

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN DON HARGROVE, on March 12, 1997, at 9:00 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. Tape notations were notated at 2.4 tape speed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 394, 3/7; HB 468, 3/7
HB 575, 3/7
Executive Action: HB 334 BCI; SR 8 A;
HB 361 (amendments only)

EXECUTIVE ACTION ON HB 334

Discussion: CHAIRMAN DON HARGROVE asked if this had any connection to the ethics law from last session. Mr. David Niss replied that it had been amended last session, had predated the ethics bill but had some connection.

Motion: SEN. BROOKE moved DO PASS.

She asked Mr. Niss about the concern about immunity during the session. She said it sounded threatening. Mr. Niss said the reference was to general legislative immunity contained in the Montana Constitution that says members are immune from suit for

actions arising in matters heard in the course of speech and debate which would include defamation actions, for example.

CHAIRMAN HARGROVE asked if there were any other immunity. **Mr. Niss** said there were statutes covering legislative immunity in the Constitution which applies to legislators, quasi-legislators, boards and bodies. For example, when the city commission adopts ordinances they are covered by a provision in state statute which applies to immunity.

SEN. WILSON asked for clarification regarding the use of the letter on official stationery if this was a potential official act, or implied. **SEN. GAGE** said he would think even if it was on his own personal stationery and he threatens somebody with the use of his position as a legislator he would fall under this bill.

Vote: The question was called. The motion PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON SR 8

Motion/Vote: **SEN. THOMAS** moved to ADOPT SR 8 to confirm Pat Haffey as Commissioner of Labor. The question was called. The motion PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON 361

Amendments: Amendments requested by **SEN. THOMAS** were distributed **EXHIBIT 1**. **SEN. THOMAS** clarified that **REP. HARPER** was opposed to paragraphs 5, 8, 11 and 14 so it would be one way to handle this by segregating those four. *{Tape: 1; Side: A; Approx. Time Count: 34.4; Comments: discussion on amendments.}*

SEN. GAGE commented that in light of the testimony it would seem logical that if a building had been sprayed with pesticides people wouldn't want to go into the building in order to read the notice. It would be better to see it outside the building rather than go into the building to read it had been sprayed and then they are already exposed. The amendment would cure that problem.

Motion: **SEN. MESAROS** moved to adopt amendment #5.

Discussion: **SEN. BROOKE** said she was concerned about the reason **REP. HARPER** was opposed to this. **Mr. Niss** said it may be the room did not have a door that could be closed in order to segregate that room. The issue of a closing door into the room isn't addressed.

Vote: The question was called. The motion PASSED UNANIMOUSLY.

Mr. Niss clarified that paragraphs 7, 8 and 9 all speak to the same issue which is the applicator being required to post the

sign on application rather than the 24 hours prior to application if the pesticide is not regularly applied. There is a distinction between regular application and irregular applications. Regular application, in paragraph 6, requires permanent signage. If the application is irregular, paragraphs 7, 8 and 9 would require that the place of the application be posted at the time of application rather than requiring permanent signage.

Motion: SEN. MESAROS moved paragraphs 7, 8 and 9.

Discussion: SEN. BROOKE asked why REP. HARPER only opposed #8. Mr. Niss replied that he did not have a chance to discuss it with him. SEN. BROOKE thought the intent was to post it 48 hours before, then 24 hours and now "at the time of". She said she objected to that since people needed to be able to rearrange their schedules which takes a little time. SEN. MESAROS said without the amendment it creates logistical problems when there are contracts for services. The applicator needs consistency. SEN. GAGE pointed out that the applicator could go into that building if the building operator had not posted it and still do the spraying. The building operator is responsible for posting the notice. There will be a lot of building operators who won't even know that the bill went through. SEN. MESAROS said this would affect schools, city, and county buildings. He pointed out a potential liability problem if the building operator posted for something different than what the pesticide applicator was using or time of entry was different. It would be more consistent if it were posted at the time application were made. {Tape: 1; Side: A; Approx. Time Count: 63.5; Comments: examples.}

SEN. BROOKE discussed her concerns. She pointed out the building operator has a contract with the pesticide applicator and should know the terms of the contract. The notice would be in some type of calendar form that noticed the types of chemicals and when they would be sprayed and left up for the three days. Otherwise sacrificing peoples health for a minimal exposure to liability by the pesticide applicators are the consequences. They have a liability now to make sure they do the job right and that is what the building contractor contracted for.

SEN. THOMAS pointed out the bill was probably written to put the onus on the building owners because they didn't think they could put it on the sprayers. There is no documentation of health situations though it may affect those who are sensitive. He stated if it is going to affect their health it shouldn't be put in buildings. If that can be proven then this shouldn't be done at all. The liability is on the building owner to post the notice.

Vote: The question was called. The motion PASSED with SEN. BROOKE voting No.

MOTION/VOTE: SEN. MESAROS MOVED AMENDMENT 11.

Discussion: SEN. THOMAS pointed out that a log is kept by the applicator. By posting the name of the specific pesticide, if there is an error in communication, the only dependable source will be that log. SEN. BROOKE did not agree. She thought the bill was serious and it was necessary to protect people's health. If there is a contract it should be known what pesticide is going to be sprayed in the building. CHAIRMAN HARGROVE asked why the name of the pesticide should be on the notice. *{Tape: 1; Side: B; Approx. Time Count: 8.9; Comments: Discussed pesticides.}*

SEN. GAGE asked if the name of the pesticide was the brand name or the content. SEN THOMAS pointed out the common sense of having the chemical company listed in case they needed to be called with concerns. SEN. BROOKE discussed the testimony regarding treatment of the chemicals and the information should be on hand. Treatments may have already been developed to handle this as an antidote.

Vote: The question was called. The motion PASSED with SEN. BROOKE AND THOMAS voting No.

Motion: SEN. THOMAS moved amendment 14 subsection (4) only.

Vote: The question was called. The motion PASSED UNANIMOUSLY.

Executive Action closed on HB 361.

{Tape: 1; Side: B; Approx. Time Count: 29.8; Comments: hold off on HB 361.}

HEARING ON HB 394

Sponsor: REP. HAL GRINDE, HD 94

Proponents: George Ochenski, lobbyist
REP. SAM KITZENBERG, HD 96

Opponents: Leroy Schramm, legal counsel for the Board of Regents and a registered lobbyist
Judy Browning from the Governor's Office and a registered lobbyist
Marilyn Wessell, Montana State University in Bozeman and a registered lobbyist

Opening Statement by Sponsor:

REP. HAL GRINDE, HD 94 presented HB 394. He noted that people against the bill believed this would keep them from lobbying. However, this bill does not preclude anybody from lobbying. The

bill says if you are from an agency and want to lobby you must first notify the Governor and report the time and money spent. He discussed pieces of the bill and referred to the Goals to Track Political Activity by State Agencies, **EXHIBIT 2**. He noted the amendment that would allow for the lobbying to be reported to the agency affected. He discussed procedures as listed in the exhibit. He pointed out examples of agencies lobbying to fund programs. *{Tape: 1; Side: B; Approx. Time Count: 47.8; Comments: examples.}*

Proponents' Testimony:

George Ochenski, lobbyist since 1989 stated that it has been his experience that there was a lot of lobbying going on behind the scenes by people who are not registered as state lobbyists; they are, in fact, state agency personnel. It is the elected representatives of the people of the state, the legislators, who make the policies and the laws that keep government in line. It is very dangerous when government begins to run itself through unregulated lobbying activities. This is a breakdown of the separation of powers. It is important to keep these powers separate. If the legislature makes the policies and the laws then the agencies carry them out. It is unjustified for agencies to use public resources to lobby against legislation that is being proposed. *{Tape: 1; Side: B; Approx. Time Count: 58.7; Comments: examples of lobbying by state agencies.}*

REP. SAM KITZENBERG, HD 94, Glasgow testified in support of the bill. He pointed out problems in dealing with issues that relate to agencies. The agencies are like an army that is well funded. He cited examples of the Fish, Wildlife and Parks Department and how they are out of control. The citizen legislators are the ones who should be creating the laws, not the agencies.

Opponents' Testimony:

Leroy Schramm, legal counsel for the Board of Regents and a registered lobbyist spoke against the bill. The bill imposes contradictory requirements on state officials and state employees. It is not clear if there are different standards for lobbying on the federal level compared to the state level. The first section attempts to apply lobbying restrictions on lobbying that is done on Congress, which is a good step. This would help keep track of which changes are being lobbied for. Presently there is no registration or record keeping required of that. However, there is confusion raised by the bill. Present law, page 4, lines 6-10, is the definition of lobbying which either promotes or opposes legislation before the legislature. To do that, you have to keep track of your time and file with the Commissioner of Political Practices. The bill leaves that in the statute but on page 2, last line to page 3, includes a new definition of lobbying which is very different and includes the development or design of a proposal or program intended to be implemented through legislation. This could include any staff

member in the department who helped on the project. This would mean a very broad definition of lobbying. He pointed out another inconsistency which singled out a public official. A public official would include high level, policy making officials like the Governor, statewide elected officials, members of boards or commissioners. They were excluded probably because that is part of their job to delineate impact on their agencies. However, when you get below them you have to register since this is not a necessary part of their job. This bill leaves in the exclusion of public officials on page 4 but includes them on page 2.

{Tape: 1; Side: B; Approx. Time Count: 81.0; Comments: examples.}

Mr. Schramm handed out amendments **EXHIBIT 3**. The amendments would add to the definition of lobbying in present law to include advocating the passage or defeat of federal legislation by a state employee.

Judy Browning from the Governor's Office and a registered lobbyist discussed the current law and reporting practices. The Commissioner of Political Practices notifies the office of who is registered. She has a list of all the registered lobbyists for the executive agencies under the supervision of the Governor. She pointed out that the people coming before the legislature are supposed to be registered, paid a \$50 fee and are reporting their time. That applies to lobbying on state legislation not on federal. The suggested amendments would expand the scope to apply to federal legislation. She explained why pages 1-3 make it inefficient in carrying out business for the federal government, primarily. Page 1 deals with federal lobbying. Line 20 covers public officials. That means that any elected officials, including the Governor, etc. will have to get prior approval even to talk to legislators, and prior notice to the finance committee. It will be difficult to comply with this. She pointed out that they answer phone calls from federal counterparts talking about legislation. Under this proposal, prior written approval from the Governor would be needed as well as filing with the finance committee even for phone calls. She discussed on going conversations with federal counterparts regarding all types of legislation and policy issues.

{Tape: 2; Side: A; Approx. Time Count: 14.3; Comments: federal discussions.}

Marilyn Wessell, Montana State University in Bozeman and a registered lobbyist testified against the bill. She agreed that federal reporting would be reasonable. The prior notification section is a problem. There are 600 employees on the MSU campus alone that receive some part of their pay from the federal government as part of a federal grant. They talk about the legislation and the future of the funding under the grant. Those people would have an obligation to seek prior approval for those contacts under this proposed legislation.

Questions From Committee Members and Responses:

SEN. MESAROS asked about the rationale for the bill. He noted that legislators had identified some problems. **Judy Browning** replied that she did not know what would fix the bill. She said that if agencies were spending money on inappropriate activities, which had not been appropriated, then the Governor's Office should know about it. For example, there are a couple of departments missed their reporting requirement on lobbying.

CHAIRMAN HARGROVE asked **REP. GRINDE** about the objectives of the bill, addressing county officials lobbying or department newsletters which may solicit support or object to legislation. **REP. GRINDE** replied that it may be subliminal but the bill would not affect that.

SEN. BROOKE discussed department director appointments and the question posed to directors as far as their legislative priorities. She asked how this would work with departments creating long range planning. This is the type of activity that legislators expect of departments to deal with in trying to advance the programs that are already put in place. **REP. GRINDE** pointed out that the people that are working within the agencies are not generally lobbyists. The behind-the-scenes influence is the target of the bill as they are using tax payers dollars to pass or defeat legislation. **SEN. BROOKE** noted the example of the Department of Corrections where legislators needed direction from the department in advancing a long term plan plus effects of bills on their long term plan. It would appear that it was okay for an agency to advance their agenda but not okay for them to oppose any other legislators agenda. **REP. GRINDE** said they would still have the right and the privilege under the bill as long as they were registered. If there is a problem, the agencies come to the legislature. They cannot mount public opposition using taxpayer dollars and time. *{Tape: 2; Side: A; Approx. Time Count: 48.6; Comments: clarification.}*

Closing by Sponsor:

REP. GRINDE closed. He pointed out that the Governor's Office should be notified. This would be a protection and would give them a chance to know what their agency people are doing. He addressed **Mr. Schramm's** testimony regarding lobbying. Reporting to the Legislative Finance Committee would allow for monitoring and auditing. He handed out a lobbying report and summary, **EXHIBIT 4**. He noted that this bill is simple compared to the bill presented to the Oregon Legislature, **EXHIBIT 5**. He stated that he felt like he was treated like a second class citizen. The agencies hate the legislature when it is here and rejoice when they leave and then they do anything they want anyway. This bill deals with the separation of powers.

Example of lobbyist form- **EXHIBIT 6**. Senator Harp will carry the bill.

HEARING ON HB 468

Sponsor: REP. KIM GILLAN, HD 11 presented HB 468.

Proponents: Steve Bullock, Chief Legal Counsel for Secretary of State

Opponents: None

Opening Statement by Sponsor:

REP. KIM GILLAN, HD 11, Billings, presented HB 468. The bill would allow the Secretary of State to begin developing a statewide electronic filing system. The system would be used by business organizations who have transactions with the Secretary of State. The Business Services Advisory Council within the Secretary of State's Office recommended this bill. The use of electronic filing would make it easier to do business with the Secretary of State. The technological advances will help work more efficiently. In the House committee an amendment was proposed to strike the issue of governmental liability. That was struck but a reference to that needs to be struck as well to maintain consistency in the bill.

Proponents' Testimony:

Steve Bullock, Chief Legal Counsel for the Secretary of State testified about the history of the bill. He said the recommendation came through the clients of the office throughout the state. Proposals from other states were looked at, the extreme one being from the State of Texas that said they did not need legislative authority to do this. A middle road view would be states like Kansas and Washington which are asking the legislature for blanket authority to do rule making for the Secretary of State to design and implement electronic filing. This bill is patterned after Wyoming which allows the Secretary of State to design and implement the program but gives specific rules about what must be done. The bill does not specify a date for the program but allows the Secretary of State's office to look at other systems and decide the technology, timing and resources. There is no fiscal note because this only gives authority to look into this. The Secretary of State's office says fees must be commensurate with costs.

Opponents' Testimony: None

Questions From Committee Members and Responses:

CHAIRMAN HARGROVE asked Mr. Bullock about the duties of the Secretary of State. Mr. Bullock replied that a UCC requires a signature. He pointed out there were two schools of thought, one that all contracts dealing with the Secretary of State should be on-line. However, Montana is not yet ready to go that far. Now it is becoming standard practice for the UCC filing statements

and financial statements to be on-line all the time. As this progresses, Montana will have a uniform state system.

Closing by Sponsor:

REP. KIM GILLAN closed. She mentioned concerns about security. This is one issue that will be looked at when the office looks at the different options. There is a lot of technology out there, for example, tax statements are accepting digital signatures. The coordination with the Department of Administration will allow for compatible systems with incorporated security. {Tape: 2; Side: B; Approx. Time Count: 00; Comments: Tape turned over.}

HEARING ON HB 575

Sponsor: REP. BILL REHBEIN, HD 100, SIDNEY

Proponents: Dennis Burr, Montana Taxpayer's Association
Les Graham, representing Montana Stock Growers,
Montana Wool Growers, Montana Cattlemen and
Montana Dairy Association
Russ Ritter, representing Washington Corporation
in Missoula
John Shontz, representing the Montana Association
of Realtors
Don Allen, Montana Wood Products Association

Opponents: Tara Mele, Montana Public Interest Research Group
Jonathan Motl, 1516 Jerome, Helena, Common Cause
of Montana
REP. TIM DOWELL, HD 78, KALISPELL
Patrick Judge, Montana Environmental Information
Center
Brad Martin, Executive Director of the Montana
Democratic Party
Russell Hill, Montana Trial Lawyers
Don Judge, Montana State AFL-CIO
Beverly Fox, Helena
Ted Lange, Northern Plains Resource Council
John Smart, Helena
Brett Brownscombe, Montana Wildlife Federation
Mark Mackin, East of Helena
Dave Dittloff, Montana Audubon

Opening Statement by Sponsor:

REP. BILL REHBEIN, HD 100, SIDNEY presented HB 575. The bill amends Initiative 125 that was approved by the voters in November of 1996. The initiative prohibits corporations and some non-profit corporations from contributing money to support or oppose a state or local ballot measure. House Bill 575 does not limit 125 but expands it. The wording of I-125 prohibits only corporations from contributing to ballot issues. House Bill 575 expands that prohibition to other forms of business organizations

to include partnerships, limited partnerships, cooperatives and others listed in the bill on page 2, line 6. House Bill 575 also extends coverage of Initiative 125 to other types of non-profit organizations. Additionally, the bill includes labor unions, fraternal organizations and other groups. The purpose of the bill is to level the playing field for all organizations in Montana to make sure all groups are treated equally by campaign laws regardless of how they are organized. Non-profit organizations such as state and local chamber of commerce are prohibited from contributing to ballot issues because they are registered as non-profit corporations. Most state and local labor unions are not covered by Initiative 125 because they are not incorporated. However, the Montana Education Association and the Montana Public Employees Association are both incorporated and may be subject to the ban on participating in ballot issue campaigns contained in Initiative 125. House Bill 575 will treat all these organizations the same based on their non-profit status rather than their method of organization. On the business side, corporations are prohibited from making contributions but other businesses are not. An example is Montana Power Company is a corporation and is subject to a ban on contributions contained in I-125, Plum Creek Lumber Company, however, is a publicly traded limited partnership and not subject to limitations in I-125.

This bill insures that all businesses, like non-profits, are treated equally. The only changes made to I-125 by this bill are intended to clarify and extend it's provisions to all businesses and non-profit organizations. House Bill 575 does not affect the ability of organizations to form pacts nor does it impose any restrictions on individuals who may participate and contribute for or against ballot measures. The bill levels the playing field for organizations interested in state and local ballot issues.

Proponents' Testimony:

Dennis Burr, Montana Taxpayers Association discussed the bill and what it does. This does not limit or remove restrictions to I-125 that were placed on various businesses and organizations. He discussed the amendments effect on the bill. *{Tape: 2; Side: B; Approx. Time Count: 40.6; Comments: explained differences from I-125 to HB 575.}* He pointed out that out-of-state non-profit groups are covered under the bill as well. The bill is an expansion and clarification of I-125, **EXHIBIT 7**. He noted that business activity is something a non-profit does that is not part of it's mission as a non-profit organization. There were some concerns raised about constitutionality of the measure. It could be found unconstitutional as it is written. He distributed a handout that was written by the Kaleczyc and Browning law firm about constitutionality, **EXHIBIT 8**. A couple of the issues that are in the law suit now are vagueness and equal treatment. The bill eliminates those items as part of the law suit. The law suit will have to be amended if this bill is passed because it removes the vagueness in the term of corporation. Right now, no

one knows exactly what that applies to by just saying corporation.

It also treats other organizations similarly to the ones covered in this act. The major issue of the law suit is freedom of speech, a first amendment issue. He read from Montana Codes Annotated which lists court decisions affecting Montana statutes, see Exhibit 7. Regarding corporate free speech, it says a portion of the section prior to the 1979 amendment totally prohibited payments or contributions by corporations in support of or opposition to ballot issues was an unconstitutional restriction to corporate rights to free speech. Courts have said that you can't limit corporate contributions to political campaigns because there may be the possibility of some "quid pro quo." They have also said that is not an issue on ballot issues and therefore the freedom of speech of corporations and other business organizations cannot be restricted on that basis.

Arguments against I-125 did not mention trying to restrict other's free speech. It is not right to restrict trade associations or corporations from presenting their positions on ballot issues. There was no distinction drawn between labor unions and other organizations which would be covered by this bill because it was not felt that their free speech rights should be restricted. However, as long as the initiative has passed and it is part of Montana law there is an obligation to regard it as a valid law until it is challenged or until a court decides. This bill would put all of the players in ballot issues facing the same limitations and that is the reason for supporting the bill.

Les Graham, representing Montana Stock Growers, Montana Wool Growers, Montana Cattlewomen and Montana Dairy Association testified in support of the bill.

David Owen, Montana Chamber of Commerce testified in support of the bill. He noted that corporations could defend themselves by contributing individually to campaigns. Therefore, commercial dollars should be purged out of the process. He stressed the need for consistency. *{Tape: 2; Side: B; Approx. Time Count: 63.6; Comments: examples of corporate involvement.}*

Russ Ritter, representing Washington Corporation in Missoula testified in support of the bill.

John Shontz, representing the Montana Association of Realtors spoke in favor of the bill.

Don Allen, Montana Wood Products Association supported HB 575. He pointed out that many of the members of the association were family owned corporations. They should have the right to speak out. If they can't speak out on various issues to protect their livelihoods and property then others should be limited to the same degree.

Opponents' Testimony:

Jonathan Motl, 1516 Jerome, Helena, Common Cause of Montana and appearing on behalf of the original initiative committee discussed his opposition to the bill. He presented a handout, **EXHIBIT 9**, from the attorneys at Reynolds, Motl and Sherwood. He pointed out that the non-profit exception was debated heavily during the campaign. There is a seven page legal memorandum that deals with this. *{Tape: 2; Side: B; Approx. Time Count: 73.2; Comments: discussed the handout.}* This is not directly limiting speech. The corporations can speak through political committees. However, the manner in which they speak is limited. They cannot use the direct corporate check. There is an emerging body of law on this issue. The legal foundation for this issue is described at length. Taking one form of speech on initiatives or independent expenditure, which are not connected to political campaigns and therefore you cannot use quid pro quo. Quid pro quo applies when there is a candidate running for office who can potentially become obligated to a large donor and carry that corruption past the election date. You can't make that same argument on initiative campaigns since you cannot corrupt an idea nor can you corrupt an independent expenditure. You have to use a different form of constitutional underpinning in order to have any restriction.

The courts say there is a difference between commercial speech and non-commercial speech. A corporation receives it's assets from shareholders. That money was not intended for political purpose, that is commercial money. These cases say that commercial money has an insidious and pervasive effect on political process and can be restricted. This is contrasted to non-commercial money. Regarding the second half, **Mr. Motl** continued, the state must show a compelling state interest. Commercial money must be shown to be abusing the process when you are attempting to do the restriction. That means you go through the initiative process itself, see page 2. **Mr. Motl** referenced the graph in Exhibit 9. He stressed the importance in differentiating between commercial money, generated by people buying the product, and money which was contributed for a political purpose where the use of the money is consistent with the origin of the money.

Tara Mele, Montana Public Interest Research Group discussed her objections to the bill. She passed out handouts, **EXHIBIT 10, 11**. She listed contributions to ballot campaigns that listed corporations as the highest spenders (see page 2 of Exhibit 10.) Ms. Mele pointed out the press clippings (Exhibit 11) and how this was shown to be an underhanded way to defeat an initiative.

REP. TIM DOWELL, HD 78, KALISPELL testified in opposition to the bill. He said this was a back door approach to destroy an initiative. *{Tape: 3; Side: A; Approx. Time Count: 10.2; Comments: comments.}* The bill would expand the law to include every corporation and non-profit group into the coverage which

would make the whole initiative unconstitutional. This is a policy decision dealing with the will of the people and how the initiatives are judged. He read the paragraph from *The Missoulian* that was in Exhibit 11. The opinion tells how the initiative can be abolished without being seen as defying the will of the voters. He noted that a vote for HB 575 would be a vote to repeal I-125. It would be a policy decision to overturn an initiative. He pointed out how frustrating it is to have passed a law and then to come back in two years to find the rules had been changed. The people can only make law in one way and that is to pass an initiative.

Patrick Judge, Montana Environmental Information Center said he believed this was another attack on the initiative process and it makes it difficult for citizens, through their tax exempt, charitable organizations, wish to influence public policy with their voluntarily contributed donations for that purpose would be unable to do so. This is a substantive infringement on a citizen's ability to participate and also represents a tampering with the direct voice of the citizens. The problem that is perceived in the streets is the corporate money.

Brad Martin, Executive Director of the Montana Democratic Party spoke in opposition to HB 575. He said there appeared to be two principal areas of argument, one that it was good for everyone and the other area was whether it would undo the will of the people. He pointed out that every area of law dealt differently with profit making vs. non-profit making organizations. *{Tape: 3; Side: A; Approx. Time Count: 22.8; Comments: examples.}* This bill would undo I-125 and expands the scope of the initiative beyond what looks to be constitutional.

Russell Hill, Montana Trial Lawyers discussed his concern about the absence of a severability clause in the bill and the implications about the affect on the lawsuit mentioned by Dennis Burr.

Don Judge, Montana State AFL-CIO commented that they took no position on Initiative 125. However, their organization was deeply involved in Initiative 121 which was an initiative to raise the minimum wage in the State of Montana. He pointed out that David Owen's committee spent in excess of \$450,000 to promote the opposition to the initiative. Labor and non-profits and everybody else combined spent a total of about \$50,000 to try to pass the Montana Minimum Wage. When that initiative was put on the ballot there was about a 72% voter support for the initiative. It went down 53-47. He pointed out you can buy votes in Montana. Most of that money came from out-of-state national restaurant associations backed with corporate money, such as Pepsico Corporation, J.C. Penny and a number of others. It was clear and convincing that corporate money had an impact on that campaign.

Beverly Fox, of Helena, urged the committee to kill HB 575 since its purpose is to destroy I-125 that the voters passed in the last election. She pointed out that the playing field has never been level when you compare the money spent on the issues by profit making corporations.

Ted Lange, Northern Plains Resource Council pointed out the bill appears to be about amending I-125, however, that is not really what it is about. If this bill is passed this would directly sabotage the will of the people.

John Smart, Helena, commented that he had seen a huge direction shift in government. This used to be a people's state and a state of democracy. It has moved into being a government by and for the corporations. The for-profit corporate dollar, usually coming from outside of Montana, has overwhelmed the political system and for this reason HB 575 is not a good idea.

Brett Brownscombe, Montana Wildlife Federation spoke in opposition to HB 575, **EXHIBIT 12**. This is an issue about the use of money in politics which is a common theme of the campaign finance reform movement. This bill would effectively overturn an initiative. He distributed a copy of the initiative as it appeared on the ballot last year, **EXHIBIT 13**. He noted that it was clear what the initiative said and people knew what they were voting on. Part of the argument against the initiative is that people were confused, which is not the case.

Mark Mackin, East of Helena, opposed the bill. He said reaction to legislator involvement in initiatives is suspicion, and then anger for any attempts to manipulate the initiative. It does not seem necessary or urgent to amend this initiative.

Dave Dittloff, Montana Audubon stated that the way the state and national governments were set up were balanced between democracy and constitutional rights. Democracy in this instance was carried through in a direct way in the initiative process. The other side of the issue is the constitutionality as it is interpreted by the courts.

Questions From Committee Members and Responses:

SEN. GAGE asked **Mr. Motl** about what corruption meant to him. **Mr. Motl** replied that in the context of independent expenditures and initiative expenditures, not candidate campaigns, corruption meant the pervasive influence of one source of funds that corrupts the political process by allowing money to voice which is not equal to other voices. It is the idea that you can use money which wasn't intended for political purpose to buy politics.

CHAIRMAN HARGROVE asked if this was shooting down I-125 and what the people did. **Mr. Motl** replied that the initiative was already

in the court systems and if this bill passed I-125 would no longer exist.

SEN. BROOKE asked **Mr. Burr** if he would oppose the severability clause. **Mr. Burr** replied that the clause was not offered in the House. He pointed out that if you can't defeat something, you try to amend it.

SEN. MESAROS pointed out the huge partnerships that dwarfed corporations and the only difference was structure. **Mr. Motl** replied that one thing they have learned in campaign finance reform is to never go beyond the facts. Everything that is done in campaign finance reform is restriction of speech. Two years from now there may be other sources of funds moving into initiative campaigns and I-125 may have to broaden. If this is done, there would need to be a factual basis for it.

SEN. GAGE asked if the purpose of corporations was to do what it could to stay in business and to try to defeat those things that would impede their business progress. **Mr. Motl** replied that the definition of corruption was the U.S. Supreme Court's definition and their basis for it was they would say the shareholders did not intend the money be used for political purposes rather they wanted more profit or they would say the people who bought the product didn't intend the money be used for political purposes but they wanted a product at a reasonable cost. Money that went into that artificial entity, the corporation, from either the shareholders or the purchaser was not intended for political purposes and shouldn't be used. If the people in the corporation need a voice then the corporation should organize politically through it's human beings, form a political committee and fund that committee through donations from the officers, shareholders and directors and then contribute to the political process.

SEN. GAGE commented about corporate existence. He said it was his concept when somebody buys something they are purchasing the product and after that they have no strings to it afterwards. They should not have to put stipulations on how the money is used after the purchase of that product.


SEN. THOMAS questioned an example of the ability to make a donation and the corrupting influence. **Mr. Motl** said there needed to be a factual basis to justify the compelling state interest and a constitutional means to support it. He noted that there were no large individual donors to initiative campaigns so there is no factual basis to say there is a corrupting influence on the initiatives. Secondly, you can't restrict what individuals give to initiative campaigns. The U.S. Supreme Court has said, in the area of individual expenditures and ballot initiatives, the use of commercial money has a pervasive and overwhelming influence that can corrupt the political process. That is where the facts show that it has hurt the political process and the initiative process.

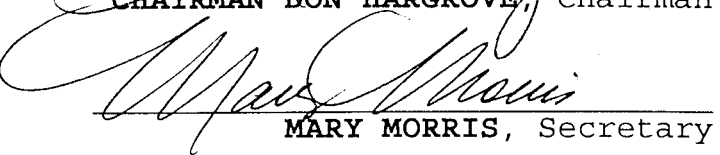
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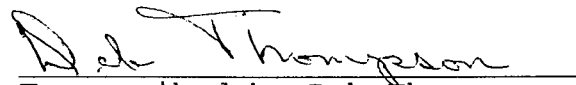
REP. BILL REHBEIN closed. He noted that reference was made that people didn't know what they were voting on or that money buys votes. However, he questioned this since money is a vehicle that allows the voter to be somewhat educated and make a good vote based on what he has learned.

ADJOURNMENT

Adjournment: 12:28


CHAIRMAN DON HARGROVE, Chairman


MARY MORRIS, Secretary


Transcribed by Deb Thompson
By: Shirley Herin
DH/MM