

MINUTES

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

Call to Order: By CHAIRMAN DON HARGROVE, on February 5, 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: SR 7, SJR 3, HB 76,
HB 182; 2/1/97
Executive Action: HB 123 BCIAA

HEARING ON SJR 3

Sponsor: SEN. MACK COLE, SD 4, Hysham

Proponents: None

Opponents: None

Opening Statement by Sponsor:

SEN. MACK COLE, SD 4, Hysham, said SJR 3 was brought at the request of the American Legislative Executive Council and requested Congress to propose an amendment to the U.S. Constitution to clarify that federal courts can not require a state or political subdivision of a state to levy or increase a tax. It also encouraged other states to support the same amendment. He said he had more information, if anyone was interested.

Proponents' Testimony: None.

Opponents' Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor: None.

HEARING ON SR 7

Sponsor: CHAIRMAN DON HARGROVE, SD 16, Bozeman

Proponents: None

Opponents: None

Informational

Testimony: Patrick Judge, Montana Environmental Information Center

Opening Statement:

CHAIRMAN DON HARGROVE said SR 7 was a confirmation of the Governor's appointment of **Mark Simonich** as Director for the Department of Environmental Quality (DEQ). CHAIRMAN HARGROVE reminded the Committee since the General Election had occurred, law said the Senate had to confirm the Governor's appointments, and State Administration Committee was involved in the process. He said he considered the process important because the public, through their elected Senators, participated in the appointments. CHAIRMAN HARGROVE then gave the floor to **Mr. Simonich** and invited him to give his remarks.

Mr. Simonich said he was currently the director of DEQ and agreed with CHAIRMAN HARGROVE'S remarks the confirmation process was not a formality, but very serious. He used (EXHIBIT 1) to inform the Committee of his credentials, explaining he had spent about 15 years as a forester with both small and large companies. He related how in 1988 he ran for the legislature in HD 8 but wasn't successful, and then spent four years on Senator Burns' staff as a legislative assistant covering all the public lands, natural resources, and environmental issues for the Senator; in fact, gun control was also assigned to him. **Mr. Simonich** said when Governor Racicot called him in 1992 and asked him if he'd like to return to Montana, he told the Governor his offer was like manna from heaven because he was looking for a way to get out of Washington, D.C. and return to Montana; therefore, in January, 1993, he accepted the appointment of Director of the Department of Natural Resources and Conservation, and served in that capacity for 2½ years. He stated because of government reorganization required by the last legislative session, in July, 1995, Governor Racicot appointed him to be the Director of the new Department of Environmental Quality. He explained even though there was a new General Election he knew he had to go

through a confirmation anyway because he had been reappointed to a new position since his last confirmation, adding he had been acting without confirmation for the past 1½ years. **Mr. Simonich** claimed he brought a fair amount of expertise in the area of natural resources and environmental policy because he had worked diligently with private companies in the implementation of those laws as they were handed down to private companies who had to abide by those laws. He contended he also had to work at implementing those policies at the federal level. He closed by saying he would be happy to answer any questions.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Patrick Judge, Montana Environmental Information Center (MEIC), said public employees for Environmental Responsibility in DEQ conducted a survey which asked a number of questions relating to Department morale, management, reorganization, etc. He said 115 out of 330 employees returned surveys and 100 (87%) of them disagreed with the statement that morale was good. He referred to **(EXHIBIT 2)** and said it contained a number of direct quotes from employees as well as concerns.

Questions From Committee Members and Responses:

SEN. BILL WILSON asked for comment on the 87% bad morale. **Mr. Simonich** agreed morale was not at its highest because of the Department reorganization and creation of a new one. He said two years ago when the Governor, through SB 234, recommended recreating the natural resource-related agencies, it was their belief it wasn't simply an effort to change the name of a Department or give it a new Department head; rather, it was to re-energize those agencies and make them work in a more comprehensive, integrative fashion. He reported DEQ was composed of pieces of three of those old agencies which had operated under very different policies and attempts had been made to make changes and bring it together. **Mr. Simonich** said they continually told people to leave the baggage at the door because this was a new agency with a new mission and purpose. He admitted this had been a very difficult time for the employees and one reason was in July, 1995, DEQ was located in five Helena locations, with people from three different Departments who could not communicate with each other through their computers because all had different software packages. He said they currently were located in just two buildings in Helena because there wasn't a single building large enough to hold the Department. He stated they continually indicated the reorganization was not focused on position reduction, but there was always that uneasiness; however, they had eliminated a few top level positions, as HB 2 directed them to do. **Mr. Simonich** related he was realizing, even though he and his family had moved many times, how difficult

change was for employees, even to move from cube to cube in the same building. He didn't discount that difficulty and admitted morale was very low; however, he believed the legislature directed them to make some very fundamental changes in the way they operated their agencies and in time, as the changes were implemented, morale would come up because they would be able to reinstill the credibility of DEQ.

SEN. WILSON referred to Page 1, column 3, of the newspaper article in **(EXHIBIT 3)**, "A survey respondent had this to say, "The Director, Deputy Director and Chief Legal Counsel seemed to have a blatant disregard and disrespect for the environmental laws they are entrusted to uphold. In fact, 16% of employees and 15% of managers said they were directed to bend the rules and, perhaps, break the law." He asked for comment. **Mr. Simonich** said unless he saw some concrete evidence, he believed the allegation was without merit. He swore in his Oath of Office to uphold the Constitution and laws of Montana, which was something he didn't do lightly. He said his chief legal counsel, deputy director and he worked diligently to administer those laws exactly as they should be administered. He suggested what may have happened was many of their staff were committed, dedicated professionals who felt very strongly in a particular belief; however, sometimes the policy had to be set by the Director's office to provide guidance. He said it didn't always fit into an individual's personal belief about how something ought to be done; however, he reiterated his chief legal counsel, deputy director and he were absolutely committed to upholding the laws of Montana. **Mr. Simonich** said **Mr. Judge** did not say that when this survey came out, he (**Mr. Simonich**) wrote a letter to the representative of PEER **(EXHIBIT 3)** asking him to provide those specifics and offering to meet with them to go over those specifics. He declared both he and **Governor Racicot** were very strong on the issue of correcting allegations of Department wrongdoing if they were informed of them. He said although PEER hadn't shared those specifics yet, he had a meeting scheduled with them the next morning; in fact, he asked them to bring the specific allegations of misconduct or direction to evade or ignore the laws.

SEN. WILSON asked if the survey **(EXHIBIT 3)** was anonymous and **Mr. Judge** said it was. **SEN. WILSON** asked if anyone was willing to own up to the allegations and **Mr. Judge** said he didn't know.

SEN. KEN MESAROS asked if the Department staff turnover was leveling out. **Mr. Simonich** suggested that some level of turnover would not change or cease because he wasn't sure reorganization had entirely driven it, that two or three people had indicated they left because of the reorganization, but he wasn't sure there were more. He said there were very highly trained technical experts in the Department, with many people having more expertise in their areas of work than he; they are valuable commodities on the job market and are constantly being hired away by private

companies. He maintained he does not think that fact has much connection to reorganization.

SEN. MESAROS asked about his Department's policy regarding answering constituent concerns, etc. **Mr. Simonich** said they had an "Open Door" policy and stated so on many occasions, explaining employees shouldn't feel compelled to always have to run through the chain-of-command if they had a problem they felt their supervisor wasn't dealing with because his door was always open. In fact, there were very few meetings in his office which required a closed door -- staff could always feel they could come forward. When dealing with constituents (taxpayers of Montana), his Department continually stressed service to them. As for legislative efforts, they made every effort to respond to any request by legislators, whether during the interim or during the session. He said they routinely wanted to ensure the Director's office was kept informed of those contacts so appropriate follow-up could be done because he didn't want things "falling between the cracks."

SEN. VIVIAN BROOKE referred to reports which said there were organizational moves involving people moving two or three times and other costs as well; yet the legislature was told it would be revenue-neutral. She asked for actual figures of the cost of reorganization. **Mr. Simonich** said he had the information, though not in front of him at the present time; however, as best as he could remember, the cost of the reorganization to date was about \$110,000 (he would provide exact figures later). He said when SB 234 was presented two years ago, it stated they would do what they could to minimize costs, but didn't say there would be no costs. The legislature said no specific dollars would be appropriated but any reorganization costs incurred would be paid through existing budgets. He said they had accomplished that through vacancy savings, and in some cases were required to keep the vacancies longer than they preferred to. He explained much of the cost was rewiring the Metcalf building to install state-of-the-art wiring to accommodate all electronic needs of the agency. He stated the divisions from the various places could communicate electronically, something they hadn't been able to do previously; however, it was a cost which would have been incurred regardless of the move.

Mr. Simonich admitted there was more than one move but it involved several agencies and was a concerted effort coordinated by the Department of Administration to consolidate several agencies into fewer buildings, all at the same time. Unfortunately, at the time, DEQ wasn't through with their internal organization so they couldn't figure out where to finally locate those bodies; however, they couldn't hold everybody up so they went through the moves last fall. He explained some people were moved into temporary offices but found permanent homes in November and December; thus, some people did move more than once. He said much of the moving was done internally with their own efforts but if outside services were

required, they went through a bid process to get the best price possible. He summarized they did all the reorganization with minimal cost to the people of Montana.

SEN. BROOKE asked for an example of how an "overly zealous" employee would be "ratchetted down." **Mr. Simonich** described how they first tried to get people together, recognizing there were concerns from previous Departments in which there were edicts with no explanation from the Director's Office; however, he tried to ensure people who needed help in resolving issues were aided in doing so. The example he used was Big Sky Water & Sewer District had been leaking sewage for more than ten years; in fact, a few years ago the Department of Health and Environmental Sciences issued an administrative order to Big Sky to fix the problem and attached a moratorium for any additional hookups. The Department had done an environmental assessment on what both the short term and long term fix should be and determined there could be significant impacts; therefore, it decided to do an EIS on the water & sewer problem as well as a regional EIS which would look at all development at Big Sky such as subdivisions, water, sewer, etc. He said when DEQ came in 1995, it was faced with Big Sky screaming their commitments to property being built, residences done, etc., as well as the sewer district facing a deadline of September 1 to either have the problem fixed or pay the penalties. The Department had made the decision to do the EIS but hadn't started it; therefore, the district was about to have start paying penalties because of the Department. They sat down with virtually every staff member in the Department who needed to be involved so they could hammer out what should be done. The chief legal counsel said the Department was wrong to make the determination the EIS should be done in the first place because under NEPA, that determination was made when the proposed action was in front of the Department, something the district had not yet done. **Mr. Simonich** said they worked that through with all the staff involved in the final decision, and they were presently trying to operate so concerns could be brought to the table, hammered out and legal authority ensured to take appropriate action.

SEN. BROOKE asked if any investigation of personnel issues had been done in the Human Resources Division within the Department. **Mr. Simonich** said they were attempting to do that and cited how at Christmas time the Communications Director in his office encouraged him to send a holiday greeting to the employees which would also thank them for their hard work; in addition, they would have a little holiday open house personally paid for by the Director's office staff. He said he planned to write the greeting on a Wednesday evening but on Tuesday the PEER results hit the press so it was very difficult to sit down and write; however, he did write it and reminded them there was an "Open Door" policy and encouraged them to come in and talk. He said the note also reminded them of the legislative auditor's anonymous hotline for fraud and abuse which was there for anyone in Montana to call when they suspected wrongdoing in State

Government. **Mr. Simonich** reiterated how the Department was trying to take those kinds of steps to communicate to the employees and those encouragements were being done by Division Administrators throughout the Department. Also, they were working hard to provide responsible management within the Department which they felt would help engender the appropriate employee response, i.e. working together because they felt trusted and valued. He felt that would raise morale as much as anything they could do.

SEN. BROOKE referred to a bill which she was sponsoring and asked for **Mr. Simonich's** response. He said he thought the intent of the policy was good and followed the lines which Governor Racicot had laid out to the various Department directors; in other words, they expected their people to abide by the laws of Montana and implement them to the best of their ability. They also expected their people to have open communications instead of retaliation; in fact, they would tolerate nothing less. He referred to Section 2 of her bill and said it was appropriate and would be a great Senate Joint Resolution; however, the rest of the bill was almost a solution looking for a problem because, to a taxpayer, it might seem the legislature was taking this action because it wasn't sure management could be trusted to do the job it was supposed to be doing so the employees needed to be protected. He contended that was a dangerous signal to be sent because it didn't seem feasible for taxpayers to begin questioning the treatment or law administration every time they did business with a Department. He stated Montanans should be engendered with the understanding those public servants who worked for them in State Government were there and were committed to administering the laws as they were directed. Also, it was a disservice to the state workers to suggest they weren't trusted to do the job.

SEN. BROOKE asked if it was true there was a can of "Spotted Owl Soup" in his office. **Mr. Simonich** said it was a can of "Spotted Owl Gumbo" (but the back of the can said "chicken gumbo") and sat on his shelf next to his mug which said "Save A Tree." **SEN. BROOKE** commented that was inappropriate for an objective director of a department who was protecting the environment.

{Tape: 1; Side: A; Approx. Time: 10:44 a.m.; Comments: End of Tape 1, Side A.}

SEN. DELWYN GAGE asked his position on environmental self audits. **Mr. Simonich** said they were trying to focus on compliance but enforcement should not be the goal, but a tool used to gain compliance. He maintained environmental self audits were appropriate because companies who were honestly doing business could find a mistake and bring it to the attention of the Department who could help find a solution. He referred to a personal experience in May, 1995, when Governor Racicot first appointed him to DEQ, a DNRC employee who owned a trailer court came into his office and told him the trailer court was having trouble with the water supply and he wasn't sure how to fix it.

He went to the Department of Health to tell them about it and he got fined; therefore, he asked **Mr. Simonich** if he thought he would tell them the next time he had a problem. **Mr. Simonich** said he couldn't verify whether or not he got fined; however, there was that perception. He suggested the perception that should be created was they would work cooperatively with the public to help them stay in compliance. He was of the opinion the self audit bill gave the tool to accomplish that.

SEN. GAGE said he was concerned, in the legislators' zeal to cut budgets, Departments were put into a position where their employees were getting comp time, unused vacation time, unused comp time and overtime. He wondered if he could give a figure on that issue for his Department for last year. **Mr. Simonich** said he didn't have the figures at hand but would gladly get them to the Committee.

SEN. GAGE asked what the length of his average day was. **Mr. Simonich** said 12-14 hours per day, at least six days per week.

SEN. GAGE asked how he rated himself (on a scale of 1-10) as a disciplinarian among his employees. **Mr. Simonich** said if 10 were the strongest and 1 the weakest, he would be on the lower end of the scale, maybe 2 or 3. He felt it was much more effective to show by example than take harsh actions; that was what they tried to implement in the Department.

SEN. GAGE referred to a situation in Cut Bank where a fire destroyed their school gym and 13 classrooms, and the reorganization causing their morale to nosedive; therefore, he was not surprised at the low morale within **Mr. Simonich's** department.

SEN. FRED THOMAS asked if there was an increase in people coming to see him since his "Open Door" policy. **Mr. Simonich** said he had one employee specifically call him to share some important issues and he was glad she did because they would follow up on them. However, he hadn't seen a real increase in people coming forward, but after the PEER and newspaper report, quite a few messages of encouragement came, some from people he didn't even know. He said he felt they were on the right track.

SEN. THOMAS asked what his top three legislative initiatives were this session. **Mr. Simonich** said they were: (1) A bill which would create an Environmental Rehabilitation and Prevention account, money from which to be used to fix environmental problems when there was no available money. He said Montana had emergency accounts but the environmental problems he was talking about didn't fit the criteria of an emergency. He said the fund would be created with up to \$250,000 of penalties collected each year which currently went into the General Fund but would now be placed into the account for rehabilitation and prevention measures. He stressed it was not a statutory appropriation; rather, the Department would always have to justify to the

Legislature how much should be appropriated; (2) A bill to deal with TMDL's (Total Maximum Daily Load) which dealt with the 14,000 miles of impaired Montana streams. According to the Federal Clean Water Act something had to be done to clean them up; in fact, Montana was about to be sued because not enough had yet been done. He said there was framework legislation which would create the mechanism for developing those TMDL's at a local watershed level, using local people working with the Department. He said they were committing substantial resources within the Department (funds they already had) so they could minimize the need to come to the Legislature to ask for additional monies. He said they currently got a sizeable amount of money on an annual basis under the Federal Clean Water Act which was for pollution and currently went out for demonstration grants. He said they were committed to reprogramming and heading that entire amount into TMDL development; (3) A bill which would authorize an additional state revolving fund loan program, explaining he felt local government was the most heavily regulated of all regulated communities, and taxpayers paid the bill because they were the people government tried to protect as well as serve. He further explained the bill as creating a loan program for landfills so the seed money from the federal government could be matched with general obligation bonds which were sold on a rotating basis to provide low-interest loans to local governments as well as the private sector for landfills. **Mr. Simonich** stated the same thing would be done to ensure safe drinking water, explaining such legislation passed the last session in anticipation of Congress authorizing that program; however, Congress made some changes before doing so and Montana's laws had to conform with those changes. He related it was an important legislative item because it would enable them to provide assistance to help Montanans remain in compliance.

CHAIRMAN HARGROVE asked if he had a self-evaluation philosophy technique or management system to continually look at the Department when budgeting priorities were being considered. **Mr. Simonich** said they put together a management team that very critically looked at all aspects of every program, explaining when the Department was reorganized, it reshaped virtually every program, reallocated staff and prioritized within the Department. In fact, when Department vacancies occurred, he indicated the vacancy didn't get filled until the administrator talked to him; his purpose in doing that was to force the administrator to think about that position -- how it had been and should be used to best accomplish the job.

Closing:

CHAIRMAN HARGROVE invited **Mr. Simonich** to make his closing remarks. **Mr. Simonich** said he would be happy to answer any questions the Committee might have as they went through their deliberations. He also offered both his and the Department's assistance to provide any information they needed.

CHAIRMAN HARGROVE reminded the Committee Mr. Simonich was to get two pieces of information to them: (1) Cost of reorganization; (2) Accounting for overtime and comp time.

{Tape: 1; Side: B; Approx. Time: 11:00 a.m.; Comments: None.}

HEARING ON HB 76

Sponsor: REP. GAY ANN MASOLO, HD 40, Townsend

Proponents: Elaine Graveley, Clerk & Recorder & Election
Administrator for Broadwater County
Robert Throssell, MT Association of Clerk &
Recorders
Tara Mele, Montana Public Information Research
Group (MtPIRG)

Opponents: None

Opening Statement by Sponsor:

REP. GAY ANN MASOLO, HD 40, Townsend, said HB 76 was to provide for the correction of elector addresses in conjunction with mailed ballot elections only and would allow the forwarding of mailed ballots (the post office did that for only six months) but would allow Election Administrators to provide a form for the electorate to correct their address. REP. MASOLO said this was brought to her attention by her Clerk & Recorder because in Townsend there was a mail ballot election for unification of school districts; however, none of the ballots could be forwarded so many people lost their right to vote. Also, it was very expensive.

Proponents' Testimony:

Elaine Graveley, Clerk & Recorder & Election Administrator for Broadwater County, said mail ballots were widely used for elections but many were returned because the codes on the envelope said they couldn't be forwarded. HB 76 would allow the ballots to be forwarded to the elector; however, the post office honored forwarding for only six months so if the elector had been away longer, there was not a problem. Ms. Graveley said HB 76 would enable more electors to exercise their right to vote and reminded the Committee elections were expensive; also, at the present time it seemed the elections were in vain because so many ballots were returned unopened because they couldn't be forwarded. She stated the bill asked the elector to return the ballot to the election administrator with his or her correct mailing address; therefore, HB 76 was just a simple housekeeping bill. She urged the Committee's support.

Robert Throssell, Montana Association of Clerk & Records, said they supported HB 76, explaining the amendment in Section 1, (3) would help correct the problems being experienced with mail

ballots. He explained currently if electors moved and appeared in person to vote in the old precinct, they could vote because of a one-time opportunity to update; they believed HB 76 gave this one chance to people in the mail ballot process. The bill provided for a form from the Secretary of State's office; however, it was not their intent to create more paperwork and confusion with the returned mail ballot so they had been debating if the use of "correct" on Line 21 was the best term to use. He said they agreed the persons receiving the forwarded mail ballot could either verify their address as correct or send in a new address so the Election Administrator could contact them and get a new registration in place with a new address. **Mr. Throssell** said if the Secretary of State's office had a better term than "correct" they would be willing to work with them on that; however, he felt HB 76 would make mail ballots more accessible to people because more elections, particularly small school districts, were using them as a cost-effective way to conduct elections on a smaller scale and perhaps in the future, on a larger scale as well.

Tara Mele, MontPublic Information Research Group (MtPIRG), said they supported HB 76 because it would allow greater access to the process by citizens.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. BROOKE referred to Page 3, Lines 9-11, and asked if the person didn't verify his or her address, would the ballot be invalidated. **Robert Throssell** affirmed, explaining when a person received a mail ballot, there was a return envelope which contained an affidavit he or she was already a qualified elector in order to participate in that mail ballot. HB 76 would not change that, but the intent was not only to give electors that one chance to vote but also to update their addresses.

David Niss said **Joe Kerwin** knew he drafted HB 76 and Subsection (4) was put in for a specific purpose, i.e. despite the incorrectness of the mail ballot and failure of an addressee to make the correction, if the addressee received and voted the ballot, the failure to correct the address would not interfere with a person's Constitutional right of suffrage. However, the amendment changed to the reverse and addressed the question he tried to draft around, i.e. if, despite an incorrect address, an elector got the ballot and didn't correct the address but verified the address at which the ballot was received was correct, Article II, Section 13, of the Constitution was reversed. **Mr. Niss** asked **Robert Throssell** if, before that amendment was submitted to the House, he had an opportunity to research to determine whether the reversal of the language in the bill as introduced was Constitutional. **Mr. Throssell** said he hadn't -- he simply looked at the existing law which would allow electors to appear in person to vote if they had moved. In order

for them to vote, they had to correct their address at that time; in fact, existing law said if electors didn't want to update their addresses, they could be turned away from the poll.

SEN. WILSON asked where an elector would vote if he filled out the card immediately. **Robert Throssell** said if an elector moved from his precinct but didn't change his or her address, at the next election he or she could return to the old precinct to vote; however, he or she would have to update the address right there. **SEN. WILSON** commented if the elector signed without saying he or she had moved, a misdemeanor would be committed. **Mr. Throssell** affirmed.

SEN. GAGE asked if an insert would be included in the mailing which would tell them unless they verified their address or gave the correct one, their vote wouldn't count. **Robert Throssell** said the mailing details hadn't been worked out; however, they were trying to keep them simple and uncomplicated, yet with the ability to get the information back.

SEN. GAGE commented perhaps the same information should be gotten from voters who went to the polls but hadn't moved. **Mr. Kerwin** said current law required electors to state their name and current address when going to vote; if it was different, it would be corrected at that point. He said the difference between current and proposed statute was "correct" meant "notifying of the correct address" -- the correction came later when the Clerk received the notification and then sent the elector a "Change of Address" card. **Mr. Kerwin** suggested changing "correct" in Section 3, Subsection (4) to reflect the meaning.

SEN. BROOKE commented what was being attempted in Section 3, Subsection (4) was when an elector moved out of Montana, he or she shouldn't have a say in local matters. **Elaine Graveley** said what happened in Townsend was mail addresses changed from post office boxes to street addresses and the post office refused to forward the ballots because they were marked "Do Not Forward." Therefore, the electors had to come to the courthouse to get their ballots.

Closing by Sponsor:

REP. GAY ANN MASOLO said HB 76 was trying to fix the "Do Not Forward" on the ballot because it would save money and enable more people to vote. She urged the Committee's concurrence.

HEARING ON HB 182

Sponsor: REP. GAY ANN MASOLO, HD 40, Townsend

Proponents: Elaine Graveley, Clerk & Recorder and Election Administrator, Broadwater County
Joe Kerwin, Deputy Secretary of State for Elections

Robert Throssell, Montana Association of Clerk &
Recorders

Sue Haverfield, Flathead County Clerk & Recorder
and Election Administrators

Opponents: None

Opening Statement by Sponsor:

REP. GAY ANN MASOLO, HD 40, Townsend, said HB 182 pertained only when there was the death of a candidate shortly before election, something which didn't happen very often; however, it gave a clearer definition of procedure in case it did happen. She cited the 1996 gubernatorial election as one of the reasons for the bill; thus it was called the "Blaylock Bill." REP. MASOLO said in the last election there was no provision for the lieutenant governor candidate to have moved up to the governor candidate and appoint someone. HB 182 would provide for that, as well as if something happened to the lieutenant governor candidate, the governor candidate could appoint someone. She said if a voter voted absentee for that party, the vote would have to be redone, but HB 182 would allow the voter to redo the absentee ballot if he or she decided to vote for the other party. REP. MASOLO said the same thing applied to the Presidential elections and it also allowed the counties options because of potential difficulty with labels in voting machines.

Proponents' Testimony:

Elaine Graveley, Clerk & Recorder & Election Administrator, Broadwater County, said HB 182 was something they never hoped to use; however, it was important to have something in law because of the confusion in the last election. She urged the Committee's support of HB 182.

Joe Kerwin, Deputy Secretary of State for Elections, said the bill came as a result of the death of Chet Blaylock during the last election, which forced them to make some last-minute changes. He said current law provided for some last-minute changes, but they mainly dealt with a single candidate race or a race where the candidate ran as a single candidate; however, it still wasn't clear how to handle that.

{Tape: 1; Side: B; Approx. Time: 11:21 a.m.; Comments: End of
Tape 1, Side B.}

Mr. Kerwin said they were wondering how to make the changes so they came up with guidelines from the Attorney General so they could do what was necessary; in fact, the credit for the election success went to the County Clerk & Recorders and County Election Administrators who did an incredible job of making the last-minute changes to the ballots and ensuring the election was held

without confusion. Thus, the voters were able to do what they had to do.

Mr. Kerwin said HB 182 tried to deal with situations which could arise regarding joint candidacy. Current law said a candidate couldn't withdraw less than 85 days before an election, unless, of course, the candidate died. When gubernatorial candidate Chet Blaylock died, the party had five days to make an appointment; however, there was no mechanism for the lieutenant governor candidate to resign as such and move up. That was why lieutenant governor candidate Judy Jacobsen had to appear on the ballot as both governor and lieutenant governor candidates. They recommended that when the gubernatorial candidate died, the lieutenant governor candidate automatically moved into that spot; or if the lieutenant governor candidate died, the gubernatorial candidate would appoint that spot. This was different from other appointments because normally the political party would make the appointment; however, the afore-mentioned situation was a bit different because the two ran as a ticket. This was similar to what would happen if the death would occur to a sitting governor or lieutenant governor after the election -- the lieutenant governor would move up and make the appointment or if the lieutenant governor passed away, the governor would make that appointment.

The people who voted for the original ballot would be counted for the new ticket; this was different from the last General Election where people who voted but didn't send in a replacement ballot had their vote count for Judy Jacobsen as lieutenant governor but not for governor. He stressed the carryover of the vote was for the joint candidacy only; not for other candidates where law currently allowed for provisions that the voter would ask for a replacement ballot to vote the new ticket. The request had to ask for the replacement ballot before election day and if not done on time, the ballot originally sent in would be the one which counted.

Mr. Kerwin said they allowed for a similar situation in the Presidential/Vice-Presidential election, explaining they certified the ballot 75 days before election. If there were a death in that ticket, there was no mechanism for the state to make any sort of change; therefore, they urged the Committee's support of HB 182.

Robert Throssell, Montana Association of Clerk & Records and Election Administrators, said HB 182 would give direction to the Secretary of State who could in turn give direction to the County Election Administrators. He said Section 3 addressed how changes were physically done on the ballots and allowed the counties to tailor their response to their particular voting system. **Mr. Throssell** said much of what had been eliminated from the original bill by the House dealt with giving people who had voted absentee the opportunity to come back and re-vote. It was the concern of the Election Administrators the untimely death of a candidate

could be a very difficult situation and could cause considerable confusion that people who voted absentee with the provision they voted, knowing going in, for the joint candidates, i.e. ticket rather than individuals. He stressed it was significant if they wanted to change their vote before election day, they could call in and get an updated absentee ballot to change their vote; otherwise, their vote would go into the category of dual office. He reiterated voters still had the right to vote absentee, though to vote early could include a risk of the death of a candidate; however, there was an "out" because they could ask for an updated absentee ballot before election. **Mr. Throssell** said the old bill allowed absentee voters to show up in person to vote on election day, which created a lot of problems; however, without those provisions there were sufficient safeguards.

Sue Haverfield, Flathead County Clerk & Recorder and Election Administrator, said she concurred with what had already been said.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. BROOKE asked for response regarding the House amendments. **Mr. Kerwin** referred to Page 3, Section 4, Line 11, said they, along with the Attorney General, decided "omission" in this case was when Chet Blaylock's name appeared on the ballot for governor but Judy Jacobsen's did not. He contended if they used that section, they could have expanded that to say a ballot replacement could be requested on election day because there was a printing error or omission. **Mr. Kerwin** said the more this was opened, the harder it was to manage and the bigger the potential for problems; therefore, since the voters could still make the oral request for the replacement ballot before the election, the voters should have enough time to request replacement ballots so they were fairly comfortable with that amendment, as well as the others which flowed from that.

CHAIRMAN HARGROVE asked if the 75 was a federal election law. **Mr. Kerwin** said the law just said the ballots had to be certified 75 days before the General Election. He explained that sometimes caused problems because in the 1996 General Election, the 75 days fell in the middle of the Democratic Convention and in the 1992 General Election, it fell right in the middle of the Republican Convention; in fact, in the 1996 General Election the 75 days precluded Ross Perot from having his preferred vice presidential candidate on the ballot. He said most other states had later deadlines; however, they didn't want to move it back because in extreme situations they wanted some flexibility.

CHAIRMAN HARGROVE asked if there was a time when nothing more could be done. **Mr. Kerwin** said currently there was no cutoff deadline, even for presidential/vice-presidential or gubernatorial/lieutenant governor elections, when a change should

be made but it couldn't effectively be done. He said some counties could make the change quickly while others couldn't; however, with technology, etc., that could change also. He stated they avoided as much as possible putting that into law to allow for flexibility.

SEN. GAGE referred to Page 6, Line 2, and thought "placed" should be dropped. He said he talked to **Mr. Niss** who said it could be done without a formal amendment; that way it wouldn't have to return to the House.

Closing by Sponsor:

REP. GAY ANN MASOLO said she believed election was very important so she urged the Committee to vote BE CONCURRED IN.

{Tape: 2; Side: A; Approx. Time: 11:34 a.m.; Comments: None.}

EXECUTIVE ACTION ON HB 123

Amendments: **CHAIRMAN HARGROVE** asked if the Committee had gotten the information it needed on the Capitol complex. **Mr. Niss** explained Amendments hb012301.adn (**EXHIBIT 4**). He said he had spoken with Debbie Fulton and Administration had no objection with the first amendment but had concerns with the other two. He said in #2, she wanted to stay out of the rulemaking process so he asked her what they did if someone illegally placed a statue on the Capitol lawn. Ms. Fulton replied they just took it out; it had never gotten to the point where the material placed on the grounds was such a violation of public order that they wanted to anything other than remove it. She told him there was a specific criminal statute against the desecration of the Capitol building; therefore, there were a couple of criminal methods through which to take care of it.

Mr. Niss said concerning the inventory, the duties between the Department of Fish, Wildlife & Parks and Department of Administration (Section 7, Page 3) were split. Fish, Wildlife & Parks had the duty to conduct the inventory on the grounds of the Capitol and Administration had the duty to conduct the inventory within the Capitol building. The purpose of that, according to Debbie Fulton, was the Department of Administration wanted to bring the issues of displays, decorations, monuments and plaques to the attention of this Committee because having them placed inside the Capitol building was a bigger problem than displays on the ground or inside other state buildings in the Capitol complex. **Mr. Niss** said he informed her Page 3, Line 27, authorized only the inventory on the grounds within the Capitol complex, while Page 3, Lines 29-30, only required the inventory within the Capitol building. Debbie Fulton said that wasn't a problem because about the only place the public wanted to place something was within the Capitol building itself.

SEN. GAGE said someone had commented there were valuable things in other buildings which have disappeared. He felt that ought to concern them but he wasn't sure the bill would aid in preventing that from happening; however, perhaps it would help in determining when or where they were located.

Mr. Niss said material within other buildings outside the Capitol hadn't been a problem and that was why there was this gap in the bill between Subsections (1) and (2) of this section for inventory of materials within other buildings outside the Capitol and not on the grounds itself. He reiterated how Debbie Fulton was not that concerned about that.

SEN. BROOKE asked if it would be better to delete "including" in Line 27 and just list "the grounds of the Capitol complex, executive residence and the original Governor's mansion". She suggested the way it was broken up, it didn't seem to need "including". **Mr. Niss** said she was correct in that the application of the definition on Page 1 made the "including" superfluous but he supposed the reason for it was to be a reminder.

SEN. BROOKE asked if "Capitol building" could be used on Line 30 so it was defined, rather than "Capitol complex." **Mr. Niss** said "tol" meant the building, but he didn't know if it was necessary.

SEN. GAGE said he didn't have a preference; he just wanted to make sure they were discussed.

CHAIRMAN HARGROVE asked if anyone wanted to offer an amendment. **SEN. BROOKE** said she would like to include "building" at the end of the sentence on Line 30, even though "tol" meant building.

SEN. GAGE said he wanted to replace \$25 with language which would make it the same as compensation for legislators.

Motion/Vote: **SEN. BROOKE MOVED DO PASS ON HER AMENDMENT. Motion CARRIED UNANIMOUSLY 6-0.**


Motion/Vote: **SEN. GAGE MOVED DO PASS ON HIS AMENDMENT. Motion CARRIED UNANIMOUSLY 6-0.**

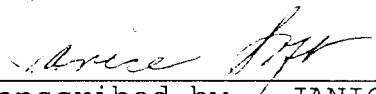
Motion/Vote: **SEN. THOMAS MOVED HB 123 AS AMENDED BE CONCURRED IN. Motion CARRIED UNANIMOUSLY 6-0.**

ADJOURNMENT

Adjournment: The meeting adjourned at 11:48 a.m.


SEN. DON HARGROVE, Chairman


MARY MORRIS, Secretary


Transcribed by: JANICE SOFT

DH/MM