform Unclaimed Property Act, for rural electric and telephone cooperatives, as long as the money is used for educational purposes, that it was inadvertently omitted when SB 125 was drafted, and this amendment will restore that exemption.

Mr. Niss explained that paragraph 6 of the amendment reduces the daily penalty for failure to report abandoned property from \$200 to \$100, and the maximum penalty from \$5,000 to \$2,500. He indicated that paragraph 8 of the amendments will coordinate the provisions of this bill with the provisions of HB 284, which provides that monies on deposit as reclamation and other bonds, for mining purposes, do not forfeit, that they go into an account of the State Special Revenue Fund for use by that particular agency. He noted that this paragraph of the amendment would provide that those bonds or cash deposits with the Department of Environmental Quality are excepted from the provisions of the Uniform Unclaimed Property Act.

Motion/Vote: **SEN. BROOKE** moved that SB012501.adn BE ADOPTED.
The motion **CARRIED UNANIMOUSLY**.

Motion/Vote: **SEN. MESAROS** moved that SB 125 DO PASS AS AMENDED.
The motion **CARRIED UNANIMOUSLY**.

EXECUTIVE ACTION ON SB 152

Amendments: None

Motion/Vote: **SEN. MESAROS** moved that SB 152 DO PASS. The motion **CARRIED UNANIMOUSLY**.

COMMITTEE DISCUSSION SB 153

Mr. Niss explained that the first paragraph of the amendments substitutes one "Whereas" clause for the existing "Whereas" clause on lines 14 and 15, noting that the sponsor requested this amendment. He continued that the second paragraph of the amendments adds the initiative and the referendum as two additional methods by which Federal mandates can be rejected.

CHAIRMAN HARGROVE asked **Mr. Niss** to give him some philosophy behind the "Whereas" clauses, asking if they are merely assumptions.

Mr. Niss stated that is very much the case, that "Whereas" clauses are placed above the enacted line on the bill, and are not part of the law. He indicated that they are introductory information from the sponsor of the bill, and signify the sponsor's ideas, that they are not reflective of the opinions of

the entire Legislature, unless the Legislature votes to approve the bill. He added that, if a committee or body votes to approve the bill, the majority, at least, agrees with the "Whereas" clauses.

{Tape: 1; Side: B; Approx. Time: 11:19 a.m.; Comments: End of Tape 1, Side B.}

SEN. MESAROS noted that the Committee has another Constitutional Amendment to consider, and asked if it would be appropriate to consider them simultaneously.

CHAIRMAN HARGROVE asked if he is suggesting postponing this discussion until Mr. Petesch is available. SEN. MESAROS confirmed that is what he would propose, and CHAIRMAN HARGROVE postponed executive action on SB 153.

EXECUTIVE ACTION HB 48

Amendments: None

Motion/Vote: CHAIRMAN HARGROVE moved that HB 48 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 26

Amendments: None

Motion: SEN. THOMAS moved that HB 26 BE CONCURRED IN

Discussion:

CHAIRMAN HARGROVE asked SEN. THOMAS if he sees any inconsistency in the activities of this bill, and SB 170.

SEN. THOMAS responded yes, and no. He explained that there is inconsistency in the numbers, but the subject matters are inherently different in that, in one, they are proposing to change the law and, in the other, they are just gaining access to the ballot. He pointed out that, when a Legislator files for election, he or she files with no signature but their own and a small fee, with the theory being that a lot of signatures are required to gain access to the Presidential ballot. He stated that he does not know that it has merit, that the "wackos" make the ballot easier than the normal party candidates because there are some zealots out there obtaining signatures for whomever. He indicated that, last election, there was hardly anyone on the ballot because of the requirement for 2,000 signatures on a petition to qualify, and that he thinks, since the threshold for getting to the ballot is insignificant for a Legislator, it should not be so huge for Presidential candidates.

Vote: The motion that HB 26 BE CONCURRED CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:27 a.m.


SEN. DON HARGROVE, Chairman


MARY MORRIS, Secretary

DH/MM