MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MACK COLE,** on March 10, 1999 at 10:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:
Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 468, HB 474, 2/22/1999; HB 469, HB 508, 2/23/1999
Executive Action: HB 468, HB 474

HEARING ON HB 468

Sponsor: **REP. MATT BRAINARD, HD 62, MISSOULA**

Proponents: **Verner Bertelsen, Montana Senior Citizens' Association.**

Opponents: None

Information: **Mark Mackin**

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 10 - 26}

REP. MATT BRAINARD, HD 62, MISSOULA, said this bill requires those individuals who hire paid petition gatherers to file with the Commissioner of Political Practices and record the expenses they paid for the petition gatherers. I am a supporter of the initiative process, but I think it's a grass roots provision in our state law for the initiative process. It is the safety valve for the public to be heard on particular issues. To me, there has always been a fundamental flaw in hiring someone to get signatures on a grass roots drive. As a result, I think one of the things we can do is to have those people who hire the signature gatherers register and make reports on the money being spent. That is a reasonable thing to do so the public knows what is going on and who is paying the bill.

Proponents' Testimony:

Verner Bertelsen, Montana Senior Citizens' Association, stated I think this sounds like an excellent idea. We should know where the money is coming from and who it is going to. No matter which side a person takes on an issue, it is important to know something about that.

Informational Testimony:

Mark Mackin said I am advocate for direct democracy. In looking over **REP. BRAINARD's** bill, I don't think it is going to affect the gatherings of signatures, materially. I don't see any serious problems with it. Whether you like or don't like paid signature gathering, it is an issue the Supreme Court has settled pretty definitively right now. They say it is acceptable, but this may help us to understand what is going on a little better. I am not at the point where I could say I am a proponent at this time, but I see no objection to the bill. I would like to keep taking a look at what happens in terms of receiving useful information. We may have to revisit this in the future.

Questions from Committee Members and Responses:

SEN. WELLS asked, what does the report do to Title 13, Chapter 37. **REP. BRAINARD** said, I would like to refer this to **Mr. Niss,** who helped draft this bill. I think that if you have normal reporting where this is already covered, you don't have to comply with this. You are not expected to report twice.

SEN. WELLS asked if this is the title that covers political action committees. **Mr. Niss** stated this covers all financial reports. **SEN. WELLS** clarified these are the things we have to report as candidates; the political action committees have to report, etc. **Mr. Niss** replied yes.

SEN. COLE said as I understand this, all this reporting would go to the Commissioner of Political Practices. **REP. BRAINARD** said yes, it would. **SEN. COLE** asked if they feel that is going to be a significant amount of extra work for them? **REP. BRAINARD** replied, I don't believe so. In the normal course of events, on general elections we probably run between two and six initiative campaigns. I don't think that represents a significant increase in work for the Commissioner of Political Practices to handle those reports.

Closing by Sponsor:

REP. BRAINARD said, thank you for a good hearing.

HEARING ON HB 469

Sponsor: **REP. MATT BRAINARD, HD 62, MISSOULA**

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. MATT BRAINARD, HD 62, MISSOULA, stated this has been significantly amended in the House from what it was originally intended to be. The first part of the bill deals with changing Election Day as a state holiday. It eliminates that and creates a new holiday, the day before Christmas. If you had the opportunity to talk to public employees, you would find out quite a few of them do not understand why they have Election Day off. It's a dead vacation day for them because it falls on Tuesday in the middle of the week.

As I understand it in talking with Tom Schneider with the Montana Employees' Association (MEA), the original purpose for public employees having Election Day off was that at one time in this state, most of the voting was done in the county courthouses and in the State House as well. At that time, public employees lobbied people standing in line at the polls. I guess they got tired of that, so they gave them the day off. Today, most of the

voting is done in the schools. The schools are in session during those days and I think this is a good provision.

In talking to Mr. Schneider, he thought the day before Christmas was a good idea for state employees. If you had the opportunity to go to the offices on the day before Christmas, you are going to find there are very few people there. There is a slight Fiscal Impact in this bill because Election Day is once every other year and the day before Christmas is an annual holiday. The fact is, the lost time we have on the day before Christmas probably balances out on the Fiscal end.

The second part of the bill deals with campaign sign placement on the highway. If you are going to place a sign on private property, in Section 2, you need to have the approval of the owner or manager of the private property. That is just good sense and respect for property rights. I have had people ask me if they can remove a campaign sign from their property. They were concerned they would be breaking the law by removing campaign material. I told them I think they violated the law by putting it on private property in the first place, although there is nothing in the law specifically against it. It violates the spirit of private property and what a campaign is all about, which is talking to people and convincing them that you are the right candidate.

The other issue, in Subsection 2 of Section 2, says, a sign may not encroach upon a public highway unless the election campaign sign is attached to a fence or other fixture located on private property. That sign cannot extend more than 12 inches onto the public highway right-of-way. I ran into a unique situation with a couple of my campaigns. I had a person who worked for the highway department who was not of my political belief. He was a ardent supporter of the concept that we should not have campaign signs on public highways. A couple times I had campaign signs on private property, along the highway, and a small portion hung over the fence line. He removed those signs and said you are encroaching on the right-of-way. From then on I made sure nothing hung over the fence line.

In the last election I went through, that same individual allowed my opponent to put signs 30 feet down from the fence line. I think it is time, regardless of party, we standardize this so everyone knows what latitude we have. I don't think political signs should be placed in the highway right-of-way. We don't allow that for most businesses. A sign too big or too close to the highway can provide a safety problem as well. Being attached to a fence or fixture on private property and extending no more than 12 inches into the right-of-way is not going to create a safety problem and will let everyone know exactly how far you can

go. That is basically what this bill does. I will try to answer any questions you have.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 26 - 51}

SEN. WELLS said Page 3, Line 5 and 6, it says "the campaign sign may be removed and returned to the campaign treasurer pursuant to 13-25-225". What is 13-25-225? **REP. BRAINARD** explained that section is the identification of campaign materials. On your campaign sign you have an address and your campaign treasurer identification. Whoever is on your identifier will be notified to come and get the sign.

SEN. WELLS said I noticed Section 3 talks about the Highway Department. The Department can still follow what they have done in the past, where they can immediately remove an encroachment without notice. We don't really have them notify anyone, correct? **REP. BRAINARD** replied, the new language in Line 9 says, "except as provided in Subsection 2". That would go back to Page 2, Line 30. That exception is made.

SEN. WELLS stated I think your new language in Subsection 2 is talking about a homeowner or someone who owns property and wants to remove your sign and return it to the treasurer. That is fine, but we still do not require the Highway Department to bring it to you or call your treasurer, correct? **REP. BRAINARD** answered, new Section 2, on Line 27 of Page 2, is the overall section we are talking about. Subsection 1 talks about private property issues. Then Subsection 2 discusses the public highway. Page 4, Line 9 says, "except as provided in Section 2". Therefore, that is referencing the whole section. Basically it is saying, except for these election campaign signs in a procedure that is noted in Section 2, the Department will still handle encroachments. In other words, those obstacles that might be on the right-of-way from something other than a campaign They will be handled in the manner they always have.

SEN. WELLS asked, do you feel, by the way it is worded, they are required to return it to the campaign treasurer. **REP. BRAINARD** said, I believe that they are. It says on Lines 5 and 6, "a campaign sign placed in violation of Subsection 1 or 2, may be removed and returned to the campaign treasurer". That would include the Highway Department as well. Currently, they do that. I never had one removed where I was not notified.

SEN. WELLS stated they removed five of mine in the last campaign and did not notify me. They were large expensive signs, and I

was pretty angry. I went down to the city offices looking for them and they sent me to the Highway Department. They did not notify anyone so I like the change here.

SEN. WILSON said, in the bill it says "highway" and I want to make a distinction between highway and a roadway. On a roadway in Great Falls, 22 feet from the curb is my parameter for putting anything up. This bill talks about being affixed to a fixture not encroaching on a highway. Will you address the difference in highway and roadway and does this cover both? **REP. BRAINARD** replied essentially the definition of a highway is "a roadway". It depends on the particular situation but, for example, encroachment includes those right-of-ways. I am not sure what the right-of-way would be on the avenue you are talking about, but in Missoula, from the sidewalk to the curb is part of that right-of-way. If, for example, you place a yard sign in the yard adjacent to the sidewalk, you are not encroaching on the right-of-way. If you put the sign between the sidewalk and the curb, you may be in the right-of-way. When placing signs on some of the city streets, you may have city ordinances already controlling that. I prefer to have my yard signs in the yard rather than putting them out by the sidewalk. That is almost inviting someone to kick them over or do something with them. In the worst case scenario, someone from the opposition could come along and pick them up from the roadway.

SEN. WILSON stated, addressing the election side of the bill, are we really surprised there were not opponents to this change? I am wondering what happened in the House. You mentioned Tom Schneider, and it sounded like his people are for this. Did you have opposition to this in the House? What would this do for turnout on Election Day? I am surprised someone didn't come in and oppose that. **REP. BRAINARD** replied I don't think this is going to affect turnout. One of the questions I hear is why are state employees off when everyone else has to go to work and vote before or after work? There is a fairness issue perceived by some of the public. I don't think the majority of state workers are going to have a problem going to the polls at the same time other people do. Mr. Schneider said he didn't get a chance to testify on this bill, but he thinks it is a great idea. I had a lot of other issues in this bill. By the time we finished amending those things out, everyone breathed a sigh of relief that I wasn't turning the state upside down.

SEN. WILSON asked, since they have such a vested interest in what goes on in government, was the philosophy behind giving them the day off to make it easier to vote on that day? **REP. BRAINARD** said, I don't believe that it was. Mr. Schneider is the only person I talked with who had an explanation of why they had

Election Day off in the first place. The most obvious question when talking about people who are interested in what goes on in government is why don't teachers have the day off? Children are going to school, polls are operating, and teachers vote throughout the day. I don't think this is an issue anymore. If you talk with the average citizen, they would probably say they do not understand why state employees get the day off. I don't think that is the real reason they had the day off to begin with.

SEN. TESTER said, I see that the penalty on Page 3, Line 3 and 4, was taken out. Is there any penalty to placing a sign on the highway right-of-way? **REP. BRAINARD** explained, there is no penalty involved in this bill. During this session, the Administration Committee has gone soft on political crimes. The bills we had in House State Administration dealt with opening up free speech. We had several bills for stiffening penalties for inappropriate wording in campaign literature. Most of those bills have gone down. I don't think it is appropriate in a campaign to be penalizing people or fining them for not putting up a sign in the correct manner. The bill addresses this by clarifying that individuals have the right to take down campaign signs from their private property. If that sign went up on private property or on a highway inappropriately, the easiest thing to do is take it down. I don't want to clog up the system by taking people to court or trying to fine them.

SEN. TESTER asked, who determines the highway right-of-way? **REP. BRAINARD** replied, the Highway Department or County roads. There is a specific measured right-of-way for all roads, city streets, and highways. **SEN. TESTER** asked, if it runs through reservation land, is it the same? **REP. BRAINARD** said, if it is reservation land, it still has a measured right-of-way, with fences separating the private non-tribal member property, private tribal member property, or reservation land. Right-of-ways are clearly defined in most cases.

SEN. TESTER said, there is a great amount of confusion as to whether the reservation or the Highway Department owns that right-of-way. I got into the same situation as **SEN. WELLS** because some Native Americans said I could put up my signs and I did. The Highway Department took them down. **REP. BRAINARD** explained there are things that differentiate the right-of-way; for example, public right-of-way on a highway is, in a sense, an easement. If that particular roadway is abandoned or closed for a reason, the adjoining landowners take possession of that right-of-way to the center line, depending on who owns what. In the case of the Highway Department, I wouldn't say the Highway Department owns the right-of-way, but they have a specific legal authority to keep it clear. That is in the original section in

the bill on Page 4, in Section 3. We are talking about the highway encroachment duties of those people responsible for the right-of-ways.

SEN. TESTER stated I understand. I have a certain amount of personal frustration with the fact that this right-of-way, from my perspective, depends on who you are and what you're doing. I have seen fence lines encroach on that 60 feet highway right-of-way. If I put a sign on that fence line, they take my sign down. I was looking for clarification as to some definite boundaries. **REP. BRAINARD** explained one of the problems with right-of-ways, and I generally use the existing fence line because I think that is most appropriate, is that the right-of-way is not necessarily a standard 60 feet from the centerline or from the edge of the road. It depends on the history of construction, the cuts and fills, and what other issues were there when that roadway was laid out and what they have done with it. Highway 93 runs north and south through my district. It does not have a standard right-of-way distance from the centerline. There are some wide expanses of the right-of-way and there are other places where it is fairly narrow and property lines are close to the highway. On the other side of that particular property we have the railroad property, which varies as well. If you go to the Department of Transportation and look at their actual maps, you will find that those measured legal right-of-ways vary greatly.

SEN. TESTER said you are saying there are a lot of personal calls on this by the Highway Department people. **REP. BRAINARD** stated there should not be a personal call. I am hoping we can eliminate that occurring. I made it pretty clear in the resolution. If there is a fence line encroaching on the right-of-way, allowed to exist by the Highway Department and it has been allowed as a permanent encroachment, you have every reason to believe when you put a sign up, anchoring it to the backside of that fence, extending over 12 inches, you will be well within the law. They should leave your sign alone.

SEN. TESTER said a fence line is 75 feet from the highway. The highway right-of-way is 60 feet and there is farmland extending past that 60 foot line. Do they have a right to take a sign down if it is inside that fence, but not within the 60 feet of the highway right-of-way? **REP. BRAINARD** stated you said the farmland extended into the right-of-way, but it is not fenced. It may be, depending on how it is surveyed, that the land is not extending into the right-of-way, but is extending beyond the other fence line. Then it may not be in the right-of-way. That is the question that will need to be answered on that specific issue. I think if you are attached to the fence line that is allowed to stand, and/or if the individual who plowed a field has given you

permission to put the sign in his plowed field, the Highway Department has to give some explanation as to what they are doing if they take your sign down. This bill provides for that.

SEN. TESTER said it shows the Fiscal Note is $64,795 for year 2000 and nothing for 2001. Why is that? **REP. BRAINARD** replied every two years you have an Election Day which is a standard holiday for employees. In this bill we substitute the day before Christmas, which is annual. There are not many people on the day before Christmas in most offices. People are not fastidious about marking this as annual leave or sick leave. They just sort of drift out. While this has a General Fund impact, I don't think it effects anything, because we have many offices that aren't doing any work the day before Christmas. We just make it official by giving them the day off. We are gaining an actual full day of employment every two years they presently have off. It balances out.

SEN. TESTER asked the reason there is a Fiscal Note for 2000 is because it is an off election year, correct? **REP. BRAINARD** answered affirmatively. **SEN. TESTER** said I think that's an interesting point, but we are talking about a productivity problem now. If we are paying people who are not working and not taking it as annual leave, that is an entirely different problem than what we are trying to address here. **REP. BRAINARD** said it is and it isn't. The original reason people received the day off stems from the days when public employees were at the polling place lobbying other people voting.. They found it was easier to give them the day off. Now, there is a perception in the public that people working for the state are given an election day off so they can make sure that they get to the polls in order to elect the people who are going to give them pay increases, retirement increases, etc.

{Tape : 1; Side : B; Approx. Time Counter : 51 - 65}

This is the way we can "clean up our act" and do something for the employees. We could be very specific and say from noon on, employees could take a half day off, but that is probably counterproductive as well.

SEN. TESTER stated in essence we are giving another day off every other year. If we have a production problem with our state employees, we need to look at the people administering our state programs. We don't need to try to fix the production problem by giving them another day off. **REP. BRAINARD** said I would not fight an amendment eliminating the day before Christmas if we eliminated Election Day. We are not able to influence much control over the way agencies are administrated. That is an

Executive Branch function and I don't see much hope of controlling the Executive Branch from the Floor of the House. , Because you have interim capabilities the House does not, perhaps with oversight committees in the Senate you could address this. Again, there is a perception these people have the day off simply to influence the election. I would like to end that perception. There is a public perception that state employees are becoming a different class of worker. This behooves us to let the public know state employees are like everyone else and do not get a special day off just for the election. I think the trade off with Christmas is a decent one.

SEN. TESTER said I appreciate what you are trying to do. Because of the lack of proponents or opponents, I don't see where this is being initiated or opposed by state workers. We have to compare private sector to public sector and we have to do our best to keep things competitive. I am sure there are benefits within the private sector the public sector does not have. There are benefits in the public sector the private sector doesn't have, so I don't feel any great need to try to make the scale balance perfectly because it never will. **REP. BRAINARD** stated I suppose it is true that you may not be able to make the scales balance perfectly. I can think of many days my wife, who is a state employee, receives off when I have to work. We have a variety of ways people can vote. Why do we give public employees the day off on Election Day? If it has surpassed its usefulness, why do we keep doing this? As I said, the productivity end of this is minimal. I picked the day before Christmas because that seems to be a common day many people use annual leave or whatever for taking the day off. A person's efficiency in a job hinges on having other people there. If half of the office is gone that day, the productivity for the ones who remain is lower. It is not an appropriation and I think it will actually pick up efficiency on the other side of it.

SEN. WELLS said there were no opponents. Was the switch in days in your original bill proposal? **REP. BRAINARD** replied it was. **SEN. WELLS** asked if you had not given the day before Christmas off and just eliminated Election Day, how many opponents would have been in here? **REP. BRAINARD** said we would probably have a fair number. Eliminating a day of vacation or any type of compensation would elicit some response.

SEN. COLE stated this bill has some good changes concerning right-of-way. In many cases in eastern Montana, on open range, there is no fence one way or the other so occasionally we get into a problem. You have to find out whether it is a state highway, which is 60 feet, or a federal state highway, which is 200 feet, or one that is 40 feet. Are we on our own concerning

the right of way? **REP. BRAINARD** explained there is a difference between eastern Montana and western Montana. In this bill, if you are putting your sign up on an open range area, the Highway Department is leaving it alone. If no one is messing with them, it is not a problem. It has to be on private property, extending no more than 12 inches. If you meet the qualifications and they are taking your sign down, they are breaking the law. If you are involved in the kind of campaign where suddenly someone is helping the opposition, this will give you some protection. This gives you course of action and it is going to help.

Closing by Sponsor:

REP. BRAINARD stated I think this is a good bill. We may gain productivity. It was not designed for that, but it is something that would be a side issue. I hope you will concur in it.

HEARING ON HB 474

Sponsor: **REP. CHASE HIBBARD, HD 54, HELENA**

Proponents: **John McEwen, State Personnel Administrator, Department of Administration**
Terry Minow, Montana Federation of Teachers, Montana Federation of Public Employees, Montana Public Employees' Association
Dan Anderson, Addictive and Mental Disorders Division, Department of Health and Human Services

Opponents: None

Information: **John Andrew, Chief of Labor Standards Bureau, Department of Labor and Industry**

Opening Statement by Sponsor:

REP. CHASE HIBBARD, HD 54, HELENA, said I was asked to carry this bill by the Department of Administration on behalf of other state agencies, in order to get statutory direction on collective bargaining issues that arise during major state reorganization. The bill is a result of problems which occurred the 1995 reorganization. The main problem is when two or more unions claim to represent employees doing similar work in the same work units. Without the statutory changes requested by this bill and if the problems that are inevitable are not able to be solved informally, the state faces liability in the way bargaining units might be formed in a way that has not been deemed appropriate by

the Board of Personnel Appeals and the employees affected have not been given the right to choose their bargaining union.

This legislation will allow the Board of Personnel Appeals, upon petition from the state, to assist the state in determining which unions represent which employee groups once major reorganization has occurred. This issue came up and was able to be resolved on an informal basis, but it was a very tenuous problem. There was no statute to backup what was able to be done to everyone's benefit. This will clear that up and put into statute a solution to the problem. Quite a bit of negotiation went on beforehand. The Department of Administration negotiated with the two unions, which represent the vast majority of the affected parties and there is mutual agreement that this is a good solution.

Proponents' Testimony:

John McEwen, State Personnel Administrator, Department of Administration, stated we see some reorganizations on the horizon and we feel this bill will give us the tools we need to help us through some representation issues. He handed out **EXHIBIT(sts54a01)**. I want to describe the bargaining unit determination plan contained in statute and rule. It is the determination of the bargaining unit that is a threshold issue which is disruptive in reorganizations. Line 15 of the bill talks about characteristics of bargaining units. The Board of Personnel Appeals considers factors such as wages, conditions, supervision, etc., in determining whether a group of employees are in corporate unit for bargaining. After that unit determination is made, there is an election. There can be more than one union in the election. There can be the union that petitioned for the union as well as intervener unions. A union can be an intervener as long as they have 10 percent of the card signed by employees in question. Finally, once there is an election and the unit is formed, the state has an obligation to bargain exclusively with that bargaining agent.

The examples referenced by **REP. HIBBARD** involved the 1995 reorganizations. We had a new group of employees and two competing unions, all working in the same unit under the same supervisory structure. In a second example, we had only one set of employees unionized; the other employees were not represented. If we recognized a union in either situation, we could have been charged with an Unfair Labor Practice. Our state law says it is an Unfair Labor Practice for a public employer to dominate, interfere, or assist in the formation or administration of a labor organization. If we withdrew recognition in these situations we would disrupt labor management relations, temporarily deny the employees the right to bargain, and cause

economic hardships on the unions themselves because of temporary loss of dues. We were left to resolve these representation issues without any statutory direction.

The Board of Personnel Appeals agreed to assist us. We had a new determination of bargaining units appropriate to new agencies. We did not disrupt agency operations and we maintained the employees right to choose the bargaining agent. Fortunately we were able to do so without any challenges from employees or other unions. We expect the same problems within the next few months with some reorganizations in the Department of Revenue and at the State Hospital. In Line 27 of the bill, there is one aspect different than the process we employed in 1995. We have included the requirement that the question of representation be limited to bargaining agents representing employees prior to the reorganization.

The elections conducted in 1995 allow for an intervener process similar to that in establishing new units. This provision of the bill is intended to protect labor unions from intervention by other unions who would not otherwise have been present except for the employees' and employers' reorganization. We have not eliminated or restricted employee rights to choose a different bargaining agent. There is some precedent to this statutory direction. In 1987 there was some language directing how representation issues would be handled.
{Tape : 1; Side : B; Approx. Time Counter : 65 - 83}

Terry Minow, Montana Federation of Teachers and State Employees, Montana Education Association, Montana Public Employees' Association, stated we support this bill. This bill is a result of a process of discussions and negotiations between our unions, other unions, and the Department of Administration. A similar process was used to decide the appropriate bargaining agents in the situation that occurred in 1995. We feel the involvement with the Board of Personnel Appeals is valuable. This bill puts that process into statute. As you heard, we are facing a difficult situation with the downsizing of Montana State Hospital. There will be over 100 layoffs. There will be approximately 14 unions representing employees at Montana State Hospital. Job duties will change and we feel this bill will help us get through that difficult situation and appropriately determine the bargaining units. We are also facing a situation in the Department of Revenue with reorganization. This bill would be very helpful in that situation as well.

Dan Anderson, Addictive and Mental Disorders Division, Department of Health and Human Services, said as you have already heard, our department has an interest in this bill because of a very

substantial reorganization and downsizing of Montana State Hospital. Currently, the State Hospital has 13 separate bargaining units. Many of those units have fewer than fifteen members. Once we go through the downsizing, a number of those units will have only one member. As we are changing things at the State Hospital, we are moving towards operating a much smaller, more efficient facility where staff of various types work together closely to get the patient needs taken care of. We need a neutral third party to help us and the employee bargaining units at the State Hospital go through this process and set up a bargaining unit structure that makes sense for the employees and for the Department. We support this bill and urge your support.

Informational Testimony:

John Andrew, Chief of Labor Standards Bureau, Department of Labor and Industry, stated one of my functions is to assist in staffing the Board of Personnel Appeals. We are the third party neutral working with labor and management on all the matters involving the Collective Bargaining Act. In the past the legislature gave some guidance when the Vo-Techs were reorganized. We are viewing this as another tool to aid us in assisting labor and management and bring about friendly agreements and good resolutions to these types of situations.

Questions from Committee Members and Responses:

SEN. HARGROVE said the bottom of the first page says, "the Board may not consider any labor organization that is not designated to represent employees of the affected agency or facility at the time the reorganization became effective". It seems to me there might be times when that could be appropriate or could happen. Would you discuss that? Is it possible for that to be the appropriate thing to do and if it were done, would it be a bad thing? **Mr. Andrew** replied there are a couple issues in there. We did some research into the Federal Labor Law and found that in the case of reorganizations, the National Labor Relations Board uses a process similar to what is in this bill. The state law is mirrored after the federal law, so we believe there is good precedence for going this way. There is also a special provision, a "window period", that opens in any contract lifetime. A window period makes some allowance for other labor organizations to intervene if that window is open and things are not otherwise resolved. The concerns out there are accommodated quite well in this bill.

Closing by Sponsor:

REP. HIBBARD said I think everyone has done a good job explaining what this bill does. It puts into statute things that will be beneficial not only to management, but to the employees involved as well. I think this is a win-win for all. It eliminates liability to the state and the court's protection for those bargaining units. I hope you will give this favorable consideration.

HEARING ON HB 508

Sponsor: **REP. DAN HARRINGTON, HD 38, BUTTE**

Proponents: **Beth Baker, Chief Deputy Attorney General, Department of Justice,**
Verner Bertlesen, Montana Senior Citizens Association
Gary Marbot, Montana Shooting Sports Association

Opponents: None

Information: **Mark Mackin**

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 83 - 90}

REP. DAN HARRINGTON, HD 38, BUTTE, stated the Attorney General's Office helped me work on this bill. We put an amendment on it and the amendment is basically what the bill does. This is not a Constitutional amendment. It is a statutory change in the law which does three basic things. It extends the time of filing an initiative petition 30 days by allowing the petition to be submitted to the Secretary of State 30 days sooner than current law provides. It clarifies what is meant as legal sufficiency, so the Attorney General is not ruling on Constitution issues that should be only decided after the measure becomes law and is being applied, e.g.,an equal protection challenge requiring the development of factual content before the legal interest can be determined.

The legal reviews do not hold up circulation of the process. The major portion dealt with by the courts was "the more than one issue" in the Constitution. From the beginning, given the number of revenue oversight of the property tax study, we were told CI-75 had serious problems because it dealt with more areas than the Constitution initiated. That is a very important part of the

Constitution, which I helped to write. That was the Constitution of the State of Montana 1972. One of the issues brought out was that with any Constitutional initiative, we should try to stay within the parameters of one basic issue. This bill covers that. It gives the Attorney General the time and ability to look at these petitions.

If the Attorney General determines there is more than one issue being addressed by any Constitutional amendment, he doesn't have to validate the initiative. The amendment process will work as follows. When the petition is submitted the Attorney General for review, the Attorney General will conduct the same review done in current law as a form of preparation. Unless the petition is rejected as informed within 21 days, the Attorney General will return the petition to the Secretary of State with the statement of purpose and implication of the Fiscal Note. The Secretary of State will give preliminary approval to the measure and the sponsors will be able to begin circulating the petition for signatures.

In the meantime, the Attorney General will complete his legal sufficiency review and notice the conclusions. At the point the Attorney General finds the petition deficient, the petition will have to seek review in court. Since a court review can take several months, the bill will allow circulation of petitions pending the legal review. Otherwise you could end up with a situation where the petition is not approved until it is too late to gather the necessary signatures. There are probably some issues that moved over from the Senate to the House that I think possibly should be addressed, but they are Constitutional amendments and will have to be voted on by the people. This only allows the Attorney General to review these petitions, give him time enough to review it, and to see there is nothing blatant within that Constitutional amendment causing any serious problems.

Proponents' Testimony:

Beth Baker, Chief Deputy Attorney General, Department of Justice, said **REP. HARRINGTON** brought this bill to us shortly after it had been introduced. We assisted him in preparing the amendments to make it do what I think his original intent was. I would like to give the committee a little background in what we currently do with initiative petitions and how this bill will change that. Currently, if a person wants to put a petition on the ballot they first have to submit it to Legislative Services Division, which does a complete and thorough review and advises the person of any possible legal problems or drafting problems with the initiative. The person is not obligated to take the Legislative Services

Divisions' recommendations. Then the person goes to the Secretary of State with their proposed petition.

At that point, the Secretary of State defers the petition to the Attorney General, who has 21 days to look over the form of the petition and make sure it is in proper form and then prepare the ballot statements. The Attorney General prepares a statement of purpose, which is the explanation of the measure, the statements of implication, which are the for and against statements, and then a Fiscal statement, which we usually get from the Budget Office. That's the end of our involvement in the process. The Attorney General does not review the legality of the measure. We will look at whether it is a proper subject for the initiative. I believe we have rejected two petitions in my ten years at the office because they did not propose to enact laws.

This bill will expand our review to include legal sufficiency. Page 2, Lines 13-17 define what legal sufficiency would mean. It would still be a fairly narrow review. We will look for legal issues that are preliminary to getting it on the ballot.

{Tape : 2; Side : A; Approx. Time Counter : 90 - 123}

We would not look at things that required an in depth review or needed to be passed before those legal issues could be determined. Our concern with the bill, as initially drafted, was that we are currently at 21 days and because the initiative process moves so quickly, we wanted a little extra time to conduct the legal review, but not have that impede the circulation of petitions. The bill builds in 30 days for the Attorney General Legal Review on Page 4, Lines 23 through 25. It keeps the 21 days review of the form. Therefore, we will get the petition and post, prepare the ballot statements, send it back to the Secretary of State and let the process get started while the legal review is going on. If there is a court challenge that could take several months, at least the petitions would be circulated. The court decision would be made before the election. The circulation pending legal review is shown on Page 3, Lines 7 through 9. If the legislature is interested in having more review of initiative petitions in terms of their substance, this bill provides the best vehicle to do that.

Verner Bertlesen, Montana Senior Citizens Association, stated I am pleased to find an initiative bill we can support. This bill is an excellent bill in that it adds more time and it eliminates a number of Constitutional issues getting involved in one measure. We strongly support this piece of legislation.

Gary Marbut, Montana Shooting Sports Association, said we are a political association of gun owners. We are very supportive of the concepts of direct democracy. We are supportive of this bill, but we have one area of concern. The Montana Constitution says that the people reserve to themselves the powers of initiative. It doesn't say the people reserve the powers of initiative unless the Attorney General does not like what they are doing. We did submit an initiative through the process about four years ago. At that time there was no authority in the law for the Attorney General to say he was not going to let us do one.

I admit we were after the hide of **SEN. MAX BAUCUS** when he broke his word to the people of Montana and voted for gun control. Part of the intent of the initiative was to chastise him. The Attorney General said this initiative wasn't something direct democracy should be used for. He said he would not write the ballot statements, statement of intents, or provide the Fiscal Note so we could not proceed, despite the fact the law did not give him the authority to do that.

Therefore, I am glad to see some clarification in the law about the sufficiency of the issue. When you look at this in Executive Session, I would like you to look at the language very carefully and make sure it closes the door to the type of arbitrary and capricious exercise of authority the Attorney General applied to us in that particular situation. You might find you need to tighten up the language to make sure that is clearly expressed in the law. We like the idea that the role of Attorney General comes under further clarification.

Informational Testimony:

Mark Mackin, stated I am an advocate of direct democracy. I have worked on four statutory initiatives and one Constitutional initiative, although I have not worked on an initiative in the last several elections. In evaluating the bill, I find the effect on time for signature gathering is okay with us. It also helps that it clarifies the role of the Attorney General, so people know what to expect when they send their material to the Secretary of State to be dealt with. As this is amended, it is not objectionable. The original provision of the Attorney General writing this statement, review of form, the Fiscal Note, bill drafting review by the Legislative Services, and some other restrictions and assistance came about in 1981.

Formerly few or no laws governed the initiative process, provided any services, or had anyone involved in it other than the Secretary of State. It pretty much worked on its own up until

1981. As a result of complaints made in 1981, there were some bills introduced to do this sort of thing. Ultimately in a House and Senate Conference Committee, which I sat in on, these things were agreed upon. At the time, we knew there was a reservation of power by the people themselves to be able to do initiatives and referendums. Since it hasn't been subject to a lot of court test, it is unclear as to what the legislature's authority is in this area. It is my concern a consensus could be broken in the future, should the legislature start stacking on other requirements, even if they seem to be beneficial. That could provoke a court challenge. We are on "thin ice" here and I don't know what the outcome of any court challenge of even the existing authorities would be.

Questions from Committee Members and Responses:

SEN. TESTER said it talks about determining if a petition is legally deficient, so it's not going to be approached by the one issue angle. I assume it will be approached on whether it meets Constitutional muster. Is that correct? **Beth Baker** replied I think you have to look at how legal sufficiency is defined starting at Line 13. We tried to define it fairly narrowly. It means a petition complies with the statutory prerequisites to the submission of the proposed measures to the electorate and that the text complies with Constitutional requirements governing submission of ballot measures to the electorate. We have tried to make sure that review will be for Constitutional issues that are preliminary to the measure being voted on. That is a fairly narrow list. The only thing we have been able to think of are things like the single amendment provision, the fact that the Constitution prohibits initiatives that would appropriate money, things that are preliminary to its placement on the ballot. The review of the petition for legal sufficiency does not include a review for consideration of the merits or application of the measure if it is adopted by the voters.

SEN. TESTER asked would I-125 fall in to that category? **Beth Baker** answered, yes. **SEN. TESTER** stated there was a tort reform bill that was thrown out. Would that one have made it on the ballot as well? **Beth Baker** replied I think the court ruled it violated Article 2, Section 16, which guarantees full redress. That would probably end up being on the ballot because the issue was about how it was going to apply once the law was enacted.

SEN. TESTER said I like the bill and the intent, but I don't know if it goes as far as I'd like it to go. The fact is, we are pretty much dealing with examples like CI-75, with amending the Constitution in two or three different areas. **Beth Baker** said

hopefully it is more cut and dried now than it was before CI-75. We ended up defending CI-75, but the court has given clear guidance as to when something will constitute more than one amendment to the Constitution.

SEN. TESTER asked if the Attorney General rules that a particular initiative does not meet muster, do the people have any legal recourse? **Beth Baker** replied yes, that is addressed at the bottom of Page 4 and continuing on to Page 5. Currently, the sponsors can challenge the statements we prepare in court. This will expand it so they will be able to challenge the legal review as well. Within ten days after receiving notice of what the conclusions are, they can file for a challenge.

SEN. TESTER asked, is the time frame such that if it was determined in favor of the petition, they would still have an opportunity to get it on the ballot? **Beth Baker** stated yes. In fact, that is why we have the bill structured so they can be gathering the signatures while the legal review is pending. In Subsection 3, beginning at Line 15, the law already provides that the court is to give these cases high priority and render decisions as soon as possible. The purpose of that is to make sure, if the petition did pass muster, all the court challenges would be over and done with before the election.

SEN. HARGROVE asked if it is challenged and a court rules against it, what happens? **Beth Baker** explained I think it would depend on what the grounds were for ruling against it. We amended our Constitution a few years ago to provide that if an initiative petition is struck down because it did not comply, it is to be put on the next ballot. If they ruled it was Unconstitutional because of its subject matter, they would have to regroup and decide if there was another way they could do it. If it was just a technical violation, it would be placed on the next general election ballot. I don't have a copy of the Constitution with me, but I could double check that.

SEN. HARGROVE said as I read on Page 5, it looks as though if a court rules against it, they can still proceed on and the statement certified by the court must be placed on the petition for circulation. Do I read that right? **Beth Baker** replied, I think that Subsection refers back to the way this section is originally applied. If the court is ruling on the statements that go on the ballot, Line 18 talks about the court certifying to the Secretary of State a statement that the court determines will meet the requirements of the law in terms of what those ballot statements are going to say. The new language says, "or an opinion as to the correctness of the Attorney General's determination". I think Subsection (b) would only apply if the

court's ruling had to do with the ballot statements. If the court threw out the petition, I don't think Subsection (b) would apply at all.

SEN. HARGROVE asked if it is the ballot statement, they could say it is not correct and put the statement certified by the court on the petition anyway? **Beth Baker** said I don't think so. If you think a clarifying amendment would help, **REP. HARRINGTON** could talk about that. At the bottom of Page 2, the Secretary of State is to send written notice of the final approval or rejection within five days in which the final court decision is entered. If the final court decision is that the petition is invalid, the Secretary of State would reject the petition.

SEN. HARGROVE stated it may be in here, but it doesn't seem to be a way to look finalize and reject. My thought is maybe that was the intent. Perhaps the intent was to make use of the Attorney General and the courts, but people don't really have to do what they said. **Beth Baker** said I don't read it that way but I would be glad to sit down with David Niss and try to work out amendments. **SEN. HARGROVE** stated I don't necessarily require an amendment. I haven't had that much time to look at it. If you can just tell me where there is some closure in this, that will be good enough for me.

Closing by Sponsor:

REP. HARRINGTON said I believe it says on the back of that page, if the petition is rejected, the notice must include the reasons for rejection. That's something I would want to clear up because I don't think it's something that should just go on if it is rejected. That is not the intent. Page 2, Line 11, addresses the issue. The petition may not be given final approval by the Secretary of State unless the Attorney General's determination is overruled pursuant to Section 13-17-316. That clarifies it cannot move on. I don't think there is an amendment needed on this. It is very clear in the way it is written in that it cannot be approved; therefore, it cannot continue on through the process. I appreciate the Attorney General's office and Beth Baker for what they have done on this. When I started, I didn't want the Attorney General's office to have opinions that would reach into other areas mentioned here. We wanted to make sure these petitions must meet the legalities, the formation, the one issue, and the basic Constitutionality of the appropriation of money. I think the bill before you is in good shape and I hope you give it a Do Pass.

EXECUTIVE ACTION ON HB 508

Motion: **SEN. TESTER** moved that **HB 508 BE CONCURRED IN.**

SEN. WELLS said I took note of Gary Marbut's comment and I am wondering if there is a place where this could be tightened up a little bit. I would like to pursue it a little bit.

Motion: **SEN. TESTER** withdrew motion that **HB 508 BE CONCURRED IN.**

EXECUTIVE ACTION ON HB 468

Motion/Vote: **SEN. WILSON** moved that **HB 468 BE CONCURRED IN. Motion carried 5-0.**

DISCUSSION ON HB 469

David Niss, Legislative Staff said I would like another day on that. I talked to both the sponsor and **SEN. WELLS** about it and there is a small problem.

SEN. WELLS explained we are looking at the removal of signs and whether the Highway Department can do that or not.

SEN. HARGROVE said I have another problem with that particular bill. I suppose that would change the balance of proponents and opponents significantly. I don't see any connection between Christmas and Election Day. I suppose some people would call that a fair trade off. As I look at that list, everything in there is a federal holiday except for the 24th, with which we are creating a separate category of state holidays. Everyone in state government would be mad at me and I really would not like that, but my work ethic makes me question that.

SEN. COLE said as far as state holidays are concerned, the Election Day was all by itself as well. It would not be creating a new one. It would be taking one special state holiday and giving us another day. The only people that get the day off on Election Day are the state employees. School teachers, federal employees, private employees, and probably your railroad people do not get the day off. That was one reason I thought trading one day for another maybe makes a little more sense. I can see where you're coming from too.

SEN. WELLS said my first reaction was that I did not think it was a good trade because of the expense. The more I think about it, I like the idea of getting rid of Election Day because I have heard complaints from people. They keep the polls open until 8 o'clock at night. There are lots of provisions made for everyone

to make it to the polls. I think eliminating that day is a good move. Trading it for the day before Christmas to appease the employees is fine.

SEN. COLE asked what did you want to change?

SEN. WELLS said where it talks about the campaign sign being removed and returned, there are some things in the law apparently conflicting. David pointed out some things that we needed to look at. The way I read this, it looks like it might not apply to campaign signs, but I don't know.

David Niss stated I found a section in an entirely different chapter than encroachments on the right-of-way. It is in the traffic regulation chapter of basic rules of the road, which prohibits signs on the right-of-way and allows them to be taken down by the Department without notice to the owner.

SEN. TESTER said I have a problem with changing the days based on a production reason. It is a poor reason. In response to the comment made about trying to hold the Executive Branch accountable, I can see many things we do as a legislature that lets the Executive Branch off the hook on many things. If we are worried about productivity the day before Christmas, and it probably is down, we need to hold them accountable. I don't think we need to change the rules to accommodate the Governor.

SEN. WELLS stated I don't think the sponsor of the bill selected that day because it was a nonproductive day. I think he needed to trade them a day so he doesn't have grand opposition and look like he is hammering on state employees. Therefore, he decided the day before Christmas is a good day and it is probably a lower productive day. He is not doing it to take care of the production problem.

SEN. TESTER said if that is not the case, this Fiscal Note has to be way off. I don't believe $64,795 would pay the salaries for all the people in state government for one day. That is the equivalent of two people for a year. There are far more than that number of man days in State Government. My assumption was that they got the $64,795 because production was so poor on the day before Christmas, they could justify that figure. I bet that figure is well over a million dollars.

SEN. COLE said when you look at assumption one on the Fiscal Note, they are only talking about holiday pay.

SEN. TESTER stated they are adding another day every other year.

SEN. COLE said I think they got the figure by multiplying 14.95 dollars by 6,000 hours.

SEN. WELLS stated I wonder if they subtracted all the people who generally take that off as a leave day.

SEN. TESTER said I am going to do some checking on that.

EXECUTIVE ACTION ON HB 474

{Tape : 2; Side : A; Approx. Time Counter : 123 - 130}

Motion/Vote: **SEN. HARGROVE** moved that **HB 474 BE CONCURRED IN. Motion carried 5-0.**

DISCUSSION ON HB 620

SEN. TESTER said I would like to have **Greg Petesch** come in and talk about the necessity of this bill. It is important for the committee to hear from him and then we can decide if we want to table this bill or move it out of here. **Mr. Petesch** told me it is covered somewhere else in statute, but I don't think he made that clear to **REP. CARLEY TUSS**, so I want him to make that clear to us.

ADJOURNMENT

Adjournment: 12:10 P.M.

_____
SEN. MACK COLE, Chairman

_____
KERI BURKHARDT, Secretary

MC/KB

EXHIBIT(sts54aad)