

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By DICK SIMPKINS, CHAIRMAN, on March 10, 1993, at 9:07 a.m.

ROLL CALL

Members Present:

Rep. Dick Simpkins, Chair (R)
Rep. Wilbur Spring, Vice Chair (R)
Rep. Ervin Davis, Vice Chair (D)
Rep. Beverly Barnhart (D)
Rep. Pat Galvin (D)
Rep. Harriet Hayne (R)
Rep. Gary Mason (R)
Rep. Brad Molnar (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Norm Wallin (R)

Members Excused: Rep. Bob Gervais; Rep. Sheila Rice

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Council
Dorothy Poulsen, Committee Secretary

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

Committee Business Summary:

Hearing: SB 130; SB 186
Executive Action: None.

HEARING ON SB 130

Opening Statement by Sponsor:

SEN. HENRY McCLERNAN, Senate District 34, Butte, introduced SB 130 which revises the appointment process for the Commissioner of Political Practices. **SEN. McCLERNAN** reported the bill has no fiscal impact. He noted the current selection process for the Commissioner of Political Practices had been challenged in court

last year. He described the current process in which the House and Senate leadership creates a list of nominees and submits it to the governor. The governor appoints an individual after consideration of the list, but the selected individual is not necessarily chosen from the list of nominees. He said a subcommittee with himself, **SEN. WELDON**, and **SEN. SWIFT** was appointed in the Senate State Administration Committee to draft legislation to address issues in the lawsuit and to make the process more open. He stated SB 130 changes the existing selection process by adding three requirements: (1) the legislative leadership would be required to comply with the open meetings law; (2) the leadership would be required to advertise the position and have at least one open meeting during which they reviewed applicants; and (3) the governor would be required to choose from the list of nominees. **SEN. McCLERNAN** reported because there was some question about whether the legislature could require the governor to choose from the nominee list, the bill includes a severability clause for that provision. He explained with the severability clause, if the courts were to decide the governor is not bound by the requirement, the rest of the law would still stand. He reported no opposition to the bill in the Senate committee and few dissenting votes in the Senate.

SEN. McCLERNAN noted shortly after second reading of SB 130 in the Senate, he was given a FAX about the court decision on the lawsuit brought by Common Cause, The Independent Record, and The Great Falls Tribune. The court found in favor of the legislative leadership and recommended plaintiffs take their concerns to the legislature and have it clarify the role of the selection committee. He commented SB 130 was probably the fastest legislative response to a court decision in Montana's history.

Proponents' Testimony:

Verner Bertelsen, citizen, provided written testimony in which he described the intent in creating the office of Commissioner of Political Practices as providing a means of supervising the election process without political bias. He expressed the feeling, however, that only political insiders are chosen as Commissioner. He explained he had served as a member of the Common Cause committee which advertised for and openly interviewed candidates for the position last fall; he acknowledged the committee had no standing to actually select a candidate. He reported the committee had recommended three applicants to the legislative leadership and lamented the lack of public scrutiny for the process which followed. He declared the need for public scrutiny and asserted without changes in the law the office of Commissioner of Political Practices was at risk.

EXHIBIT 1

Amy Kelley, Executive Director, Montana Common Cause, provided written testimony in which she reported frustration by political players and the public in the seeming unwillingness of the office of Commissioner of Political Practices to aggressively pursue

potential violations of campaign laws. She asserted the problem was due to the nature of the appointment process. She described four problems with the current appointment process: (1) the limited search for candidates; (2) an unclear link between legislative recommendations and the governor's appointment; (3) the commissioner nominee takes office prior to Senate confirmation; and (4) the lack of citizen input and public scrutiny of the selection process. **EXHIBIT 2**

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. ROSE asked **Mr. Bertelsen** how the bill would take political bias out of the selection of the Commissioner. **Mr. Bertelsen** responded the bill would give the public the opportunity to comment on political bias to the selection committee, and it would broaden the field of candidates.

REP. SCHWINDEN asked **Ms. Kelley** to explain the purpose of the severability clause in the bill. **Ms. Kelley** said the lawsuit by Common Cause and others centered on whether or not the legislative leadership was required to follow the open meetings law in the selection process. She said Common Cause argued if the leadership violated the open meetings law, then any decision by them could be voided by the court; and if their recommendations were voided, then the governor had no list to consider and therefore his appointment also would be void; and the entire process would need to start over. She reported the court did not rule that there had been a violation of the open meetings law, and therefore, Common Cause is appealing the decision. She stated the court's interpretation of current law was that the governor is not required to appoint from the list submitted by the legislative leadership. **Ms. Kelley** explained the court's ruling on the appeal could uphold the plaintiffs' contention that the open meetings law had been violated; however, she said the court could also rule that the legislature cannot restrict the governor's choice to the list. She said the severability clause was included in order to prevent the loss of other provisions in the bill in the event the court makes the latter ruling.

REP. SPRING asked **SEN. McCLERNAN** to explain the reasoning for having two to five individuals recommended to the governor. **SEN. McCLERNAN** responded he had no explanation other than the original law specified those numbers. **REP. SPRING** noted **SEN. McCLERNAN** had reported the bill would not cost anything and asked him who would pay the cost of advertising for candidates for the Commissioner's position. **SEN. McCLERNAN** responded the bill would cost almost nothing.

REP. MOLNAR asked **Ms. Kelley** how political bias would be avoided by a four-member legislative leadership committee without including the governor to break ties. **Ms. Kelley** responded the bill does not fundamentally change the current process. She reported another bill draft would have established a citizen committee in place of the legislative leadership. She said the intent of the bill was to open the process to the public and to make the committee more accountable for their choices. She said the governor could still choose whomever he/she wishes. **REP. MOLNAR** asked **Ms. Kelley** how excluding the governor from the nominating committee improved public input and the openness of the process. **Ms. Kelley** responded she did not understand the question because the bill did not exclude the governor from the process. **REP. MOLNAR** insisted the governor was excluded because the nominating committee included only the legislative leadership, and therefore the governor could not submit a name to the list. **Ms. Kelley** responded the intent of the process was to make it as impartial as possible. She said the reason the legislative leadership had been specified as the nominating committee was because that would assure two democrats and two republicans on the committee. She said if the governor alone made the appointment with no limitations, the process would be viewed by the public as a partisan appointment to an impartial office. She contended the process helped the governor. She explained once in office, the Commissioner is independent and does not report to the governor; and the governor has no control over the Commissioner except in cases of gross incompetence.

REP. WALLIN asked **SEN. McCLERNAN** what qualifications were specified in law for the Commissioner. **SEN. McCLERNAN** said he did not think any qualifications were specified, and the committee might want to add qualifications.

REP. STOVALL asked **Ms. Kelley** whether the open meetings law would apply to conversations between the governor and the committee. **Ms. Kelley** responded the open meetings law applied to meetings of any committee of the legislature or the body of the whole but not to conversations between individuals. **REP. STOVALL** asked whether the governor could unofficially suggest a candidate to the committee. **Ms. Kelley** responded by law it would be acceptable. She said by opening the process the reasons certain candidates were considered would be open to public inquiry. She suggested if there was evidence the governor had promoted a particular candidate, then the public would likely perceive the action as unethical pressure by the governor.

REP. GALVIN asked **Ms. Kelley** whether the governor could have his/her choice on the nominating list by having the individual apply for the position and then working with members of the nominating committee to ensure the individual was placed on the list. **Ms. Kelley** responded the situation could occur and probably happens now. She said the only possible response was to make the process open and hold people accountable for their choices.

REP. SPRING asked SEN. McCLERNAN whether he would oppose amending the bill to require the list of nominees include three to five names. SEN. McCLERNAN responded he would not oppose the change.

REP. ROSE recalled Ms. Kelley had said conversations were not a violation of the open meetings law and asked her to comment on The Great Falls Tribune suing the Cascade County Commissioners because they discussed a candidate over the noon hour. Ms. Kelley said the open meetings law was limited to deliberations of the legislature or subdivisions of the legislature or state. She said the county commission would be a public body, and if they had a meeting, it would need to be open. She said she did not think the open meetings law would apply to two people having a conversation, unless they were acting in an official capacity.

REP. MASON asked SEN. McCLERNAN whether there had been consideration of having the governor, or a representative of the governor, on the nominating committee. SEN. McCLERNAN explained the original law called the legislative leadership the "selection committee" and he had changed it to "nominating committee" to clarify that the legislative leadership nominated and the governor selected the commissioner. He said he did not think the governor should be on the nominating committee. REP. MASON asked whether the nominating committee might reach gridlock. SEN. McCLERNAN responded that had not been a problem.

REP. SIMPKINS asked SEN. McCLERNAN to comment on the timing of the process in which a lame duck governor and legislative leadership may be choosing the next commissioner of political practices. SEN. McCLERNAN agreed that was the current process unless the governor was re-elected. REP. SIMPKINS asked whether the present process required confirmation of the commissioner by the Senate in an open meeting. SEN. McCLERNAN confirmed that requirement. REP. SIMPKINS asked if there were efforts to apply the open meetings law to judicial appointments. SEN. McCLERNAN responded he did not know of any efforts. REP. SIMPKINS asserted those meetings were not open.

Closing by Sponsor:

SEN. McCLERNAN said his purpose in drafting the legislation was to make the process more open and to keep the state out of court. He said the bill addressed most of the issues brought up by Common Cause. He said he wanted to address REP. MOLNAR'S concerns. He explained when the bill was being drafted, they had considered how important it was to have average citizens included in the process. He said, being pragmatic, he preferred having a political hack in the commissioner's office because someone who did not have experience in the political process probably would not be effective. He said he liked the last two commissioners, both of whom were seasoned politicians. He stated they were more likely to be aware of possible unethical practices by politicians.

HEARING ON HB 186Opening Statement by Sponsor:

SEN. HENRY McCLERNAN, Senate District 34, Butte, introduced SB 186 which authorizes the districting and apportionment commission to reapportion the public service commission (PSC) districts. He reported PSC districts were set in statute and had been in place since the 1970's; currently, there is no mechanism for reapportioning the districts. He stated SB 186 provided criteria for reapportioning the districts including preservation of county boundaries and communities of interest. He reported he had no opposition to the bill in the Senate.

Proponents' Testimony:

Bob Anderson, Chairman, Public Service Commission, stated the commission supports the bill and considers it both a practical approach and in the public interest. He stressed the importance of the communities of interest provision in the bill. He said PSC districts currently differ in populations because of demographic shifts within the state, but the PSC does not necessarily consider the population differences a problem. He said the expense of an independent committee to reapportion the districts was too great, and using the districting and apportionment commission was a good compromise.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. WALLIN asked SEN. McCLERNAN how often PSC districts needed to be changed. SEN. McCLERNAN responded the bill authorizes the commission to recommend changes with each reapportionment. He noted that the legislature normally only recommends changes to the districting and reapportionment commission's plan; however, for PSC districts the legislature would receive recommendations from the commission and then set the district boundaries in statute.

REP. STOVALL asked SEN. McCLERNAN whether the bill mandated the commission to reapportion the PSC districts. SEN. McCLERNAN explained the duties of the districting and reapportionment commission were defined in the Constitution, and the legislature cannot change those duties without a constitutional amendment. Thus, the bill authorizes the commission to reapportion the districts.

REP. SPRING asked Mr. Anderson whether the Kalispell district included counties east of the divide. Mr. Anderson said the northwestern district was entirely west of the divide. He said

the northeastern district was east of the divide and included 22 counties.

REP. SIMPKINS reported to **Mr. Anderson** the committee had recently passed a bill dividing the state into four sections with equal populations to be used in making appointments to certain boards. He suggested the PSC should recommend district changes to the legislature rather than using the districting and reapportionment commission. **Mr. Anderson** responded that under SB 186 the PSC would make recommendations to the commission and to the legislature. He said because the PSC is a quasi-judicial body, objectivity was one of the most important elements of their work. He explained PSC members had a personal interest in the districts because they run as candidates in the districts, and therefore they might have a resistance to change.

REP. SIMPKINS expressed his concern that because reapportionment had just been completed, the PSC boundaries would not be adjusted for ten years under the bill. He said if the PSC has disproportionate districts, then they should recommend boundary changes; and the legislature could judge whether or not the recommendations were objective. As an alternative, he suggested a legislative committee could be appointed to reapportion the districts. **Mr. Anderson** responded the PSC was concerned about the cost of having another committee determine the district boundaries. He said PSC members were not convinced the demographic shift was a major problem because they considered maintaining communities of interest of overriding importance.

REP. SIMPKINS asked **SEN. McCLERNAN** whether PSC boundary adjustments should be requested now since the legislative council staff had current demographic information from the recent reapportionment. **SEN. McCLERNAN** said he had initially considered immediate action necessary. He had, however, analyzed the population distribution in the five PSC districts and found the districts varied between 16 and 23 percent of the total state population. He asserted this variation was not too disparate from a 20-percent ideal, and therefore immediate action was not required.

Closing by Sponsor:

SEN. McCLERNAN urged the committee to consider the bill and not leave the PSC out of the excitement of reapportionment.

ADJOURNMENT

Adjournment: 10:06 a.m.

Dick Simpkins

DICK SIMPKINS, Chair

Dorothy Poulsen

DOROTHY POULSEN, Secretary

DS/DP

Testimony - S.B. 130 - Clarify process of selection of
Commissioner of Political Practices

EXHIBIT 1

DATE 3/10/93

HB SB 130

Mr. Chairman, members of the State Administration
Committee

I am Terence Butcher and today I am
representing myself -

As a member of the House of Representatives
I felt the creation of the office of Commissioner
of Political Practices was a big step forward.
It gave us the necessary tools to more
fully supervise the election process. The
intent was to provide supervision free of
political bias. Somehow many have felt
that this goal has not been fully ^{realized} ~~met~~. ~~There~~
^{Some have} an uneasy feeling that only a political
insider can become Commissioner of Political
Practices.

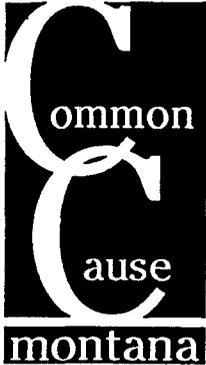
It was this concern with the process
that encouraged Common Cause to ~~form~~ ^{form} a
committee of concerned citizens to seek applications
for the position. I served as a member
of this committee. We advertised the position
statewide and were pleased to receive
applications from 32 highly qualified individuals.
All the applicants were aware that we could
not make the final selection but were only
acting in a ~~pre~~ screening capacity. After
receiving resumes we selected several for
personal interviews before the committee at a

meeting open to the press and public. Three outstanding applicants were then chosen by the Committee to recommend to the legislative leadership for their consideration. The lack of opportunity for public scrutiny of the remaining process has been a matter of real concern.

In view of this and the public concern which has developed over the conduct of the office of Commissioner of Political Practices H. B. 130 is very timely. Until the process is exposed to the daylight of public scrutiny the position will remain clouded by the suspicion of political bias.

The changes proposed by H. B. 130 are excellent and I believe necessary to improve the performance of the office. Without these changes to the law I am fearful we will actually lose the office. It would be a shame to lose the important ~~function~~ ^{function} the Commissioner of Political Practices can play in ~~insuring~~ ^{assuring} the integrity of the political process. I ask for your support of S. B. 130 -

Verner Bertelsen
1800 Winne Ave.
Helena, Mont.



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EXHIBIT 2
DATE 3/10/93
HB SB 130

**COMMON CAUSE TESTIMONY
IN SUPPORT OF SB 130
MARCH 10, 1993**

Mister Chairman, members of the House State Administration Committee, for the record my name is Amy Kelley, Executive Director of Montana Common Cause.

Common Cause/Montana is a nonprofit, nonpartisan citizen group of more than 800 members working to promote more open and accessible government in Montana. On behalf of those members, I wish to register our support for SB 130.

The Commissioner of Political Practices is the enforcer of Montana's campaign laws. It is the public watchdog, established to ensure public confidence in the political process.

Since the establishment of the office in 1975, frustration has been expressed by political players and the public alike concerning the seeming unwillingness of that office to aggressively pursue potential violations of campaign laws. Common Cause believes that problem is largely due to the nature of the appointment process.

This bill addresses four problems with the current appointment process:

1. LIMITED SCOPE OF CANDIDATE OUTREACH

The current appointment process does not require the Legislative Leadership to conduct any level of official candidate search. Thus, the only individuals that come forward -- in fact, the only individuals that even know of or hear about the position's opening -- are "political insiders." This bill would require more extensive outreach through newspaper advertisements, thus reaching such individuals as educators and attorneys not directly involved in the political system.

**2. UNCLEAR LINK BETWEEN LEGISLATIVE RECOMMENDATIONS
AND GOVERNOR APPOINTMENT**

In the recent Common Cause lawsuit, the District Court pointed out that current statute does not require the Governor to appoint from the list of candidates submitted by the Legislative Leadership -- despite their statutory duty to select candidates. This bill would ensure balance in the selection process by requiring that the Governor choose from that list.

3. COMMISSIONER NOMINEE TAKES OFFICE BEFORE SENATE CONFIRMATION

Currently, the Commissioner's term expires December 31, leaving the Commissioner-nominee to take over the duties of that office before being confirmed by the Senate. The obvious problem that arises is that the candidate's approval by the Senate is not guaranteed, which could leave Montana without a Commissioner of Political Practices for an unknown amount of time. Second is the problem of an inexperienced person having to defend the budget of that office before the Legislature in the first week of the session. Keeping the outgoing Commissioner in office until the new official is confirmed would solve both of these serious problems.

4. LACK OF CITIZEN INPUT

Most importantly, while the open meetings provisions of the Montana Constitution and Montana statute require that all meetings of legislative committees be open to public observation, the current appointment process does not allow for public participation.

More than any other appointment, the Commissioner of Political Practices must withstand intense public scrutiny. There must be no question as to whether the appointee will be impartial and unwavering in the enforcement of our political practices laws.

This bill would require that the Legislative Leadership selection committee created in 13-37-102 abide by the Open Meetings Law. It would also require that at least one public hearing be held during the selection process. This would allow the public to speak out in favor of or in opposition to potential Commissioner appointees -- before they are appointed by the Governor. More information would be disseminated about the Commissioner candidates. And, the Legislative Leadership selection committee would be freed from the appearance of "insider" appointments.

* * *

SB 130 would help ensure integrity in the appointment of the Commissioner of Political Practices. The integrity of that office is more important today than it ever has been. What's more, it presents an opportunity to make a POSITIVE CHANGE in an office which, this Committee well knows, has been under direct attack.

Common Cause strongly urges passage by this Committee and the Legislature of SB 130.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

State Administration

COMMITTEE

BILL NO. SB 186

DATE 3/10/93

SPONSOR(S) Sen. McCLERNAN

PLEASE PRINT

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Denise Peterson	PSC	✓	
Bob Anderson	"	✓	
N. McCaffrey	"		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.