

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN DON HARGROVE, on February 13, 1997,
at 10:04, 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: SJR 6, SB 296 - 2/8/97
Executive Action: SB 264, HB 76, SB 220, SB 269

HEARING ON SJR 6

Sponsor: SEN. FRED THOMAS, Senate District 31, Stevensville.

Proponents: Joe Kerwin, Deputy Secretary of State for Elections.

Opponents: None.

Opening Statement by Sponsor:

SEN. THOMAS stated that the resolution is for an interim study having to do with the Presidential primary. He explained that there is an effort to draw the attention of this region of the country toward our Presidential nomination and primary process. This is an identical resolution to that in other states such as Utah, Idaho and Wyoming. The idea is to work with other states in an effort to involve the west in the primary process. There

is currently an Iowa caucus and a New Hampshire early primary. Montana, along with many other western states, is left out of the process by the time it reaches us in June.

{Tape: 1; Side: A; Approx. Time Count: 10:07; Comments: None.}

Proponents' Testimony:

Joe Kerwin, Deputy Secretary of State for Elections, stated that SJR 6 is an important way to make sure Montana voters have a say in the Presidential election process. With the current trend of moving primaries forward, Montana voters are often left out the selection process for the Presidential candidate. He stated it is a good idea to have a committee to look at a proposal to see what can be done to get Montana voters involved in the process. He offered the resources of his office for this purpose.

{Tape: 1; Side: A; Approx. Time Count: 10:08; Comments: None.}

Opponents' Testimony: None.

Questions From Committee Members and Responses:

CHAIRMAN DON HARGROVE asked if other states are involved.

SEN. THOMAS responded that Utah is involved and that some of the language for the resolution is from Utah. There has been work done during the interim prior to this session by SEN. FOSTER.

SEN. THOMAS stated he is not aware of other states involved, but there are many other states that could be. Colorado and Arizona do have earlier primaries. He asked the committee to recall that Arizona had an earlier primary that was more interesting due to Forbes winning, or doing well, on the Republican side. He noted that this adds to the spice of life and Montana is left out of this process.

CHAIRMAN HARGROVE asked what the cost would be.

SEN. THOMAS responded that there will be money involved in a House Bill to fund interim studies and, when the ranking of those studies is done, a determination will be made at that time.

CHAIRMAN HARGROVE inquired as to what the mechanics would be if the resolution was passed and funded.

SEN. THOMAS responded that the leadership would appoint the participants. There is a process in place for interim studies, therefore it does not need to be addressed in the resolution. Equal members from each house and party would be appointed to serve on the task force.

SEN. KEN MESAROS asked if the equal representation applies the total number of participants on the study committee.

SEN. THOMAS stated he believes there will be four members from Montana, one from each party in each house. The total number of members will depend on how many states participate in the study.

SEN. VIVIAN BROOKE inquired if this is appropriate as an interim study, or if it would be more appropriate to have a wider cross-section of representation, such as political parties or the Secretary of State.

SEN. THOMAS responded that the process SEN. BROOKE is referring to has been put into practice. The resolution would be a focused effort to have Montana participate in the Rocky Mountain Presidential Preference Primary Task Force. The Montana members could then come back with a proposal for a date and the mechanics for the process, such as mailing ballots, or other cost saving ideas. He stated that while he doesn't have any problem with including those people suggested by SEN. BROOKE, he feels that with the mechanics of the resolution, sending four members of legislature is appropriate.

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

Closing by Sponsor:

SEN. THOMAS stated that he appreciated the attendance of Mr. Kerwin.

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

EXECUTIVE ACTION ON SB 264

Motion/Vote: SEN. MESAROS moved that SB 264 DO PASS. The motion CARRIED UNANIMOUSLY.

{Tape: 1; Side: A; Approx. Time Count: 10:16; Comments: None.}

EXECUTIVE ACTION ON HB 76

Amendments: hb007601.adn (EXHIBIT 1)

Informational Testimony:

Mr. David Niss stated that the amendment would strike "correct" from page 1, line 21 and page 3, line 9, and insert "notify the election administrator of", as a correction wouldn't actually be made at that point.

Motion/Vote: SEN. DEL GAGE moved that AMENDMENT HB007601.ADN BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

Discussion:

SEN. BROOKE asked if there were any other amendments prepared for HB 76, particularly in regard to the term "invalidate", rather than "does not invalidate" on page 3.

Mr. Niss responded that the House turned that around. He stated that he was initially concerned about that. He spoke to the counsel for Clerk and Recorder's Association about the situation. He stated that the counsel is correct in that there is a parallel situation in the current election practices when electors are asked by election judges to verify their address when they vote in person.

SEN. GAGE commented that a bill cannot be changed to the extent that it changes the original purpose of the bill. He stated that this proposal would be a 180 degree turn.

Mr. Niss responded that the particular provision regarding changing a bill appears in the constitution in the section dealing with bills. He stated that he has read about three quarters of the cases which indicate that there are two ways to make the determination. One way is by looking at the title to see if it has been changed and the other way is by looking at the body of the bill. The Supreme Court doesn't reconcile those two divergent lines of cases. In this situation, there has been no change to the title of the bill required by that section. He stated that, in terms of the sections of the bill and the changed to those sections, his judgement would be that the proposal would violate neither of the tests. He agreed it is true that the section of the bill would be changed, but the question is whether the purpose of the bill is judged by that one section or by a combination of sections.

CHAIRMAN HARGROVE inquired whether this means that the bill was written incorrectly in the first place, and whether the actual intention was the way the bill currently reads.

Mr. Niss responded that he could not be certain what the House intended, but that this definitely changes the language and application of that provision. He stated that the House disagreed with what the effect of the provision should be.

SEN. GAGE commented that the proposal to have correct addresses is probably in keeping with what the intent. He added that this is probably the only way to penalize a person for not validating the correct address. It does, however, seem that there is an inconsistency in how the situation is being handled if it is mandated that a mailed ballot with an incorrect address is invalid, while the vote of individual voting in person who hasn't changed his/her address is not. He speculated as to whether the vote of an individual voting in person would be invalidated if someone challenged it.

Mr. Niss, responded that **SEN. GAGE** raised a good question. He stated that although he is not aware of the answer, he has discussed the provision that went into the original draft with **Joe Kerwin** of the Secretary of State's Office. He stated he is not aware of any particular applications or results of court challenges in the situation of one elector challenging the validity of the vote of another elector.

SEN. GAGE reiterated his concern that mail-in votes not be treated differently than any other votes. He requested that the committee delay action for one day in order to have the matter clarified.

CHAIRMAN HARGROVE requested the input of **Mr. Kerwin**.

Mr. Kerwin agreed that there is an inconsistency in that, at the poll, an individual has to correct his or her address in order to vote. The situation is not the same with mail ballots. He stated the way the bill is intended and has been amended, is the voter is simply notifying clerk and is not bound to making the address change. In the original version of the bill, with the word "correct", the correction had to be made, causing the situation to be more parallel to poll voting. The clerks' intent was to have notification.

SEN. GAGE noted that he has never been asked if his address is correct when he has gone to vote. He asked whether a vote can be challenged and thrown out if someone is allowed to vote without being questioned about his/her address.

Mr. Kerwin explained that a person's vote could be challenged and thrown out if the person doesn't reside where it is stated he/she does. By law the election judge is supposed to verify the address and when the voter signs the precinct register, he/she is not only attesting to identity, but to the correct address as well. If the address is not correct, the voter is to complete a change of address form. Whether this process is always put into practice is not certain, but the law provides that the address is to be verified with the voter and, if not, the vote could be challenged.

SEN. WILSON noted that elections have been decided by as few as one vote and that he knows people who have voted without changing their addresses. He expressed concern that an entire election could be challenged.

Mr. Kerwin explained that an individual vote can be challenged before the vote is made, but that afterward it is quite difficult. If a voter is challenged, his/her ballot is marked with a number so the court can later examine or throw out the ballot. This challenge must be made on or before election day or

order to mark the ballot. After that, it is not possible to identify the ballot of the challenged voter.

CHAIRMAN HARGROVE agreed that the committee would postpone further action on this matter.

{Tape: 1; Side: A; Approx. Time Count: 10:30; Comments: None.}

HEARING ON SB 296

Sponsor: SEN. GREG JERGESON, Senate District 46, Chinook

Proponents: Carl Wambolt, Montana State University
Gregg Carlson, Montana State University
Judee Wargo, Montana State University

Opponents: None

Opening Statement by Sponsor:

SEN. JERGESON reported that two employees from the Extension Service and experiment station approached him last summer regarding circumstances that transpired preventing them from receiving full retirement benefits to which they are entitled. He indicated that the proponents of the bill would describe how the particular circumstances of three state employees transferring between agencies caused them to not receive full retirement benefits, creating the necessity for this bill.

{Tape: 1; Side: A; Approx. Time Count: 10:33; Comments: None.}

Proponents' Testimony:

Carl Wambolt, Professor of Range Science at Montana State University, provided written testimony. EXHIBIT 2.

{Tape: 1; Side: A; Approx. Time Count: 10:40; Comments: None.}

Gregg Carlson, Research Agronomist with Montana Agriculture Experiment Station provided written testimony. EXHIBIT 3.

{Tape: 1; Side: A; Approx. Time Count: 10:46; Comments: TO END OF TAPE 1 SIDE A.}

Judee Wargo, Associate Professor, Montana State University presented written testimony. EXHIBIT 4.

{Tape: 1; Side: B; Approx. Time Count: 10:50; Comments: None.}

Opponents' Testimony: None.

Informational Testimony:

Dave Senn, Executive Director of Teachers' Retirement System stated that this issue is not new. In 1949 the Teachers' Retirement Act was amended to allow county extension employees to elect to participate in double service retirement. It appears to him that these individuals were in both retirement systems. In 1989 the legislation was proposed to correct situations that occurred over the years.

He stated it is his belief that there will be more than three individuals affected by this bill. He states that the bill will not have a significant effect on the Teachers' Retirement System. This bill builds on the 1989 amendment that allows individuals to buy five years of their previous extension service. The employee pays the combined employee and employer rate. That is not the actuarial cost. Actuarial cost takes into consideration that contributions will begin at the beginning of an individual's career and that those contributions will be invested.

Life expectancy is also a consideration. It is similar to buying a annuity in the private sector. He stated the benefits probably won't increase that much from purchasing the years of service in question. The actuarial amount for one of the proponents would be approximately \$7,600 per year, and for another, \$8,600 per year. He stated that this is significantly higher than the cost provided to the employee. The cost to purchase five years is highly subsidized by the system. This particular provision does not allow for credit in both systems.

He indicated that he would have to work with the individual concerned with the 1989 provision to determine if it presents a problem to the Teachers' Retirement System. The reason for the 1989 hire date and 5 year maximum is to prevent people from simply coming in and buying up retirement and quickly retiring.
{Tape: 1; Side: B; Approx. Time Count: 10:54; Comments: None.}

Questions From Committee Members and Responses:

SEN. GAGE asked whether payment must be made in a lump sum if an individual does elect to buy retirement or if that determination can be made upon retirement.

Mr. Senn responded that IRS Code, Section 415 limits how much one can contribute to the retirement system. The limit is 25% of the individual's taxable income in a year. Therefore, waiting until retirement may not be possible.

SEN. GAGE asked if the proponents are aware of this.

Mr. Senn responded that they likely are not as this section of the code was only recently applied to public plans. He added

that he is working with the National Council of Teachers' Retirement to get that corrected.

SEN. GAGE commented that this is good information to have and inquired if any of the proponents had purchased the 5 years.

Dr. Wambolt responded that he has. He added that he had previously determined he would gain between \$3,600 to \$4,100 per year. After hearing **Mr. Senn's** testimony it appears to him that it will take 10 years just to get his money back. Without compounding of interest, the money would be lost, so, realistically it would take closer to 12 years. It doesn't appear to him that actuarial cost is a viable situation. He pointed out that drawing people to Montana and allowing them to simply buy up five years of retirement is a considerably better deal than allowing the proponents to buy the ten years they have actually worked. He asked the committee to consider the impact of actuarial costs.

SEN. GAGE asked if arrangements for a monthly amount could be made for those buying in.

Mr. Senn responded that it has always been the policy of the Teachers' Retirement Board to make payments as convenient as possible for the payer.

SEN. GAGE commented that the effective date of passage and approval would help to spread payments out over a few more months.

SEN. MESAROS asked the proponents if they accumulated retirement during the years they initially worked for the civil service or had some duplication of benefits.

Mr. Wambolt answered that he had civil service retirement, but that he was told upon transferring to TRS he could withdraw it. He felt that this was good advice because the amount of time he had would not have amounted to much by the time he retired. The idea to was transfer the time to TRS. He stated that he does not have any civil service retirement. The advice he was given was affected by the change in personnel officers in 1985.

Mr. Carlson stated that the initial advise he was given regarding not being able to make the transfer was sound, however the advice given after that was not sound. The latter advice was to do as he wished with regard to leaving what he had in civil service as it would remain on account at 2%. He added that he was told that if he withdrew his employee contribution (\$11,000 in 1981) that he could go back into civil service with TRS years because the faculty at the research centers were going to be on joint appointment with the Extension Service. However, civil service went away from the Extension Service. He does not have any civil service retirement.

CHAIRMAN HARGROVE asked about the significance of the 1989 provision.

Mr. Senn responded that in 1989 a change was made so that for every five years an individual worked, he/she could purchase one year of additional service by paying the actuarial cost. However, if a person waited until retirement, paying the interest that would have been earned over a career is too expensive, so the 1989 date was put in place. The date does apply to the extension service differently because of the type of service and the individuals involved. The Montana State Constitution now requires actuarial funding of retirement benefits.

CHAIRMAN HARGROVE asked if there is a difference among the proponents' cases with regard to the 1989 provision.

Mr. Senn responded that only one of the proponents came into the system after 1989.

{Tape: 1; Side: B; Approx. Time Count: 11:05; Comments: None.}

Closing by Sponsor:

SEN. JERGESON left the decision of what to do with actuarial cost to the wisdom of the committee, but pleaded that the committee try to correct the situation. He recalled the Extension Service coming before the Education Appropriations Subcommittee during the 1987 session requesting additional appropriation because the benefits cost for the civil service federal program were increased and the state portion of the match increased as well. He stated that the Extension Service was instructed that new hires were to be hired under TRS as the employer cost was much less under this system. The proponents were then brought in as new hires upon transferring from civil service. The legislature now has an obligation to these people who have fallen through the cracks.

{Tape: 1; Side: B; Approx. Time Count: 11:07; Comments: None.}

EXECUTIVE ACTION ON SB 220

Discussion:

CHAIRMAN HARGROVE reported that he has followed the public hearings and executive action for the bill. He expressed his concern that institutionalizing the Consumer Council may limit its abilities. He stated that there has been no significant change in the views of Mr. Matt McKinney, **SEN. CHUCK SWYSGOOD**, or **Governor Marc Racicot** concerning this bill.

Motion: **SEN. MESAROS** moved that **SB 220 DO PASS.**

Discussion:

SEN. GAGE reported that he is expecting information on the original purpose of the Consensus Council. He stated that the expenditures as reflected in the fiscal note will remain the same whether or not the bill passes.

SEN. THOMAS asked if HB 2 will leave the money in the budget even if this bill is not passed.

SEN. GAGE replied that this was his understanding of the situation. The bill would not change the situation, other than to make the function statutory.

CHAIRMAN HARGROVE recalled that in the last session, **Governor Marc Racicot** "traded off" with larger budget items in order to fund the Consensus Council. He stated it is his belief that an effort will be made to keep the Consensus Council this session as well.

SEN. MESAROS agreed and asked whether function is something that the committee believes in strongly enough to preserve in statute for future administrations. He expressed concern about creating a function of government that is competitive with the private sector. He asked **CHAIRMAN HARGROVE** whether he had received any correspondence from other consultants in favor of the bill.

CHAIRMAN HARGROVE responded that he had and that the material was in the folders.

SEN. MESAROS stated he had been involved with contentious issues addressed by the Consensus Council. He has seen divisive issues resolved, but conceded that the process is not going to work 100% of the time.

CHAIRMAN HARGROVE stated he received a letter from a firm of attorneys in Big Timber who are mediators and who support the legislation.

SEN. MESAROS stated that with the workload the Consensus Council has, they must be very selective. The areas they are involved in are close to the public policy arena and play a vital role for legislators. Yet, the staff is small and contracts out for positions. He stated that, despite his concern about competition, he feels the Consensus Council plays a vital role and he would like to see legislation to help function continue.

SEN. THOMAS stated that this bill is not at the **Governor's** request. He explained that he is comfortable seeing the **Governor** have a resource such as the Consensus Council, although \$200,000 a year seems excessive. He stated he is very uncomfortable codifying the function into statute. One person in the

Governor's staff would be appropriate, but with this legislation there is no limit other than appropriation. He noted that the bill has touched a nerve in the private sector and argued against putting the function into statute.

CHAIRMAN HARGROVE stated that the current Governor has said that he stands back from the function and lets the work react to requests that come from the public sector.

SEN. GAGE asked if the legislature would be under more obligation to fund the Consensus Council if it were statutory.

Mr. Niss answered that it would not.

Amendments: 341527SC.SRF

Motion: **SEN. THOMAS** moved an amendment to insert A
TERMINATION DATE OF JULY 1, 1999 DO PASS.

Discussion:

SEN. MESAROS questioned whether the termination date is too short given the effective date.

SEN. THOMAS responded that his attempt was to match the biennium so this issue will have to be revisited next session.

SEN. MESAROS expressed his concern that it will be October before the ongoing processes can be implemented. He suggested an additional two years before terminating.

CHAIRMAN HARGROVE asked **SEN. GAGE** if the consideration of HB 2 in the 1999 session will allow enough time to fund the continuation of the Consensus Council for July of that year.

SEN. GAGE answered that it probably would. He added that it seems reasonable to extend the termination to the term of the current governor. This would make certain that the future administration would make the decision for itself regarding the Consensus Council.

Substitute Motion/Vote: **SEN. THOMAS** moved that an amendment to insert A TERMINATION DATE OF JULY 1, 2001 DO PASS. The motion CARRIED UNANIMOUSLY.

Motion: **SEN. GAGE** moved that an amendment to insert AN
EFFECTIVE DATE OF JULY 1, 1997 DO PASS.

Discussion:

SEN. THOMAS asked if the effective date would be irrelevant.

SEN. GAGE and SEN. HARGROVE stated that they believe the effective date makes the bill a little cleaner.

Vote: The motion CARRIED UNANIMOUSLY.

Substitute Motion/Vote: SEN. MESAROS moved that SB 220 DO PASS AS AMENDED. The motion CARRIED with SEN. GAGE and SEN. THOMAS opposed.
{Tape: 2; Side: A; Approx. Time Count: 11:29; Comments: None.}

EXECUTIVE ACTION ON HB 76Discussion:

SEN. THOMAS asked SEN. GAGE about the intent of the bill.

SEN. GAGE explained that the bill gets people who are voting by mail to correct their address when they send their ballots in. The current provision in statute requires someone voting at the poll to provide a correct address before voting. The House changed the bill to read that a vote will be invalidated if the address is not correct.

CHAIRMAN HARGROVE recalled testimony which indicated that the address must be changed upon the first move, but not the second.

SEN. MESAROS questioned how often voters are really questioned about their addresses.

Mr. Niss explained that it was brought to SEN. MASOLO'S attention by the Townsend Election Administrator that current law prohibits forwarding of election materials. He stated that it is the opinion of Mr. Kerwin that the current system of signature comparison eliminates the need to prohibit forwarding.

CHAIRMAN HARGROVE explained that Townsend changed from post office boxes to street addresses, making it very difficult to forward.

Mr. Niss explained that due to previous changes, section 3 of the bill is not a major issue of legislation.

SEN. GAGE reiterated that the stress of the bill is to get addresses corrected.

SEN. THOMAS expressed concern about mail fraud and the need to have signatures compared on mail-in ballots.

CHAIRMAN HARGROVE stated that there is a tremendous need to get good addresses.

SEN. THOMAS noted that by deleting the language, someone could hypothetically register in five different districts with five different addresses, and have them all forwarded to the voter's correct address.

CHAIRMAN HARGROVE questioned whether a zipcode change would be affected by the bill.

Motion: SEN. THOMAS moved that HB 76 BE
CONCURRED IN AS AMENDED.

Discussion:

SEN. VIVIAN BROOKE inquired about the House amendments.

CHAIRMAN HARGROVE stated that after discussion, the committee felt it appropriate to leave the amendments.

SEN. BROOKE expressed concern about the amendments.

SEN. GAGE asked to what extent the bill would pass an unfunded liability down to the counties.

SEN. WILSON recalled that the issue was addressed in testimony and that no additional costs would be incurred.

Vote: The motion CARRIED with SEN. WILSON opposed.
{Tape: 2; Side: A; Approx. Time Count: 11:44; Comments: None.}

EXECUTIVE ACTION ON SB 269

Amendments: sb026901.adn (EXHIBIT 5)

Motion: SEN. BROOKE moved that AMENDMENT SB026901.ADN DO
PASS.

Discussion:

SEN. BROOKE questioned whether the amendments should be separated, noting that the first five amendments include more people under the study.

Mr. Niss explained that members of the protected profession that would be consolidated into the pay plan have had similar problems over the past years and have shared the same duties and risks. It was discovered that employees other than those named in the

title and text of the bill encountered similar problems, so it was determined that the scope of the study should be expanded.

SEN. MESAROS inquired as to who these other employees are and to what degree the bill will be impacted.

SEN. GAGE recalled that testimony indicated there were almost no other employees and stated it is his belief that the amendment is more of a "catch-all" provision. He believes it will not affect the bill.

Mr. Niss explained that paragraphs 1 through 5 take into account the other employees, known or not known, by the Department of Administration. In regard to paragraph 6, Washington was included for the purposes of the survey because, at the time, South Dakota's pay for similar employees was so low that it skewed the study to the low end of the pay scale. Now that South Dakota has raised their pay, it has skewed the study the other way because Washington paid more. That is the purpose for striking Washington.

In regard to paragraph 7, HB 13 requires the development of the newer pay classification system of all state employees and the purpose of the coordination clause is to ensure that if HB 13 passes, the recommendation that results from the study will be enacted consistently for all state employees.

CHAIRMAN HARGROVE inquired about funding for HB 13.

Mr. Niss explained that there is no funding in HB 13, but the step has been made from graded steps to market-base and now the final step is being made to performance-base.

Vote: The motion **CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. MESAROS** moved that SB 269 DO
PASS AS AMENDED. The motion **CARRIED**
UNANIMOUSLY.

{Tape: 2; Side: A; Approx. Time Count: 11:57; Comments: None.}

ADJOURNMENT

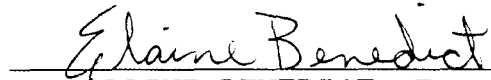
Adjournment: 11:57



SEN. DON HARGROVE, Chairman



MARY MORRIS, Secretary



ELAINE BENEDICT, Transcriber

DH/EMB