

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on March 14, 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.

Committee Business Summary:

HEARING(S) & DATE(S) POSTED: HB 568, 3/11/97;
HJR 6, 3/11/97
Executive Action: HB 568, BCIAA; HJR 6, A;
HB 193, BCIAA;
HB 468, BCIAA; SR 13, A

HEARING ON HB 568

Sponsor: REP. KARL OHS, HD 33, HARRISON

Proponents: Brian Cockhill, Director, Montana Historical Society
REP. GEORGE HEAVY RUNNER, HD 85, BROWNING
Don Peterson, President Lewis and Clark Heritage Foundation
Arnie Olsen, Administrator, Parks Division, Department of Fish, Wildlife and Parks
Matthew Cohn, Administrator, Travel Montana

Opponents: None

Opening Statement by Sponsor:

REP. KARL OHS, HD 33, HARRISON, stated HB 568 puts together a Lewis and Clark Bicentennial Commission in Celebration of the Lewis and Clark Expedition in the year 2005. He stated it was important to get the plans moving early so they can get the funds raised and the commission put together. He said out of the states involved, Montana would have the most to offer because of their journals of where exactly Lewis and Clark camped. He stressed this would be good for tourism and business.

Proponents' Testimony:

Brian Cockhill, Director, Montana Historical Society. He said the Montana Historical Society and Travel Montana provided the staff and support for the Lewis and Clark Bicentennial Council which Governor Racicot appointed. **Mr. Cockhill** explained the importance of creating a Lewis and Clark Bicentennial Commission in recognition and celebration of our heritage and that this would be an important economic and tourism activity. He said Lewis and Clark spent a major portion of their time in Montana and the Lewis and Clark Trails are major tourism regions in Montana. This bill would spur the economies in small towns as well as large towns. **Mr. Cockhill** stated that they started working on this commission early, that the actual expedition would not be a bicentennial until 2004 - 2006. He said they needed to raise money, but are not asking for general funds, that funding will come from grants and donations. He said the other reason they are starting this commission early is to coincide with other activities in other states, as well as working with the National Bicentennial Celebration Council already formed. **Jeanne Eder, Vice President of the National Bicentennial Celebration Council**, originally from Fort Peck, is now at Western Montana College in Dillon. He said there is a regional organization for the Northwest that will be planning cooperative exhibits and activities with Idaho, Washington and Oregon. He urged passage of the bill.

REP. GEORGE HEAVY RUNNER, HD 85, BROWNING, expressed his support of HB 568. He said Lewis and Clark associated with the Montana Salish and Kootenai Tribe, asked for the involvement in the state with the tribes.

Don Peterson, President, Lewis and Clark Heritage Foundation, read written testimony attached (EXHIBIT 1).

Arnie Olsen, Administrator, Parks Division, Department of Fish, Wildlife and Parks, presented written testimony attached as (EXHIBIT 2).

Matthew Cohn, Administrator, Travel Montana, stated that Montana held a unique position in the Lewis and Clark Expedition because they spent the most time in Montana and came through the state in both directions. He said it would be a multi-state celebration

and compared it to the celebration of the Oregon Trail and explained how it had a major impact on rural tourism in the states involved. Mr. Cohn said numerous Lewis and Clark Sites in Montana are still in their native state. He said Montana has a lot to gain from the bill and urged the Committee's passage of the bill.

Opponents' Testimony: None

Questions from the Committee Members and Responses:

SEN. VIVIAN BROOKE asked REP. OHS if REP. HEAVY RUNNER's proposed amendments were presented in the House. REP. OHS stated they were not but he accepted the amendments.

SEN. DELWYN GAGE stated that Union Oil did a documentary on Lewis and Clark, and asked if anyone knew where that documentary was. Brian Cockhill said he believes they have a copy of it.

Closing by the Sponsor:

REP. OHS urged passage of the bill.

{Tape: 1; Side: A; Approx. Time: 9:20 a.m.; Comments: None.}

HEARING ON HJR 16

Sponsor: REP. GEORGE HEAVY RUNNER, HD 85, BROWNING

Proponents: SEN. VIVIAN BROOKE, SD 33, MISSOULA

Opponents: None

Opening Statement by Sponsor:

REP. GEORGE HEAVY RUNNER, HD 85, BROWNING, stated that the resolution requires the approval of statues and memorials.

Proponents:

SEN. VIVIAN BROOKE, SD 33, MISSOULA, reported that she was involved with helping to put this plaque together, along with former SEN. ETHEL HARDING, as chair, and SEN. SUE BARTLETT. She indicated that was commemorative of the centennial of the first women in a state legislature and, looking back over the course of time, it was an issue of importance that women brought. She said the goal is to put a booklet together celebrating the centennial of the women involved.

Opponents: None

Questions from the Committee Members and Responses:

SEN. FRED THOMAS asked REP. HEAVY RUNNER if there should be a plaque commemorating men. REP. HEAVY RUNNER said he believes in an equal playing field, and urged that someone take the initiative to start the process.

Closing by Sponsor:

REP. HEAVY RUNNER said he currently serves on the House State Administration Committee, and the House was kind to the Senate's legislation. He urged the Committee to be kind to their's.

{Tape: 1; Side: A; Approx. Time Count: 9:26 a.m.; Comments: Committee recessed for 8 minutes.}

EXECUTIVE ACTION ON HB 468

Amendments: HB046801.adn (EXHIBIT 3)

Motion: SEN. GAGE moved the amendment

Vote: The motion CARRIED UNANIMOUSLY.

Motion/Vote: SEN. BROOKE moved HB 468 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY. SEN. BROOKE will carry HB 468 on the Senate floor.

COMMITTEE DISCUSSION - HB 521

David Niss recapped HB 521 reestablishing new rules for determining residency by amending Title 1. Chapter 1. He said Jeff Miller's (Department of Revenue) amendment would say residency in Montana for one purpose and residency in Montana for all other purposes. Mr. Niss stated that a majority of residency statutes do not concern just state residency. He further explained he conducted a computer search on the words "county" and "resident", and it came up with 125 hits. He said there were many statutes requiring residency in a particular political subdivision or legislative district. Mr. Niss said he proposed amendments to the Department of Revenue, and they are working on proper language for the amendment.

SEN. KEN MESAROS said he was concerned about the consistency within departments regarding the definition of residency. He urged creation of consistency throughout all departments on residency. He asked Mr. Niss, if the bill is amended properly, would they accomplish that. Mr. Niss stated that the language SEN. MESAROS is proposing would not be in the general section, that the amendment would deal with language in other titles and sections administered by the department and would be more specific than the general default statute Title 1, Chapter 1.

SEN. GAGE asked if a statement for purposes of this section could be made, or if a person claims residency for any purpose. **Mr. Niss** said he thought it would create ambiguity in the section.

SEN. GAGE said he thinks it is important to see why someone has abandoned their residency, and they should check if the person has bought a fishing license and registered for boating in the state, if the person claims residency.

CHAIRMAN DON HARGROVE asked if adding Montana was to eliminate confusion with counties and towns. **Mr. Niss** stated the reason **Mr. Miller** suggested adding Montana was that, without further definition, that sentence would only apply to Montana. **Mr. Niss** explained if a person is in Alaska, and should be paying taxes in Montana but has an Alaskan driver's license, the statute says residency in one location for one purpose is residency for all purposes.

Mr. Niss addressed the concerns of **SEN. GAGE** of potential conflict between two subsections within the bill. He pointed out the conflict is between the new language and the existing language.

{Tape: 1; Side: A; Approx. Time: 9:47 a.m.; Comments: End of Tape 1, Side A.}

CHAIRMAN HARGROVE asked **Mr. Niss** if he was working on language to eliminate the conflict. **Mr. Niss** stated it was his recommendation to address the problem. **CHAIRMAN HARGROVE** stated that he would like an amendment to address those concerns.

SEN. BILL WILSON asked **CHAIRMAN HARGROVE** what the concern is with the bill. **CHAIRMAN HARGROVE** stated he did not know. **SEN. GAGE** stated that there would be more teeth in the law for the Department of Revenue to operate under.

CHAIRMAN HARGROVE stated he had a friend who relocated to the state and is a resident of the state and, in the community where he resides, he does not know of another person who is a resident of the state but living in the state. He said his friend thinks there are millions of dollars lost in revenue by the state.

SEN. WILSON asked if there was resentment with the military in his area. He indicated **REP. BILL WISEMAN** has a bill concerning recreation licenses.

SEN. BROOKE asked if there was anything about residents paying in-state tuition. **Mr. Niss** stated the University System has a separate statute regarding residents. **CHAIRMAN HARGROVE** asked **Mr. Niss** to research the issues of concern to the Committee.

SEN. BROOKE noted that parents buy houses for students attending the university, in order to declare residency. **SEN. WILSON** said the bill states for one purposes means you're a resident for all

other purposes. **Mr. Niss** stated that is correct, unless there is a specific statutory exemption.

EXECUTIVE ACTION ON HB 534

Discussion:

Mr. Niss explained the amendment by **Kelly Jenkins** is probably unnecessary, but would do no harm.

SEN. BROOKE asked **Mr. Niss** if the bill, in its current form, does what it needs to do in regards to contracts. **Mr. Niss** stated he thought it did, pursuant to Title 18.

{Tape: 1; Side: B; Approx. Time: 9:59 a.m.; Comments: The Committee recessed for 5 minutes.}

Mr. Niss finished answering **SEN. BROOKE's** question. He said all other types of contracts would be governed by Title 18, which is the public contract title, whether it be purchase of the service, or the purchase of the item.

Motion: **SEN. MESAROS** moved HB 534 BE CONCURRED IN.

Discussion:

SEN. BROOKE pointed out that **Mr. Gianoulias** said there was a conflict about the rate of interest. **Mr. Niss** stated that was correct.

Motion: **SEN. MESAROS** withdrew his motion.

SEN. GAGE asked if it was a negotiated settlement, as opposed to a judgment, would HB 534 apply. **Mr. Niss** stated that it would.

COMMITTEE DISCUSSION - HB 394

CHAIRMAN HARGROVE reported that he met with **REP. LARRY GRINDE**, some the university officials and the board of regents, and they are still working out the details. He said **REP. GRINDE's** main concern was departments using taxpayer resources to pass legislation. **CHAIRMAN HARGROVE** stated that it would be difficult to "get a handle on", and the idea was an excellent one.

{Tape: 1; Side: B; Approx. Time: 10:08 a.m.; Comments: None.}

EXECUTIVE ACTION ON HB 193

Discussion:

SEN. THOMAS stated HB 193 has not passed out of committee due to a tie vote.

SEN. THOMAS reminded the Committee that HB 193 deals with authority of the Legislative Auditor to access transactions between public entities and private foundations.

CHAIRMAN HARGROVE stated that all the members had to do was change their vote.

SEN. THOMAS said he visited with individuals who worked for the University System who said there was no wrong-doing, but that there is no reason the public could not have access to the knowledge. He said another individual said there could be possible incidents where perks were being purchased with the foundation monies.

CHAIRMAN HARGROVE stated he had a separate meeting with **Marilyn Wessel** and **Leroy Schramm**, and they agreed that HB 193 may dispel some of the distrust that recent transactions have caused, and it may even encourage donors.

SEN. WILSON said the only reason he voted against the bill was the possibility of scaring people from donating. **SEN. WILSON** asked **SEN. THOMAS** if he had resolved this issue. **SEN. THOMAS** said it was possible people may not want to donate because there was no public scrutiny of where the funds would go.

SEN. MESAROS followed up on the comments of **SEN. THOMAS**, outlining many of the issues legislators deal, one of which is "perception is reality". **SEN. MESAROS** stated that HB 193 would help alleviate the concern of many individuals.

CHAIRMAN HARGROVE indicated that donations are public knowledge and that what is of concern is what is given to the University was not known to the public.

SEN. WILSON stated there was a major effort to stop HB 193 and he commented that passage of the bill could end all donations. **SEN. WILSON** asked for a sunset to be placed on the bill.

Motion: **SEN. WILSON** moved to amend HB 193 by placing a sunset provision in the bill. (**EXHIBIT 4**)

Discussion:

SEN. GAGE stated it would be difficult to determine how the University lost money due to the passage of the bill.

CHAIRMAN HARGROVE said it would be the job of the Auditors to determine if HB 193 is aiding the University.

SEN. GAGE said what if they get a tremendous gift prior to passage of the bill, and get the same number of gifts in the years following passage of HB 193, but it does not add up to the large donation given prior to enactment of the bill.

SEN. BROOKE commented on the sunset provision, and said she felt it would help to determine whether HB 193 would be a harassing process or would be a workable process.

SEN. GAGE stated the University is audited now and. if there were leaks, it would happen now and not when passage of HB 193 is enacted.

Vote: The amendment CARRIED with SEN. GAGE OPPOSED.

Motion: SEN. THOMAS moved HB 193 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. BROOKE reminded the Committee what happened in the University System in Missoula, and indicated that the "fall out" is still continuing. She said she is concerned about the amount of effort to kill HB 193 and felt that, with passage of the bill, some controversy may be put to rest.

SEN. THOMAS said he felt HB 193 is a very healthy approach to address the concerns of the public.

Vote: The motion CARRIED with SEN. WILSON and SEN. BROOKE OPPOSED. SEN. KEATING will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 568

Amendments: HB056801.and (EXHIBIT 5)

Motion/Vote: SEN. GAGE moved to amend HB 568. The motion CARRIED UNANIMOUSLY.

Motion/Vote: SEN. MESAROS moved HB 568 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY. SEN. MESAROS will carry the bill on the Senate floor.

{Tape: 1; Side: B; Approx. Time: 10:24 a.m.; Comments: None.}

EXECUTIVE ACTION ON HJR 6

Motion: SEN. BROOKE moved HJR 6 BE ADOPTED.

Discussion:

SEN. BROOKE commented on the difficulty women had being elected to the legislature and urged passage of the legislation.

SEN. WILSON asked about the span of years the plaque referenced in the testimony. SEN. WILSON said the years were from 1917 through 1995.

SEN. WILSON stated that placement of the plaque would be determined at a later date. **SEN. BROOKE** said the Capitol Complex Renovation Committee would review where the placement would be.

Vote: The motion **CARRIED UNANIMOUSLY**. **SEN. BROOKE** will carry HJR 6 on the Senate floor.

EXECUTIVE ACTION ON SR 13

Motion: **SEN. MESAROS** moved that SR 13 be **ADOPTED**.

Discussion:

SEN. GAGE stated he was very impressed with General Pendergast.

SEN. BROOKE said that **General Pendergast's** presentation of the Department of Military affairs was impressive.

Vote: The motion **CARRIED UNANIMOUSLY**.

COMMITTEE DISCUSSION - HB 389

CHAIRMAN HARGROVE pointed out that a lot of amendments have been proposed for HB 389, and suggested to **David Niss** that he wait until the Committee has had time to look at the proposed amendments before spending a lot of time on them since it is his feeling the bill probably should not go anywhere. He indicated that he is a little cynical but, as far as public information and the openness of government, he doubts if there is any place in the world that has a more open government than Montana, that there is no place where people have more information. He reported that, in the last session, in Local Government Committee, a bill was presented which would remove the requirement to publish county budgets in the newspapers, that the bill passed, and all of the testimony was that no one ever reads them. He added that the only people who opposed the bill were the newspapers, who, obviously, make money from those ads. He noted that he was impressed that there were a lot of people who said they were spending a lot of money, and this information is already available to the public. He said that his observation has been that meetings are held over a period of time on an issue, that notices are put out, and a lot of money is spent but, when a meeting occurs, no one shows up until the final meeting, and most of that effort is without value. He indicated to the Committee that he would like some discussion, and asked if they think **Mr. Niss** should go to the trouble of going through all of the amendments.

SEN. GAGE reminded the Committee that, last session, there was a subdivision zoning bill in Local Government Committee, where they were using the emergency rules, that the bill finally was tabled and the sponsors were invited to return this session with a bill to address the issue. He indicated that he likes the emergency rule section of this bill, and would like to see the Committee

consider amending everything else out of the bill, leaving the emergency rules section in, noting that is Section 11. He explained this is because of those conflicts and the fact that some of these people are adopting, according to the testimony, emergency rules and then letting it go past the time, without having hearings, and that this is an extraordinary power.

SEN. THOMAS stated that is a good point. He indicated that he agrees with **SEN. GAGE** on that section, but pointed out that the first six amendments deal with Section 3, on page 2 of the bill, and, noting that he is not an expert on the rule process, said that it seems to him that the legislative process is more open and conducive to the public than the rulemaking process, which is kind of behind closed doors. He noted that he should not say that, but it seems to him that it is not as open and public as at least this process is. He said that they are always complaining about those rules, and for good reason in large part, reporting that a bill, which was taken off second reading recently, had to do with prevailing wage and had rulemaking authority in it. He indicated that this bill almost snuck through this whole session under the guise of the consensus bill, that it really was a consensus among a group of like parties and, although it does not relate exactly to this subject, in the bill was rulemaking authority that is probably expansive to the subject matter that they may look at in the session, noting that this area of rulemaking and disclosure, and inviting people to the table to work on it, and be noticed of it, he thinks is very important.

CHAIRMAN HARGROVE agreed that it is very important, and reported that there are two bills addressing that, that one would be to inform the sponsor, that this would be using representative government on rulemaking authority. He indicated the other one is by **SEN. LOREN JENKINS's** bill dealing with giving the Administrative Code Committee some power to do that, noting that it may be vetoed again, that it was last time, pointing out that it failed an override by one vote, which is interesting, stating that it could go this time. He said that he is not real enamored with it but, with this bill, it might become a little more active, rather than just be exception, as it is now. He remarked that, to put himself in the position of the State engineer who designs highways, he has a room full of blueprints, and people coming in all day, that he is making up these rules as he goes along and trying to fit them into the law that he has in his mind, and he writes them down. He indicated he is not sure how, or really at what point that rulemaking process would be eliminated but, from the standpoint of time, in his opinion, that \$6 million is probably (the rest of the sentence was garbled).

SEN. VIVIAN BROOKE said that she thinks this always goes to the dilemma that this is a citizen legislature, and the fact that, during the interim, they are on interim committees, they respond to constituents' calls or invitations, and are involved in their communities and jobs. She indicated that she feels she would have to be a professional legislator before she could really

involve herself in that kind of administrative work and oversight, that she would like to, but there is just not time to provide the public oversight for rulemaking, noting that they do the best they can given the circumstances, with the distances in the State, and with the time available. She reminded the Committee that **REP. BRUCE SIMON** testified about who gets the *Montana Administrative Register*, and pointed out that it must be in the libraries and, if not, she would think they would want to make sure it is in the libraries for the public, and it could be advertised more that the public could avail themselves of that, or even in the city/county governmental areas, public access to that, rather than having that subscription go out to more people.

CHAIRMAN HARGROVE indicated that, to satisfy the question, Sections 11, 12 and 13 could be left in, noting that Section 13 deals with rulemaking and the emergency process, and does not address any of the publicity, which is, he thinks, addressed in everything else.

SEN. DELWYN GAGE indicated that, in his opinion, some of this has got to be left to the public to be responsible, as well. He pointed out that, if someone is that concerned about something, they have to know that it went through the session and, if nothing else, they should write to that division requesting that, when they are ready to do rules on an issue, they be notified personally. He noted that he thinks they would be notified, that he has confidence enough in the State agencies and does not think they are trying to sneak things through, and that he believes the bill requiring notification to sponsors will take care of 99% of them.

SEN. KEN MESAROS stated that he agrees, that he thinks that is something of an issue by this administration, that it has now been codified, and he thinks it is a major improvement. He referred to Section 11, regarding emergency rulemaking that **SEN. GAGE** was speaking to, on lines 7 and 8, page 10, "sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to", noting that the word "immediate" was inserted, and he continued reading "judicial review", then noted that "upon petition by any person" was inserted. He stated that would mean any one person, noting that it was brought out in testimony, and indicated that he would say that a petition by any one person is too broad. **SEN. GAGE** said they could include language about numbers of persons.

CHAIRMAN HARGROVE suggested leaving it the way it was, "subject to judicial review".

SEN. GAGE suggested "expiration of the", noting that, as he recalls, after 120 days these emergency rules become permanent. **David Niss** indicated that it is the reverse, that he thinks the agency has to go back to adopt it. **CHAIRMAN HARGROVE** asked if 120 days is the trigger. **SEN. GAGE** indicated they could say something to the effect of "prior to the expiration of".

Mr. Niss referred the Committee to line 30 on page 9, "The rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302", explaining that means a permanent rule, "is not precluded.", pointing out that it actually expires.

SEN. GAGE indicated that they could put something in to the effect that, prior to the expiration of the 120 days, or judicial review within a period not longer than 120 days.

Mr. Niss reported that, if a person can file the petition within 120 days, that certainly would not be immediate, so it is a choice of one or the other.

SEN. GAGE noted that he was trying to get away from the "immediate", that it would be impossible with some of these real busy judicial districts.

CHAIRMAN HARGROVE said that his sense of that is that the judicial review is not to necessarily make sure that this is being done exactly, that it is for lessons learned, to make sure it was done right in keeping the train on track. He added that he guesses that they might, in some cases, want a review while the activity is still in the emergency stage.

SEN. GAGE stated that he does not have a problem with just leaving it the way it is, just striking the word "immediate" and "upon petition by any person". He added that he does like the fact that it indicates that this pretty potent power, that it is an exceptional power.

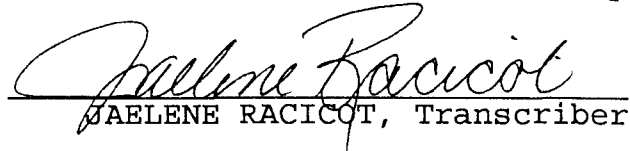
CHAIRMAN HARGROVE asked **Mr. Niss** to prepare an amendment that would strike all of the new language up to Section 11, that he thinks they should leave Sections 12 and 13, as well, making that one change in Section 11.

ADJOURNMENT

Adjournment: 10:45 a.m.


SEN. DON HARGROVE, Chairman


MARY MORRIS, Secretary


JAELENE RACICOT, Transcriber

DH/mm