

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on February 20, 1997,
at 10:04 a.m., in Room 331.

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Ken Mesaros

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 367, SB 366 - 2/17/97
Executive Action: SB 359

HEARING ON SB 367

Sponsor: SEN. SUE BARTLETT, Senate District 27, Helena

Proponents: Mike Cooney, Secretary of State
REP. JOAN HURDLE, House District 13, Billings
Tara Mele, Montana Public Interest Research Group
Darrell Holzer, AFL-CIO

Opponents: None

Opening Statement by Sponsor:

SEN. BARTLETT stated SB 367 is paired with SB 366 to limit campaign spending. The bill needs to be corrected to read 1997 rather than 1977. She asked the committee to step outside the roles of legislators and candidates in considering the two bills. She asked that the bills be looked at through the eyes of the people of Montana.

She presented written material. (**EXHIBIT 1**) Campaign spending has escalated in quantum leaps. In 1976, both candidates for Governor spent approximately \$438,000. In 1992, both candidates spent \$2,160,000. In 1980, the average cost for a contested State Senate race was approximately \$5,300. In 1994 the cost had increased to more than \$13,000. The cost for running a State House campaign has gone from an average of \$2,600 in 1980 to more than \$6,000 in 1994.

In 1994, one fourth of the State Senate candidates who had contested races spent over \$20,000. This amount applies to candidates from both political parties.

The people are disenchanted with the electoral process and feel irrelevant. The election process, the very foundation on which our entire form of government rests, is therefore seen as irrelevant by the people.

She summarized the bill. Current campaign spending was examined when setting the limits for aggregate expenditures. There is probably, in all cases, at least one campaign that has exceeded the proposed spending limits. The intent is not to be punitive, it is to be realistic.

The inflation factor used for the bill is the current inflation factor used to establish the aggregate limit for PAC contributions to State House and State Senate races.

This is not a cosmetic, feel-good proposal. It is a deeply serious proposal.

The bill is Constitutional, however it is likely to be challenged. Section 2 of the bill contains information that would normally appear in "whereas" clauses prior to the contents of the bill. A provision in state law specifically provides for the inclusion of findings in a bill. While the bill doesn't meet the customary drafting standards, it is still legal. It is essential for those findings and purposes to stay within the bill itself.

In the 1970's, when Congress passed the Federal Election Commission Law for the first time, it included spending limits. In the case of *Buckley vs. Valeo*, the Supreme Court found the spending limits violated Constitutional provisions. The legislation was challenged before it went into effect, so the court could only look at it in terms of what *could* happen.

We now have a 20 year history to demonstrate what happens when there are no spending limits on campaigns. Since the *Buckley* decision, the Court has issued several decisions which require a demonstration of the need for spending limits if the state chooses to impose them. The Courts have clearly indicated that the states must place the reasons for the limits in the legislation.

{Tape: 1; Side: A; Approx. Time Count: 10:20; Comments: None.}

Proponents' Testimony:

Mike Cooney, Secretary of State, presented written testimony.
(EXHIBIT 2)

REP. JOAN HURDLE, House District 13, Billings, stated campaign finance reform is the most crucial issue facing our nation today. It is necessary to stop the dramatic inflation of money into politics because it is destroying people's faith in democracy. The public alienation from the election process will not be stopped unless the amount of money used in the process is limited.

Since the Buckley decision, all campaign reform has focused on contributions. It has been painfully evident that hasn't worked. All means have been used to limit contributions, but every time a limit is set, someone finds a way around it. As long as the focus remains on limiting contributions, the dramatic increase of money into politics will not be stopped.

She distributed written material. (EXHIBIT 3) If money equals speech, then those with money have more freedom of speech than those without. In the last campaign, free speech resulted in a lot of negative, 30-minute sound bites because those with the money were able to buy the time.

Tara Mele, Montana Public Interest Research Group, indicated the bill is what Montanans want. The passage of Initiatives 118 and 125 clearly shows this.

Darrell Holzer, AFL-CIO, stated no one would like to see the influence that is perpetuated by escalating campaign spending curtailed more than organized labor.

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

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. DEL GAGE asked Secretary Cooney if he thinks the bill is unconstitutional.

Secretary Cooney responded that he does not think the bill is unconstitutional, but the possibility exists that it could be found unconstitutional if challenged.

SEN. GAGE noted there are currently challenges pending in the Court and asked if this bill is premature.

Secretary Cooney noted that the case of which he is aware deals with a city's ability rather than a state's ability. It would be ill-advised not to charge forward with this legislation.

SEN. GAGE commented that a lot of Section 2 of the bill is opinion. He asked if any polls support the information in the section.

SEN. BARTLETT responded that a lot of the information in Section 2 is based on experience and on records kept by the Commissioner of Political Practices. There is a poll cited on page 2, lines 22-27. There are no polls exclusive to Montana. However, the issue of campaign spending is continually raised by constituents.

SEN. GAGE requested a copy of the poll cited on page 2.

SEN. GAGE asked why candidates who may be unopposed in the general election are limited to what they can spend in the primary election.

SEN. BARTLETT responded that there are host of scenarios that can occur in regard to a candidate being contested or uncontested. There needs to be a limitation on primary elections. Elections fought within parties are usually less expensive than general elections.

SEN. GAGE commented that with the aggregate expenditure language, the ingenuity of the candidate in Montana has been underestimated. He foresees this resulting in people putting their own ads in the paper and on TV, without the blessing of the candidate.

SEN. BARTLETT stated this bill will not solve all the problems that exist. It does address where to start solving the problems, which hasn't been done before.

She would not be surprised if **SEN. GAGE's** prediction came to pass. Such instances are happening already and are called independent expenditure campaigns. The people running such campaigns are prohibited from having any contact with the candidate or the candidate's family. There is no way to limit expenditures of an independent expenditure campaign under a candidate's campaign effort.

The issue of independent expenditure campaigns needs to be addressed, but must be addressed under a different bill. Not addressing the issue is no reason not to look at what can be done with SB 367.

SEN. VIVIAN BROOKE asked if there could be any carryover from the primary election to a general election.

SEN. BARTLETT answered that the bill provides spending limits. The limits do not address contributions. The existing framework

of contribution limits and reporting requirements would stay in place.

Specific to this bill, a candidate could raise whatever money he/she chose at any point in the election cycle. The candidate could also use the money at any point in the election cycle. For example, a Governor and Lt. Governor team could raise \$500,000 before a primary election. However, they would be prohibited from spending more than \$250,000 in the primary election. The other \$250,000 could be used toward the general election.

SEN. BROOKE referred to page 5, lines 19-22 and noted that the definition for aggregate spending does not include an individual candidates' contributions to their own campaigns.

SEN. BARTLETT asserted that the definition does include individual candidates' contributions; such contributions would be included in the sum of all expenditures made to influence an election by a candidate, and those expenditures made on a candidate's behalf, whether through the candidate's committee, by the candidate's immediate family and by the candidate's political party.

SEN. BROOKE commented that no limit would be put on contributions.

She asked if in-kind expenditures are included in the bill.

SEN. BARTLETT responded that they are. In-kind contributions to a candidate or a candidate's committee would be reflected as expenditures of the candidate when the in-kind service is performed on the candidate's behalf and in conjunction with the candidate's committee.

SEN. FRED THOMAS asked **SEN. BARTLETT** how she would feel about the committee altering some of the figures in the bill.

SEN. BARTLETT responded that she would like to see the figures stay within a reasonable level. She is amenable to changing how the figures are split out between primary and general elections. She is also perfectly willing to look at whether there should be a primary election limit or a general election limit on State Senate or State House campaigns.

{Tape: 1; Side: A; Approx. Time Count: 10:45; Comments: END OF SIDE 1.}

It is critical to have input on the bills.

SEN. THOMAS referred to page 5, lines 19-22 and argued that, although many scenarios have been accounted for, setting such limits could cause the money to be used somewhere else.

SEN. BARTLETT responded that it is simply illegal to set limits on every conceivable type of spending. The definition of aggregate expenditures addresses the most common types of expenditures that are made by candidates or that are made directly on their behalf.

CHAIRMAN HARGROVE asked why the definition of immediate family is given since he does not see the term used in the bill.

SEN. BARTLETT answered "immediate family" is part of the definition of aggregate expenditures.

CHAIRMAN HARGROVE asked if a sliding scale had been considered to account for inflation and other factors in the economy.

SEN. BARTLETT responded that the bill would provide for the limits to be adjusted every election cycle by the inflation factor. Should this bill pass, there would likely be some refining of the approach.

CHAIRMAN HARGROVE asked if a candidate could conceivably have his brother-in-law file against him in the primary and then go on vacation, thereby doubling the amount for expenditures.

SEN. BARTLETT responded that it wouldn't matter whether or not there is a primary opponent.

CHAIRMAN HARGROVE asked **Ed Argenbright, Commissioner of Political Practices** whether enforcing the bill would require additional staff or expenses for his office.

Commissioner Argenbright responded that the complexity of complying with campaign laws already requires a good deal of time. This would not make the process more complicated.

His concern is with the definition "on behalf of". Policing that would be a nightmare and it is difficult to determine what the cost might be in doing so.

SEN. BROOKE referred to page 5, line 19 and asked whether "the sum of all expenditures", in current statute, includes both cash and in-kind expenditures.

Dulcy Hubbert, Staff Person with the Commission of Political Practices, responded that on the reports candidates file, there is no space for in-kind expenditures. In-kind contributions are recorded. Under this bill, the candidate would have to include the contribution in the aggregate expenditure record.

SEN. BROOKE suggested that an amendment be added to make certain in-kind contributions would be included in the sum of all expenditures.

REP. LARRY HAL GRINDE, House District 94, Lewistown stated he thinks the bill has merit. He recommended that SB 367 be added to a list of bills exempted from transmittal, or that a subcommittee be set up to look at the issues.

SEN. GAGE requested that **REP. GRINDE** ask his caucus to put SB 367 on the list of exempt bills and stated he would do the same.

REP. GRINDE agreed to do that.

SEN. BROOKE asked **REP. GRINDE** to comment on the parts of the bill he does not like.

REP. GRINDE related the scenario of a candidate for the State House reaching the \$10,000 limit and then spending \$5,000 of his/her own money. He questioned whether this would be legal under this bill.

Also, if the expenditure side of a campaign is being examined, the revenue gathering side should also be examined.

The constitutionality of the bill is a minor concern.

The reporting of in-kind expenditures is of great concern. If the reporting method is changed, it will not be that big a problem. His concern is over what would be deemed in-kind service for the sake of reporting expenditures, and how such service would be reported.

SEN. GAGE referred to page 3, lines 13 & 14 and asked what specific methods for limiting campaign contributions failed.

SEN. BARTLETT stated attempts to limit contributions have included the Initiative 118 limits on how much a candidate can receive from an individual, a PAC or a political party. For State Senate and House, there have been limits placed on aggregate contributions from PACs.

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

Closing by Sponsor:

SEN. BARTLETT agreed that the SB 367 and SB 366 need review in order to provide additional perspective. Her willingness to make changes stops at undermining the original intent which is to set realistic limits on campaign spending.

The bottom line is whether or not candidates will be self-serving or self-disciplined. Self-discipline should involve limits that have passed through the legislature. If the limits will be tested in the courts, the vehicle to undertake that testing should be provided by the legislature.

{Tape: 1; Side: B; Approx. Time Count: 11:06; Comments: None.}

HEARING ON SB 366

Sponsor: SEN. SUE BARTLETT, Senate District 27, Helena

Proponents: Mike Cooney, Secretary of State
Tara Mele, Montana Public Interest Research Group

Opponents: None

Opening Statement by Sponsor:

SEN. BARTLETT presented written material. (EXHIBIT 4)

It is almost impossible to describe the enormous amounts of money used on federal campaigns, particularly for the U.S. Senate and the U.S. House.

SB 366 is designed a little differently from SB 367 because the legislature does not have the same authority over federal office-holders as it does over state and substate office-holders.

She summarized the bill. She is hopeful that reapportionment will provide Montana with two House seats, so the phrasing was designed for that contingency.

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

Proponents' Testimony:

Mike Cooney, Secretary of State, presented written testimony.
(EXHIBIT 5)

{Tape: 2; Side: A; Approx. Time Count: 11:22; Comments: None.}

Tara Mele, Montana Public Interest Research Group, presented written material. (EXHIBIT 6)

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. BROOKE asked, regarding the gathering of signatures, what kind of reporting there would be for the expense incurred for hiring people.

SEN. BARTLETT responded that her hope is candidates would do much of the signature gathering themselves. The impetus of the bill is to increase voter contact. If a candidate chose not to voluntarily limit spending, nothing would prohibit him/her from hiring people to get signatures.

As soon as one declares candidacy, he/she is required to report to the Commissioner of Political Practices and the expenditures

for signature gathering would be captured in that reporting mechanism.

SEN. BROOKE asked whether a candidate who qualifies, pays the filing and administrative costs and gets the petition, could spend whatever he/she wanted if the voluntary agreement were not signed.

SEN. BARTLETT responded that nothing in the bill would prohibit that.

SEN. BROOKE asked why each signature for voter contact petitions would need to be on a separate piece of paper.

SEN. BARTLETT responded that the intent is that each form would have a clear statement to the voter that the candidate has reserved the right not to limit campaign spending. She referred the committee to page 7, lines 7-30.

SEN. BROOKE asked if the petition process is designed to be an onerous task, making the option to limit spending more attractive.

SEN. BARTLETT responded that she hopes limiting spending is more attractive. However, the petition process is achievable. It is modeled, somewhat, after the requirements for initiative petitions.

SEN. BROOKE asked if other states have similar systems for a federal candidate to file for office.

Steve Bullock, Legal Counsel for the Secretary of State's Office, explained that the bill is patterned after the current practice of New Hampshire. The practice has been upheld by courts within that state. Other states are considering campaign limits that deal primarily with public financing. That did not seem like a realistic possibility in putting together SB 366 and SB 367. Congress is also considering campaign finance limits with incentives such as free television time.

SEN. BROOKE asked if Montana's filing fee is high or low compared with other states.

Mr. Bullock responded that Montana's current filing fee is 1%. Court's have upheld fees as high as 5%, which is what is included in the administrative assessment. Provisions have also been made for a candidate who can't afford the filing fee.

SEN. GAGE commented that fees are generally based on administration costs. The fee in the bill appears to force spending limits.

Secretary Cooney responded that the bill has many incentives to encourage a person to limit campaign spending. There is no

question that the administrative fee for not limiting spending is one of those incentives.

CHAIRMAN HARGROVE asked **Commissioner Argenbright** how much involvement he has with national candidates.

Commissioner Argenbright answered that the Federal Election Commission oversees the federal election. His authority extends only to receiving copies of the reports filed with the FEC. Coordination with the FEC would be required for this bill.

CHAIRMAN HARGROVE asked what the penalty to the candidate is for invalid signatures on a petition.

Secretary Cooney responded that the signature could not be counted. The petition process would be self-policing. It would be an onerous task for the local election officials to verify signatures. The signatures would be public record, allowing anyone could verify the signatures.

Another reason for having one signature per page is that having several signatures on a page can get sloppy and cause the signatures to be hard to examine.

SEN. GAGE asked how many individual pieces would result from the 5% requirement.

Mr. Bullock responded that there would be slightly below 20,000.

Secretary Cooney stressed that most, if not all, people would comply with the voluntary limits.

{Tape: 2; Side: A; Approx. Time Count: 11:39; Comments: None.}

Closing by Sponsor:

SEN. BARTLETT stated that in the 1996 election cycle, the number of signatures needed for 5% of the voters statewide was 20,392. The figure slightly below 20,000 is a reflection of the disqualification of votes cast for **SEN. CHET BLAYLOCK** prior to his death.

The penalties provided for voters who sign more than one petition, etc., are the existing penalties for the initiative and petition referendum processes.

She has been struck by the increasing pressure to spend exorbitant amounts of money in campaigns. People's perception of campaign spending is driven by the money spent for the U.S. Senate and U.S. House races.

She and the Secretary of State independently decided to propose this legislation. However since combining efforts, the two have worked together very closely.

{Tape: 2; Side: A; Approx. Time Count: 11:44; Comments: None.}

Discussion:

SEN. GAGE stated he would ask REP. GRINDE how he feels about putting SB 366 on the list of bills exempt from transmittal.

CHAIRMAN HARGROVE asked if there has been any coordination with the national candidate committees and SENATORS BURNS and BAUCUS in regard to SB 366.

Secretary Cooney that coordination has been specifically avoided.

{Tape: 2; Side: A; Approx. Time Count: 11:45; Comments: None.}

EXECUTIVE ACTION ON SB 359

Discussion:

The fiscal note for SB 359 was distributed. (EXHIBIT 7)

CHAIRMAN HARGROVE pointed out that SEN. DARYL TOEWS compared the bill to the 10-31 exchange. With some exceptions, this is a good analogy.

David Niss, Legislative Services Division, reviewed the amendments prepared for SEN. TOEWS and SEN. MESAROS. (EXHIBITS 8 & 9)

Amendments: sb035903.adn (EXHIBIT 10)

Motion: SEN. THOMAS moved that AMENDMENT 4
OF SB035903.ADN BE ADOPTED.

Discussion:

SEN. GAGE clarified that the amendment means a little over 4% of the total state lands could be sold.

Vote: The motion CARRIED UNANIMOUSLY.

Motion: SEN. THOMAS moved that AMENDMENTS 1, 2,
3 & 5 OF SB035903.ADN BE ADOPTED.

Discussion:

Mr. Niss reviewed the amendments.

SEN. GAGE noted that if royalty interests are transferred, the land reverts back to the federal government.

Vote: The motion CARRIED UNANIMOUSLY.

Motion: SEN. THOMAS moved that SB 359 DO PASS AS AMENDED.

Discussion:

SEN. GAGE asked if there is a definition for "family".

CHAIRMAN HARGROVE noted that different definitions appear several placed in Montana Law.

SEN. GAGE suggested that a definition for this bill be determined on the floor.

CHAIRMAN HARGROVE states he has a basic opposition to getting rid of state land, and this bill offers him a way out. He voted against this bill last time around. The bill before the committee is not, by and means, the same bill. He supports the bill.

SEN. GAGE indicated that state lands are not the problem. The problem is that the legislature won't fund PILT payments to the extent that it should. He does, however, support the bill.

Vote: The motion CARRIED with SEN. BROOKE and SEN. BILL WILSON opposed.

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

DISCUSSION ON SB 366 AND SB 367

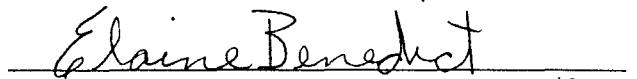
SEN. GAGE reported that Greg Petesch thinks SB 367 is unconstitutional. Section 2 is opinion. If Section 2 is going to be codified, it should be amended.

ADJOURNMENT

Adjournment: 12:01


SEN. DON HARGROVE, Chairman


MARY MORRIS, Secretary


ELAINE BENEDICT, Transcriber

DH/EMB