

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on February 19, 1997,
at 10:01 a.m., in Room 331.

ROLL CALL

Members Present:

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

Members Excused: None

Members Absent: None

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

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 359, SB 361 - 2/15/97
Executive Action: SB 361, SB 268, SB 340, SJR 6

HEARING ON SB 359

Sponsor: SEN. DARYL TOEWS, Senate District 48, Lustre

Proponents: Jim Richard, Montana Wildlife Federation

Opponents: Sharon Kindle, Women Involved in Farm Economics

Opening Statement by Sponsor:

SEN. TOEWS presented written material. **EXHIBIT 1.** He stated that the problem faced by Daniels County is the sheer amount of acreage it has. Sections 16 and 36 were given to school trust lands under the Enabling Act. Also, the development of the Fort Peck Indian reservation caused a heavy concentration of state land in Daniels County. These events have created tax problems for the county, particularly in smaller school districts.

The board has the prerogative to sell some of the state lands. This bill will encourage the board to do that. The lease or sale of state lands would be lessee initiated. The local land market would be protected because only 10% of the state lands could be sold in any given year.

The bill would provide for a downpayment and 15 year payment schedule. The Board of Investments has indicated this would bring in between 8.25% and 9% interest.

The bill would also provide for a state lands trust account within the school trust account. Federal laws require that the money must go toward the state. The money would go into the education trust account, but would stay in a separate part. This money could be used to buy other properties. If not used within five years, the money would revert to the main school trust account.

He offered an amendment. After the bill was drafted, a piece of legislation was found that says minerals can't be transferred. The amendment would take out all the minerals and leave them with the state.

He referred the committee to the hand-out. The bill was drafted with the idea that isolated tracts would probably be sold first. About 90% of the ranchers in the county are in favor of the bill and would like to buy isolated tracts at public auction. Larger parcels would be slower to sell.

The money in the trust could be used to buy and consolidate other lands to make them more economically feasible. The lands could be used for better hunting or fishing. Currently, the land only produces a 1.5% to 2% return. The Board of Investments indicated they could get between 5% and 10% if the land were in their portfolio.

The revenue from the property could be used to better places. Colorado, for example, invests in parking lots. Virginia City could be funded with the money from these lands. The decisions would be left to the State Lands Department.

{Tape: 1; Side: A; Approx. Time Count: 10:11; Comments: None.}

Proponents' Testimony:

Jim Richard, Montana Wildlife Federation, stated that last session the Federation and other conservation groups vigorously opposed bills for the sale of state lands. SB 359 doesn't provide for an outright sale, rather it provides for a trust account and a land banking concept. This would allow other state lands to be acquired to provide better public access to lands. He may propose an amendment to the House committee that would have the legislature give policy-setting direction to the Department and the Land Board.

{Tape: 1; Side: A; Approx. Time Count: 10:12; Comments: None.}

Opponents' Testimony:

Sharon Kindle, Women Involved in Farm Economics, said a member of WIFE that lives in Peerless has analyzed her cash flow and determined that she could not purchase any land. WIFE is willing to work with SEN. TOEWS, but there is concern that the townships are not mentioned in the bill.

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

Informational Testimony:

Bud Clinch, Director of the Department of Natural Resources, stated that because many of the leases are for 10 years and have been in the family for decades, the lessees are able to mortgage their leasehold interest to the local bank. He is concerned about the Department being a lending institution. He suggested statute or rulemaking provide that the Department could subordinate any other mortgages on the land. He also suggested the department be given the ability to deny the sale. His concern is a lessee may not be able to get financing at normal banking institutions because of his/her leasehold interest. He is uncertain how the state would develop rules or procedures to measure the financial status of a lessee and whether the Department could accept or reject the request for financing.

{Tape: 1; Side: A; Approx. Time Count: 10:15; Comments: None.}

Questions From Committee Members and Responses:

SEN. VIVIAN BROOKE inquired about Ms. Kindle's concern with townships.

Ms. Kindle responded that the current policy states townships are to be set aside for school trust lands, with the money going into the school trust fund. Her concern is that is not stipulated in the bill. WIFE would like to assure the money would stay within the school trust.

Also, WIFE's concern is not whether people will have the opportunity to buy the land, but whether they will be financially able. WIFE has members living in Daniels County who are entirely on state land. With cattle and grain prices lowering, a banker may not want to enter into purchasing the land.

SEN. BROOKE asked Ms. Kindle to provide numbers showing the economic impact of the bill on WIFE members.

SEN. KEN MESAROS noted that, under this bill, all the state lands could be sold. He asked whether a floor should be added to the bill.

SEN. TOEWS stated that the likelihood of selling all the state land is incredibly small. Any sale would be lessee initiated. There would be no economic impact on the agricultural community because no one would be required to buy.

In regard to money going into the school trust fund, Section 1, part 2 of the bill provides that state land money would go to the school trust.

SEN. MESAROS asked **SEN. TOEWS** if he has received input as to the recreational use of the land.

SEN. TOEWS responded that any suggestions would have to gain support and make economic sense before being put into use.

SEN. MESAROS asked **Mr. Clinch** what possible administrative problems would be faced in regard to Constitutional mandates.

Mr. Clinch responded that he does not anticipate all of the state lands in Daniels County would sell. A base could be established to get back to 6%, which is the amount each county received during the Enabling Act.

The Department would have to analyze how money from the lands would be used for the acquisition of new properties. Prudent fiduciaries in other states are purchasing development properties. This may be an alternative to turning the land into replacement grazing or agricultural land. All land sales and acquisitions would ultimately be approved by the Land Board.

SEN. DEL GAGE asked how much of the land is currently under lease.

SEN. TOEWS stated over 99% is under lease.

SEN. GAGE asked if the federal government consider minerals to be a royalty interest.

SEN. TOEWS referred **SEN. GAGE** to the bill.

SEN. GAGE asked if the provision on page 3, line 5 will be a problem is someone wants to put up a fence.

SEN. TOEWS explained that line 3 of page 3 removes the twelve family requirement for Daniels County.

CHAIRMAN HARGROVE asked if there would be a limitation on who could buy land if put up for auction.

SEN. TOEWS stated that statutes, and possibly the Constitution, provide that there can be no such limitation.

CHAIRMAN HARGROVE asked whether, theoretically, someone from an out of state development corporation could buy the land and turn it into a golf course.

SEN. TOEWS stated there are already over 3 million acres for sale in Montana, so the likelihood of an out-of-state developer wanting to buy land in Daniels County is unimaginable.

CHAIRMAN HARGROVE asked **SEN. TOEWS** if he has requested a fiscal note.

SEN. TOEWS stated that there is a fiscal note, but he has not seen it.

{Tape: 1; Side: A; Approx. Time Count: 10:32; Comments: None.}

Closing by Sponsor:

SEN. TOEWS stated that SB 359 is a downsized version of many ideas. Purchasing the land would not be mandatory. The bill would give the state a tool for better management of state lands and could provide funding for Virginia City.

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

HEARING ON SB 361

Sponsor: **SEN. STEVE BENEDICT**, Senate District 30, Hamilton

Proponents: Robert Throssell, Montana Association of Clerk & Recorders
Joe Kerwin, Secretary of State's Office
Shelley Cheney, Gallatin County Clerk and Recorder
Gail Davis, Glacier County Election Administrator
Sue Haverfield, Flathead County Clerk and Recorder
Betty T. Lund, Ravalli County Clerk and Recorder
Duane Winslow, Yellowstone County Election Administrator
Mike Mathew, Montana Association of Counties

Opponents: None

Opening Statement by Sponsor:

SEN. BENEDICT stated that he brings the bill before the committee rather reluctantly. The proposal was imposed by the federal government. The bill did not pass the 54th Legislature, partly because of the fiscal note. Other states that have not implemented the National Voter Registration Act have found themselves in court and have lost every case.

He summarized the bill. A new section of law would provide new registering opportunities for those people who apply for public assistance.

{Tape: 1; Side: A; Approx. Time Count: 10:36; Comments: None.}

Proponents' Testimony:

Robert Throssell, Montana Association of Clerk & Recorders, stated that the clerk and recorders are the election administrators in most counties. In 1994, **REP. GEORGE HEAVY RUNNER** carried a bill by the Secretary of State's Office which would have implemented more extensive procedures than were necessary in Montana. The bill did not pass. SB 361 would help local election administrators comply with state and federal law.

Joe Kerwin, Secretary of State's Office, supported the bill.

Shelley Cheney, Gallatin County Clerk and Recorder, stated that SB 361 would allow election administrators throughout the state to follow the requirements of NVRA. Montana laws and rules already address voter registration by the Motor Vehicle Division. There are provisions for mail registration and agency registration. The NVRA requires procedures to cancel voters. SB 361 will create a Montana law that would give local control to the election administrators to follow those procedures.

Gail Davis, Glacier County Election Administrator, stated that SB 361 would make the election administrators' job much easier as they would be in compliance with the NVRA. The bill would bring control back to the state and counties. Parts of the NVRA have already been implemented, so the steps are already in place to continue.

Sue Haverfield, Flathead County Clerk and Recorder, stated that clerk and recorders appeared to oppose this legislation in 1995 and have incorporated amendments made at that time into this bill.

Betty T. Lund, Ravalli County Clerk and Recorder, presented written testimony. **EXHIBIT 2.**

Duane Winslow, Yellowstone County Election Administrator, stated the title of the bill is somewhat misleading because a majority of the NVRA is already in effect in Montana. The bill will complete the small percentage of work that needs to be done. The bill reduces a massive federal act to simple procedures that can be implemented at the local level.

{Tape: 1; Side: A; Approx. Time Count: 10:43; Comments: END OF SIDE 1.}

Failure to pass the bill would likely result in the federal government dictating what procedures must be used for federal elections. When the federal government steps in to administer a program, cost and efficiency generally rise while efficiency and clarity decline.

Local governments pay the bills and know what parameters exist. SB 361 will keep Montana elections in the hands of Montanans.

Mike Mathew, President of Montana Association of Counties, stated that the commissioners stand behind the hard work done by the clerk and recorders in preparing this bill.

{Tape: 1; Side: A; Approx. Time Count: 10:45; Comments: None.}

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. FRED THOMAS clarified that this bill would allow clerk and recorders to take individuals who had missed two general elections off the registration list. He asked how this would be done under the new law.

Ms. Lund explained that two notices would be sent. If the first notice come back, a second notice including a postage paid envelope would be sent. After two federal elections, those who had returned both notices would be purged from the list.

SEN. MESAROS referred to page 10, Section 12 of the bill. He asked what the mandate is and what the cost would be to the Secretary of State's Office.

Joe Kerwin responded that there would be a minimal cost to the state.

Ms. Lund responded that after the presidential election, 175,000 voters were canceled from the state. They estimated the cost to be \$1 per voter. However, the process takes place over a four year period. If SB 361 is not passed, the state will still have to do everything required in the bill and the list of requirements from the federal government will be considerably longer than the bill.

SEN. GAGE asked for the definition of an inactive elector.

Mr. Winslow explained that in the past, names were purged from the list after a presidential election. With SB 361, the names would be put on a list of inactive electors and would not be purged from the list until the confirmation process is finished. Inactive electors are people who are registered to vote in Montana, but who did not vote in the presidential election.

SEN. GAGE asked why a mailed notice to an elector would not be forwardable.

Mr. Winslow explained that nonforwardable notices would help counties determine if the address is correct.

SEN. GAGE expressed concern that someone just moving down the street would not receive the notice and would therefore not have the opportunity to provide the correct address.

Mr. Winslow explained that the process in question would be for someone who registers by mail. The person would still be registered even if he/she did not receive the notice.

SEN. GAGE asked if there would be any problem coordinating the provisions SB 361 with HB 76.

Mr. Throssell responded that HB 76 would allow a process to update addresses. With SB 361, the mailings would go out only to someone on the inactive list. With the mail ballot procedure, if someone missed an election and was put on the inactive list, he/she would not be entitled to vote on state mail-elections. The active list contemplated under SB 361 would have the most current address.

SEN. GAGE asked if the federal government has given a deadline for having the provisions implemented.

Mr. Throssell responded that the deadline has already passed.

CHAIRMAN HARGROVE asked what the bill would mean at the county level in terms of trouble, expense and effort.

Mr. Throssell explained that there would be an additional burden on the election administrators. Counties are working with the Secretary of State's Office and the legislature to ensure that elections are sound and cost effective. SB 361 will allow local flexibility which is key as Montana is a diverse state.

There would be an expense for computer maintenance and printing of the lists. Someone on the inactive list would be able to vote in the federal election, but not the state. A system providing for this would also be an expense. Some counties could work this into their system easily while others could not, so the expense would vary. Being able to see the expense coming would help the adjustment process.

CHAIRMAN HARGROVE noted that this would be an unfunded mandate. He asked whether it should be funded by the state.

Mr. Throssell agreed it is an unfunded mandate from the federal government, but noted that it is in relation to federal elections. The cost of implementation would be a trade-off for having local control.

Mr. Mathew commented that there is unfunded mandate legislation, attached last time, and an amount of 1/10th of a mill. There is an unfunded mandate, but it does not hit the cap of the legislative issue that has already been dealt with. The federal level will not give any consideration.

SEN. GAGE cited page 6, lines 1-4 and noted that the bill would provide that the Secretary of State's Office could choose not to help the election administrators in implementing the provisions.

Mr. Kerwin clarified that the Secretary of State's chief election officer would advise the counties and the counties could then accept or disregard the advice.

Mr. Winslow further clarified that the Secretary of State would not advise counties on chapters 35, 36 and 37 of Title 13, which are the elections laws.

David Niss, Legislative Services Division, agreed with Mr. Winslow's interpretation.

{Tape: 1; Side: B; Approx. Time Count: 11:03; Comments: None.}

Closing by Sponsor:

SEN. BENEDICT stated that the fiscal note is not ready due to the late appearance of the bill. He estimates the cost to his county would be \$6,500 over a four year period. Ms. Lund, the election administrator for his county, has received approval for the budget from the county commissioners. Many, if not all, clerk and recorders are also preparing for the cost because they support the bill. Although the provisions in the bill will be unpleasant to implement, the alternative would be worse.

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

EXECUTIVE ACTION ON SJR 6

Motion/Vote: SEN. THOMAS moved that SJR 6 BE ADOPTED.
The motion CARRIED UNANIMOUSLY.

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

EXECUTIVE ACTION ON SB 268

Amendments: Contingency Voidness Clause

Motion: SEN. GAGE moved that SB 268 DO PASS.

Discussion:

SEN. MESAROS stated he respects the sponsor's concern that the lottery may contribute to gambling addiction and other social ills, however, losing \$8 million a year from the General Fund would be quite an impact. He does not recognize the concerns raised by the sponsor and therefore opposes the bill.

SEN. GAGE commented that questions may arise as to why a contingency clause was not put in the bill.

CHAIRMAN HARGROVE recalled the sponsor saying the bill would pay for itself by alleviating social problems and the associated costs.

SEN. THOMAS noted that he amended **REP. BOB PAVLOVICH's** bill for the initiative. He amended it to put the revenue toward education as a way to reduce property taxes, with the focus toward lowering the mills needed for teachers retirement. The funding of that has been changed to the guaranteed tax base process, so the money is put into the General Fund. The public passed the initiative with that mechanism. SB 268 ought to go the floor for consideration.

Withdrawn Motion: **SEN. GAGE** withdrew his motion.

Motion: **SEN. BROOKE** moved that **A CONTINGENCY VOIDNESS CLAUSE BE ADOPTED.**

Discussion:

SEN. THOMAS expressed concern that the contingency clause would not be made known to the public, and passing the bill would be seen only as an elimination of the lottery. Then, the non-funding issue would arise with HB 2. The money is the public's until it has been collected, so it is not an expenditure to reduce revenue in this manner. Attaching a contingency voidness clause to a program as highly visible as the lottery is like pulling the rug from under the public's ability to know what is happening.

SEN. BROOKE noted that is what contingency voidness is all about.

SEN. GAGE stated that a contingency voidness clause is a cop-out.

CHAIRMAN HARGROVE commented that a contingency voidness is designed be a cop-out. However, the possibility exists that it could be publicized that the lottery is down the tubes. If the caveat is not pulled out when HB 2 comes along, the public will know only that the legislature said one thing and did another.

SEN. MESAROS asserted that whether there is a contingency voidness clause or not, the central issue is whether the lottery should be continued.

{Tape: 1; Side: B; Approx. Time Count: 11:19; Comments: END OF SIDE 2.}

CHAIRMAN HARGROVE noted that, regardless of whether a standard paragraph is added, the money will have to be pulled out in the end.

SEN. GAGE stated there's no question that this is an accountability issue. If revenue is going to be reduced, it should not be done willy-nilly; considerations as to where reductions will take place must also be made. When a contingency voidness clause is added to a bill, it can change people's attitude toward the bill.

Vote: The motion **FAILED** with **SEN. THOMAS**, **SEN. GAGE** and **SEN. MESAROS** opposed.

Motion: **SEN. GAGE** moved that SB 268 DO PASS.

Discussion:

SEN. GAGE stated he agrees with **SEN. THOMAS** that this is a bill that ought to go to the floor of the Senate.

SEN. MESAROS reiterated his concern that the fiscal impact of the bill is tremendous and asserted that the issue should be addressed in committee.

CHAIRMAN HARGROVE stated he supports the bill with or without the contingency voidness clause.

SEN. BROOKE stated she was in the House when it moved a percentage of winnings into administration or marketing. She was opposed because it is a huge expenditure with a small return to the General Fund.

She shares **SEN. THOMAS's** concern about prior claims that some of the expenditures for teachers' retirement would be alleviated. She has problems with the how lottery is run, and where the money goes.

She was skeptical about the survey performed by the lottery administrators, but after reviewing it, she feels it was legitimate. The public is in favor of the lottery. No one from her district has contacted her to indicate they are opposed to anything other than the money going into the General Fund. There is no overwhelming need to pass the bill onto the Senate floor. There are other bills just as important that have been tabled.

CHAIRMAN HARGROVE agreed with **SEN. BROOKE** that the process is not consistent, but added that this bill involves an overwhelming interest of the average person.

He noted that the survey was only of people who play the lottery, thereby skewing the results.

Vote: The motion CARRIED with SEN. BROOKE and SEN. MESAROS opposed.

{Tape: 2; Side: A; Approx. Time Count: 11:28; Comments: None.}

EXECUTIVE ACTION ON SB 340

Amendments: sb034001.adn (EXHIBIT 3)

Discussion:

Mr. Niss reviewed amendments 1-7 and 10 & 11.

Motion/Vote: SEN. GAGE moved that AMENDMENTS 1-7 AND 10 & 11 OF SB034001.ADN BE ADOPTED. The motion CARRIED UNANIMOUSLY.

Discussion:

SEN. BROOKE and SEN. MESAROS made suggestions resulting in amendment 8.

Motion/Vote: SEN. GAGE moved that AMENDMENT 8 OF SB 034001.ADN BE ADOPTED. The motion CARRIED UNANIMOUSLY.

Motion: SEN. MESAROS moved that SB 340 DO PASS AS AMENDED.

Discussion:

SEN. BROOKE stated that although she spoke against it, she likes many parts of this bill. Her concern is with Section 5, where the deadline is moved from four weeks to seven weeks. People don't go to the polls just to vote. Many people go to gather and see what issues are being raised. The general public is more inclined to think about election issues while at the polling place and no one is obligated to sign a petition. The democratic process is hampered by moving the deadline.

SEN. BILL WILSON stated that, although he is bothered by petitioners at the polling place, gathering signatures there is a way to assure the signers are registered voters. Many signatures collected at K-Mart, for example, would likely be invalid.

SEN. THOMAS noted that the obtrusiveness of the signature gatherers is at the discretion of the clerk and recorders.

Substitute Motion:

SEN. WILSON moved that AMENDMENT 9
OF SB034001.ADN BE ADOPTED.

Discussion:

SEN. THOMAS supported the amendment.

SEN. GAGE stated that the initiative process is far inferior to the legislative process. He would like to discourage people from proposing initiatives. Although it is very unlikely the legislature would do something of which the public overwhelmingly disapproves, the possibility exists and initiatives do serve a purpose in those cases.

SEN. MESAROS opposed the amendment.

Vote:

The motion CARRIED with SEN. MESAROS and
SEN. GAGE opposed.

Discussion:

SEN. BROOKE referred to the new language in Section 4, lines 26 & 27 and asked if it is now acceptable to have facsimile copies or electronic transmissions.

CHAIRMAN HARGROVE recalled that the issue was not addressed.

Motion/Vote:

SEN. BROOKE moved that SB 340 DO PASS
AS AMENDED. The motion CARRIED
UNANIMOUSLY.

{Tape: 2; Side: A; Approx. Time Count: 11:53; Comments: None.}

EXECUTIVE ACTION ON SB 361

Motion/Vote:

SEN. THOMAS and SEN. BROOKE moved that
SB 361 DO PASS. The motion CARRIED
UNANIMOUSLY.

COMMITTEE DISCUSSION ON SB 359

SEN. MESAROS stated he may propose an amendment to put a floor on the amount of land that can be sold.

SEN. THOMAS stated that having the land tied up is an injustice to the Daniels County.

SEN. GAGE stated that the injustice is that the legislature won't fully fund the PILT money that ought to be going to the counties for state land.

ADJOURNMENT

Adjournment: 11:57


SEN. DON HARGROVE, Chairman


MARY MORRIS, Secretary


ELAINE BENEDICT, Transcriber

DH/EMB