

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN LARRY JENT**, on February 10, 2005 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Larry Jent, Chairman (D)
Rep. Dee L. Brown, Vice Chairman (R)
Rep. Veronica Small-Eastman, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Mary Caferro (D)
Rep. Sue Dickenson (D)
Rep. Emelie Eaton (D)
Rep. Robin Hamilton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. Hal Jacobson (D)
Rep. William J. Jones (R)
Rep. Gary MacLaren (R)
Rep. Bruce Malcolm (R)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Marion Mood, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: None
Executive Action: HB 426; HB 263; HJ 6;
HB 383; HB 177

EXECUTIVE ACTION ON HB 426

Motion: REP. B. OLSON moved that HB 426 DO PASS.

Discussion:

CHAIRMAN JENT, HD 64, BOZEMAN, read from an e-mail he received from Melanie Symons, Public Employees' Retirement Board (PERB). **EXHIBIT**(sth33a01)

VICE CHAIR DEE BROWN, HD 3, HUNGRY HORSE, referred to an e-mail she had received from Jerry Williams, Butte-Silver Bow Police Department, which answered her question about how many officers in his area would be affected by HB 426. **EXHIBIT**(sth33a02)

VICE CHAIR BROWN noted that the increased cost to Butte-Silver Bow would be in excess of \$30,000 and pointed to the fact that the Department was still researching the effects of the bill. With that in mind, she voiced concern about its passage as it would adversely impact local governments. She stated she would not vote for the bill this session, either.

Because **CHAIRMAN JENT** shared those concerns, he had asked Bill Dove, Montana Police Protective Association (MPPA), to provide him with information about the position of local governments with regard to the added expense. Without objection, he asked Mr. Dove to come forward and report on his findings.

Mr. Dove stated he was still waiting for answers from a few municipalities but anticipated opposition to the bill by several cities because of the added cost.

REP. HAL JACOBSON, HD 82, HELENA, asked whether the amounts shown in the fiscal note were included in the Governor's budget.

VICE CHAIR BROWN replied that they were not.

REP. MARY CAFERRO, HD 80, HELENA, inquired as to who Jerry Williams was. **CHAIRMAN JENT** advised he was a police officer from Butte, representing MPPA. **REP. CAFERRO** referred to the e-mail, Exhibit 1, stating that it did not say whether the \$30,000 was an annual expense nor did it specify whether "eligible for overtime" meant they would actually work overtime. **CHAIRMAN JENT** stated it was his understanding that this amount presented an annual cost and cautioned that he did not want to re-hear the bill. When **REP. CAFERRO** repeated her question, he did explain parts of the bill, adding that the 41 officers eligible for overtime probably would work overtime.

VICE CHAIR BROWN agreed that the \$30,000 presented an annual cost which, in itself, could be used to pay for an additional police officer.

REP. TERESA HENRY, HD 96, MISSOULA, asked to clarify some issues for **REP. CAFERRO** and stated it was safe to assume that there would be overtime for police officers including the eleven holidays in a year, and that some would be working second and third shifts.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 11.6}

REP. BERNIE OLSON, HD 10, LAKESIDE, stated he was not clear on why the Retirement Board changed their position from "opponent" to "informational." **CHAIRMAN JENT** advised it was because the Board wanted equity between law enforcement officers' retirement systems. The decision was made after it was discovered that the firefighters had a bill pending which dealt with this issue and that the fiscal note was clear that it would not add to the unfunded liability.

REP. CAFERRO stated she would support this bill as it provided incentives to working holiday, weekend and night shifts when the number of drunk drivers is greatest. She feared that without this incentive, younger and less experienced officers would be handed those shifts when it was most important to have experienced officers keeping the roads safe. She made reference to testimony on HB 35 and stressed she was very much in favor of supporting law enforcement.

CHAIRMAN JENT concurred, adding that reductions in DUI Task Force funding forced local governments to absorb added costs for overtime, such as the time involved in processing and booking drunk drivers.

VICE CHAIR BROWN stated this was exactly the point; she would feel better about HB 426 if cities and counties had testified in favor but they had not.

REP. SUE DICKENSON, HD 25, GREAT FALLS, pointed out none had come to oppose it, either. She opined the reason was that they were not concerned enough to testify against the bill.

CHAIRMAN JENT agreed, adding he was disappointed they had not heard from local governments. He stated his resolve to make the best decision under the circumstances.

REP. ALAN OLSON, HD 45, ROUNDUP, was not too concerned that local governments had not been represented at the hearing, saying that hearing notices are public record and they could have come to

testify. He commented that municipal police officers were indeed getting left behind. He was adamant that equity should be restored so that they were treated the same as participants in other retirement systems. He singled out teachers whose coaching stipend was included in their final average salary, saying the request to include overtime pay was no different. While he did not think he would be supporting any new programs, he stressed the importance of providing a level playing field.

REP. JACOBSON agreed, adding that this bill was a precursor to a bill requesting the same benefit enhancement for firefighters.

CHAIRMAN JENT summarized that all law enforcement officers' retirement systems include overtime and holiday pay except that for municipal police and firefighters. He stated he would vote for this bill as well as for the one coming from the firefighters, adding that according to testimony, it would not create an additional unfunded liability. He agreed with REP. A. OLSON's assessment with regard to the lack of local government testimony, stating he would leave them to deal with the issue as they may.

Vote: Motion carried 11-5 by roll call vote with REP. ANDERSEN, REP. BROWN, REP. JONES, REP. MACLAREN, and REP. MALCOLM voting no.

(REPS. A. OLSON and HENDRICK left at 8:25 A.M. to testify in another hearing.)

{Tape: 1; Side: A; Approx. Time Counter: 11.6 - 21.8}

EXECUTIVE ACTION ON HB 263

Motion: REP. BROWN moved that HB 263 DO PASS.

Motion: REP. BROWN moved that AMENDMENT HB026301.ash BE ADOPTED. [EXHIBIT](#)(sth33a03)

Discussion:

CHAIRMAN JENT asked Ms. Heffelfinger to explain the amendment. **Ms. Heffelfinger** advised REP. BROWN had requested the amendment in order to clarify that the Public Service Commission (PSC) is also a supervising authority. She explained that the PSC would not have to conform to this complaint process when conducting arbitration proceedings but would in all other matters. Items 2 and 3 of the amendment changed the turn-around requirement to 45 days.

VICE CHAIR BROWN ascertained that this meant 45 working days which **Ms. Heffelfinger** confirmed.

Vote: Motion carried unanimously by voice vote; **REPS. A. OLSON** and **HENDRICK** voted aye by proxy.

Motion: **REP. BROWN** moved that **HB 263 DO PASS AS AMENDED.**

Discussion:

REP. DICKENSON stated according to her notes, Mr. Steve Bender, Department of Administration, had cautioned about a possible conflict with existing processes and suggested an amendment. She wondered if Amendment HB026301.ash dealt with his concern.

CHAIRMAN JENT advised that it did not. The amendment suggested by the Department would have inserted the words "or any action subject to existing statutory provision, contract provision, administrative rule or written policy," on Page 1, Line 27, but it was never requested. He suggested **REP. LANGE** could easily add it as a floor amendment.

REP. JOAN ANDERSEN, HD 59, FROMBERG, stated Mr. Bender had provided copies of the proposed amendment but apparently failed to have them drafted.

Ms. Heffelfinger clarified she only drafts amendments requested by legislators, not by department representatives or lobbyists.

CHAIRMAN JENT surmised such an amendment was necessary to conform to existing practice and asked **VICE CHAIR BROWN** if she would withdraw her motion.

VICE CHAIR BROWN was not inclined to do so, saying the Sponsor could add it on the House floor.

CHAIRMAN JENT commented he favored passing the bill out of committee as is since this would be a simple amendment but insisted it be added on the House floor.

REP. WILLIAM JONES, HD 9, BIGFORK, stated he would request this amendment. **Ms. Heffelfinger** remarked that they did have the proposed amendment in written form, and if the Committee was comfortable with it, it could be made a conceptual amendment.

CHAIRMAN JENT announced acceptance of the amendment, naming it HB026302.ash.

EXHIBIT(sth33a04)

Motion: REP. JONES moved that CONCEPTUAL AMENDMENT HB02630.ash BE ADOPTED.

Discussion:

VICE CHAIR BROWN insisted the Sponsor should be informed of the Committee's action. **CHAIRMAN JENT** advised he had discussed it with him and it met with his approval.

REP. ANDERSEN stated she had written, under the term "administrative rule," it was applicable if there already was a complaint process in place and asked whether this amendment would make this clear, which **CHAIRMAN JENT** confirmed.

{Tape: 1; Side: B}

VICE CHAIR BROWN stated standard complaint forms were available; she cautioned the complaint process would not be uniform if every department was allowed to do their own. She asked Ms. Heffelfinger to elaborate.

Ms. Heffelfinger advised this bill did not change current provisions. Since this created overlaps and conflicts, the bill either required clarification or acceptance that it would not make the process uniform.

REP. HENRY stated this bill served to make the process uniform in those entities where there was no such process and it encouraged those who already have an established process to adapt it for the sake of uniformity.

(REPS. A. OLSON and HENDRICK returned at 8:25 A.M.)

VICE CHAIR BROWN advised she would support this conceptual amendment and discuss it with the Sponsor.

Vote: Motion carried 15-1 by voice vote with REP. CAFERRO voting no.

Motion: REP. BROWN moved that HB 263 DO PASS AS AMENDED.

Discussion:

REP. MALCOLM voiced his concern, not only over how this would work but also with the fiscal note with its estimated cost of \$250,000, stating he would not support the bill.

VICE CHAIR BROWN advised that as per the fiscal note, this bill would take care of about a hundred complaints per year, which would bring the cost per complaint to \$250; she also withdrew her support for HB 263.

CHAIRMAN JENT commented he liked the idea of openness in government but not to the tune of \$250,000.

REP. JONES recapped this bill addressed a problem in the Department of Health and Human Services (DPHHS) which was the reason for his conceptual amendment; namely to exempt all other agencies who were not having this problem.

REP. JACOBSON was concerned with the fiscal note as well and asked if the problem was not exacerbated by the inclusion of the PSC in Amendment HB026302.ash.

Motion/Vote: **VICE CHAIR BROWN** moved that HB 263 AS AMENDED BE TABLED. Motion carried unanimously by voice vote.
{Tape: 1; Side: B; Approx. Time Counter: 0 - 8.0}

EXECUTIVE ACTION ON HJ 6

Motion: **VICE CHAIR BROWN** moved that HJ 6 DO PASS.

Motion: **REP. A. OLSON** moved that AMENDMENT HJ000601.ash BE ADOPTED.

[EXHIBIT](#)(sth33a05)

Discussion:

When **CHAIRMAN JENT** asked her to explain the amendment, **Ms. Heffelfinger** reviewed the items with the Committee.

VICE CHAIR BROWN asked **REP. A. OLSON** why he had not included a rural office in western Montana. **REP. A. OLSON** explained his amendment urged to locate satellite offices to their original locations; Western Montana never had one. **VICE CHAIR BROWN** advised a better approach would be to ask the United States Department of Agriculture (USDA) to locate an economic development office within their local offices, as this would include such offices in all corners of the State.

REP. JACOBSON noted the region in question was Eastern Montana as the map handed out during testimony revealed.

Vote: Motion carried unanimously by voice vote.

Motion: REP. HENDRICK moved that HJ 6 DO PASS AS AMENDED.

Discussion:

VICE CHAIR BROWN advised, because it was a resolution, she would support it, explaining that legislators rank resolutions for interim studies, and this one in particular would send a strong message to Montana's congressional delegation.

CHAIRMAN JENT commented he would vote for the bill because it was justified, adding that all resolutions save those resolving that the Legislature work on something were nonsense.

Vote: Motion carried 15-1 by voice vote with REP. ANDERSEN voting no.

{Tape: 1; Side: B; Approx. Time Counter: 7.9 - 16.4}

EXECUTIVE ACTION ON HB 383

Motion: REP. BROWN moved that HB 383 DO PASS.

Motion: REP. BROWN moved that AMENDMENT HB038304.ash BE ADOPTED.
[EXHIBIT](#)(sth33a06)

Discussion:

VICE CHAIR BROWN provided the Committee with a list of staff in the Governor's Office and a table showing how other states treat this issue.

[EXHIBIT](#)(sth33a07)

CHAIRMAN JENT asked Ms. Heffelfinger to walk the Committee through the amendments which the Sponsor had worked out with Governor Schweitzer. **Ms. Heffelfinger** proceeded to explain the amendments, adding it included his proposal during the hearing to add lobbying to the bill; it also dealt with public officers' concern including local fire and weed districts.

CHAIRMAN JENT interrupted and advised the reason behind the change to "state officer" was the concern about conservation districts and school boards; the bill strives to confine the activities of "state officers" and not those of local volunteer entities.

Ms. Heffelfinger explained that Item 5 of the amendment strikes the 24-month requirement with which it reverts back to twelve months and current law; Item 6 puts the restriction of twenty-four months on state officers only. She proceeded to explain the remainder of the amendment.

CHAIRMAN JENT commented the amendment served to keep the Governor's, the Attorney General's and the Secretary of State's close staff from turning into lobbyists.

{Tape: 1; Side: B; Approx. Time Counter: 16.4 - 25.2}

REP. GORDON HENDRICK, HD 14, SUPERIOR, wondered if they would fall under the definition of "administrative unit." **Ms. Heffelfinger** advised that the administrative unit was the office group and proceeded with the review of the amendment.

{Tape: 2; Side: A}

VICE CHAIR BROWN commended the addition of the amendment because it applied the restrictions to state officers only and did not affect school board or conservation district members.

REP. DICKENSON asked Ms. Heffelfinger to define the term "lobbyist." While she was looking it up, **Ms. Heffelfinger** clarified that the bill did affect local boards because of the lobbying restriction but did not put the time constraint on them.

REP. JONES professed he would vote against the amendment because he was not clear about its implications.

REP. B. OLSON ascertained the 24-month restriction was still on former legislators, which **CHAIRMAN JENT** confirmed.

As to the definition, **Ms. Heffelfinger** quoted from statute: "Lobbying means the practice of promoting or opposing the introduction or enactment of legislation before the Legislature or the members of the Legislature and the practice of promoting or opposing official action by any public official. The term does not include actions described under 11 a (i) and 11 a (ii) when performed by a legislator, public official, an elected local official, an elected Federal official, or an elected tribal officer while acting in official governmental capacity. Lobbying does not include an individual acting solely on the individual's own behalf, an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official on behalf of the lobbyist's principal; it does not include an individual who receives payments from one or more persons that total less than the amount specified in 5-71-12 (\$2,150 inflated annually)."

She added that nothing in this definition deprives an individual who is not a lobbyist of the constitutional right to communicate with public officials.

REP. DICKENSON ascertained if payments were less than \$2,150 in living and travel expenses, the recipient was not considered a lobbyist.

REP. A. OLSON corrected her, saying it did not include living and travel expenses; the monetary limit applied to wages.

REP. DICKENSON surmised the person receiving more than the \$2,150 would have to register as a lobbyist.

REP. HENRY repeated the key points in the amendment for her own understanding.

Vote: Motion carried 13-3 by voice vote with **REP. CAFERRO**, **REP. JONES**, and **REP. A. OLSON** voting no.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 8.8}

Motion: **REP. BROWN** moved that HB 383 DO PASS AS AMENDED.

Motion: **REP. A. OLSON** moved that AMENDMENT HB038303.ash BE ADOPTED. [EXHIBIT](#)(sth33a08)

Discussion:

REP. A. OLSON advised the amendment was self-explanatory; it simply said that if a member of an organization served on a quasi-judicial board and issues which the member may have been involved in come before that board, he may not vote or perform any other official act which would affect that organization.

REP. DICKENSON wondered if this amendment stipulated that she would have to recuse herself from making relevant decisions if she had been a member of the MEA/MFT and was appointed to the Board of Public Education. **REP. A. OLSON** did not think she would have to.

REP. HENDRICK felt this would fall under "conflict of interest."

Ms. Heffelfinger advised this did not apply to legislators. **REP. DICKENSON** clarified that the scenario involved her as a citizen.

Ms. Heffelfinger stated she had to be a member of a state quasi-judicial board or commission or of a board or commission with rule-making authority. If she was a member of MEA/MFT, she would have to disclose her affiliation with MEA/MFT within 24 months

prior to her appointment to the Board. She would not be able to perform an official act affecting said group or organization.

REP. DICKENSON hypothesized if she was affiliated with a non-profit group concerned with a particular issue and then was appointed to a quasi-judicial board dealing with this issue, she could not represent those issues. While she had no problem with the disclosure requirement, she felt strongly that this would severely limit who may serve on these boards and restrict citizens from being involved in issues they cared about, merely because of a prior affiliation.

REP. HENRY concurred, stating she would face the same restrictions with regard to health care issues or serving on the Board of Nurses as she was a past State President of the Montana Nurses' Association.

REP. HENDRICK advised he is a member of the Resource Advisory Committee (RAC) and was appointed by the Secretary of the U.S. Department of Agriculture; he asked if there would be a conflict for him, as a legislator, to speak against a bill in the Natural Resource Committee. **REP. A. OLSON** stated the RAC was a Federal appointment; if he met the criteria as a lobbyist and lobbied on natural resource issues, the restrictions would apply to him as a former legislator. As to **REP. HENRY's** question, he advised she could serve on the Board of Nurses but would not be able to make decisions. He addressed **REP. DICKENSON**, saying these were pertinent issues and added this was the problem he had with the bill per se; it purports to say there are enough people who could serve, legislators did not need to. He disagreed strongly with the bill, saying that it interferes with and limits someone's future employment because of a decision they once made.

Vote: Motion failed 8-8 by roll call vote with REP. ANDERSEN, REP. BROWN, REP. HENDRICK, REP. JONES, REP. MACLAREN, REP. MALCOLM, REP. A. OLSON, and REP. B. OLSON voting aye.

CHAIRMAN JENT referred to the handout, Exhibit 7, which shows that most states have a one- or two-year ban on lobbying for compensation, saying it was not uniform.

REP. B. OLSON commented there were only seven out of fifty states who had a two-years restriction.

VICE CHAIR BROWN stated this was the reason for having asked for the first page of the handout which lists six of Governor Schweitzer's staff as former lobbyists. Depending on how long they served or were hired in 2003, this bill would have

disqualified half of them. She added she would not vote for the bill and hoped it would not pass out of Committee.

{Tape: 2; Side: A; Approx. Time Counter: 8.8 - 23.9}

REP. DICKENSON opined the reason for this bill was perception, adding that legislators oftentimes were not perceived in a favorable light; she expressed surprise at the number of former legislators lobbying this Session, stating it was not a bad thing per se, but the perception could be that of questionable government. She added, for this reason, it was important for each of the legislators to keep in communication with their constituents and to explain issues so that their perception of the Legislature's work would not be distorted. She advised she would vote against the bill as **REP. A. OLSON's** amendment pointed out a key aspect.

REP. JACOBSON commented that in his opinion, the Governor was trying to do the right thing. In view of term limits, and the loss of experience, lobbyists did bring a needed perspective, and in the case of former legislators, this experience would be lost as they would be pre-empted under this bill.

REP. ANDERSEN pointed out that this was a citizen legislature; no one made a living being a legislator. She added that some of the states applying these restrictions have full-time, paid legislators who represent a lot more constituents and advised this needed to be considered as well. She added that some of the former legislators who were now lobbying were the most honorable and ethical people she had the privilege to meet and who worked for the good of the State. She agreed with **REP. DICKENSON's** statement about the negative perception but was adamant that a bill like **HB 383** enhanced the perception that legislators were a crooked bunch, waiting to term out and line their pockets with money from out-of-state companies who do not care about Montana.

REP. B. OLSON echoed previous statements, adding that the two-year restriction was not helpful in light of the fact that the Legislature only meets for 90 days every two years. He stated he would not vote for the measure.

REP. MACLAREN concurred, adding that the institutional memory was very much needed.

REP. EMELIE EATON, HD 58, LAUREL, advised she, too, worried about the restriction in this bill, especially when she took into account how hard **VICE CHAIR SMALL-EASTMAN** was working to get the Indian community involved in serving on boards. American Indians use their legislators as promoters and facilitators, and if this bill were to pass, her hands would be tied for a considerable

amount of time before she could work for them again. She pointed to REP. CAFERRO who was very much involved in advocating for the less fortunate and who would be unable to continue her work after the end of her term.

{Tape: 2; Side: B}

REP. A. OLSON, stating that VICE CHAIR BROWN had confused him, ascertained this bill would not prohibit a former lobbyist from taking a position in government, which was confirmed by the CHAIR as well as the VICE CHAIR.

Substitute Motion/Vote: REP. JENT made a substitute motion that HB 383 BE TABLED. Substitute motion carried 15-1 by roll call vote with REP. HAMILTON voting no.

(CHAIRMAN JENT announced a ten-minute recess; the Committee reconvened at 9:40 A.M.)

EXECUTIVE ACTION ON HB 177

Motion: REP. HENDRICK moved that HB 177 DO PASS.

Motion: REP. EATON moved that AMENDMENT HB017701.ash BE ADOPTED. [EXHIBIT](#)(sth33a09)

Discussion:

Ms. Heffelfinger advised that the amendment corrects Line 29, not 28, and merely clarifies the disposal of ballots.

Vote: Motion carried unanimously by voice vote; REPS. CAFERRO and JACOBSON voted aye by proxy.

Motion: REP. HENDRICK moved that HB 177 DO PASS AS AMENDED.

Motion: REP. DICKENSON moved that AMENDMENT HB017708.ash BE ADOPTED. [EXHIBIT](#)(sth33a10)

Discussion:

REP. DICKENSON asked Ms Heffelfinger to explain the amendment.

Ms. Heffelfinger advised the substance of the amendment was Item 3 which strikes the new 30-day requirement, leaving current law in place. This meant that if an elector did not register in the new county prior to the close of election, he could still go back to their old county to vote.

REP. A. OLSON addressed **REP. DICKENSON**, saying it should be left at 30 days since this coincides with other election law time frames.

REP. DICKENSON replied she favored the longer time frame because it takes time to make all the changes associated with a new address; re-registering to vote was probably not at the top of their list. She added they may not be as familiar with local candidates, either.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 12.9}

(**REP. JACOBSON** returned)

CHAIRMAN JENT contended a 45-day window would facilitate voting and stated he would support the amendment.

REP. A. OLSON commented he would not ask to table the bill over this amendment.

Vote: Motion failed 7-9 by roll call vote with **REP. DICKENSON**, **REP. HAMILTON**, **REP. HENRY**, **REP. JACOBSON**, **REP. JENT**, and **REP. SMALL-EASTMAN** voting aye. **REP. CAFERRO** voted aye by proxy.

Motion: **REP. DICKENSON** moved that **AMENDMENT HB017709.ash** BE ADOPTED.

EXHIBIT(sth33a11)

Discussion:

REP. DICKENSON advised she preferred something more official than a newspaper obituary, such as a death certificate or a notification from the Department of Public Health and Human Services, especially when the death occurred out of state.

(**REP. CAFERRO** entered at 10 A.M.; **REP. JACOBSON** left.)

REP. A. OLSON asked to have Elaine Graveley, Secretary of State's Office, explain why "obituary" served as a cancellation mechanism. Without objection, **Ms. Graveley** advised state law did not allow a death certificate from another state as the basis for cancellation of a voter registration. The Clerk and Recorder's Office would allow the deceased voter's family to use a newspaper obituary to retrieve the information; she added without proof, electors stay on the rolls for six more years.

REP. EATON stated she would support leaving newspaper obituaries in the bill as she had the awkward experience, during her door-to-door campaign, of meeting with widows where the husband had passed away and had not been taken off the voter rolls.

REP. DICKENSON asked if she could withdraw her motion and enter a conceptual amendment which would deal with that particular portion of the law.

Without objection, **REP. DICKENSON** withdrew her motion.

Motion: **REP. DICKENSON** moved that **CONCEPTUAL AMENDMENT** striking "or by another verifiable method such as a relative" but leaving in "or through a newspaper obituary" **BE ADOPTED**.

Discussion:

CHAIRMAN JENT asked Ms. Heffelfinger if a conceptual amendment would suffice. **Ms. Heffelfinger** stated it would, advising the correct way of stating the amendment was as follows: on Page 2, Line 25, strike "or" all the way through "relative."

REP. HENDRICK said he had a problem with this as "or by another verifiable method" was too vague, and asked what exactly was stricken.

REP. A. OLSON explained how the bill would read with this amendment, and **REP. DICKENSON** confirmed this was what she wanted to accomplish.

CHAIRMAN JENT advised the Committee would now be voting on the **substitute amendment HB 017709.ash**; he added that in the future, he would disallow conceptual amendments.

Vote: Motion carried unanimously by voice vote; **REP. JACOBSON** voted aye by proxy.

{Tape: 2; Side: B; Approx. Time Counter: 12.9 - 24.6}

Motion: **REP. DICKENSON** moved **HB 017710.ash** **BE ADOPTED**.

EXHIBIT(sth33a12)

Discussion:

Ms. Heffelfinger advised the substance of the amendment was Item 4, which strikes Section 19, thus reverting back to current law.

REP. A. OLSON provided a handout which stipulated the Legislative Audit Committee's recommendations.

EXHIBIT(sth33a13)

VICE CHAIR BROWN contended the audit findings should be part of this bill, adding she would not support the amendment.

Vote: Motion failed 2-14 by roll call vote with REP. SMALL-EASTMAN and REP. CAFERRO voting aye; REP. JACOBSON voted no by proxy.

Motion: REP. DICKENSON moved that HB 017707.ash BE ADOPTED.
EXHIBIT(sth33a14)

{Tape: 3; Side: A}

Discussion:

Ms. Heffelfinger advised that due to the complexity of this amendment, she had prepared a "Gray Bill" for the Committee, showing how the bill would read if the amendment was adopted. She reviewed the amendment with the Committee.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 17.7}

REP. ANDERSEN suggested that the challenger provide the proof at the time the challenge is made.

REP. DICKENSON submitted this would be difficult to prepare for because the challenger may not know beforehand that someone he would challenge would vote at a particular time.

REP. ANDERSEN agreed but maintained proof for the challenge should be provided when the challenge is being made, especially when it involved a convicted felon since that information is readily available.

CHAIRMAN JENT addressed both suggestions, stating that a convicted felon may have voted an absentee ballot before his or her conviction and someone who was adjudicated of unsound mind had to have gone through a commitment proceeding where they were designated of unsound mind. He submitted proving both of these scenarios involved research and could not be done at the time of the challenge.

REP. EATON appreciated the written proof requirement because it would prohibit frivolous challenges.

Ms. Heffelfinger commented that the Montana Advocacy Program would oppose the challenged elector having to vote a second-class or provisional ballot; the legal opinion rendered by Greg Petesch, Chief Legislative Counsel, stated that the election judge, on election day, should not be placed in a position of having to adjudicate the case and making a determination. If a determination was to be made, it should be reversible by a court because the election judge could have violated the constitutional rights of the challenged elector. She added current law is fair

in allowing the provisional ballot and the verification process to take place.

REP. A. OLSON advised he wholeheartedly supported the amendment.

Vote: Motion carried unanimously by voice vote; **REP. JACOBSON** voted aye by proxy.

VICE CHAIR BROWN asked if the Gray Bill could be used for the rest of the amendments. **Ms. Heffelfinger** replied it only applied to the amendment that was just adopted; she had prepared a second Gray Bill for another amendment.

{Tape: 3; Side: A; Approx. Time Counter: 17.7 - 27.3}

Motion: CHAIRMAN JENT moved that AMENDMENT HB017711.ash BE ADOPTED.

EXHIBIT(sth33a15)

Discussion:

CHAIRMAN JENT explained his amendment, stating it dealt with filing a declaration of intent to be a write-in candidate.

{Tape: 3; Side: B}

Vote: Motion carried unanimously by voice vote; **REP. JACOBSON** voted aye by proxy.

Motion: REP. OLSON moved that AMENDMENT HB017702.ash BE ADOPTED.

EXHIBIT(sth33a16)

Discussion:

REP. A. OLSON advised this amendment strikes Sections 15 and 16 of the bill.

VICE CHAIR BROWN wondered if the two sections should be stricken on the Gray Bill which included REP. DICKENSON's amendments. **Ms. Heffelfinger** said no, it applied to the original bill.

(REP. JACOBSON returned at 10:45 A.M.)

Ms. Heffelfinger reminded the Committee of the lengthy discussion relating to this part of the bill and advised Section 16 dealt with the procedure for recounting paper ballots. The Secretary of State had requested adding into the bill that machine-tabulated ballots be re-counted by machine. She admitted that

the way she had drafted the bill did not accomplish the Secretary's goal; the Committee had the option to either amend these two sections to comply with the Secretary's original preference or stay with current law.

REP. EATON ascertained a yes-vote would provide for manual recounts and a no-vote would keep the machine recount, which **Ms. Heffelfinger** confirmed. She explained that a machine would reject crumpled or otherwise spoiled ballots; those then would be counted manually.

Vote: Motion carried unanimously by voice vote.

Motion: **REP. OLSON** moved that **AMENDMENT HB017705.ash** **BE ADOPTED.**
EXHIBIT(sth33a17)

Discussion:

REP. B. OLSON explained the gist of his amendment was that mis-marked ballots are not counted as election judges should not have to guess a voter's intent.

Ms. Heffelfinger added this amendment slightly changed the bill's title and proceeded to review the amendment.

CHAIRMAN JENT interrupted, stating that he agreed with **REP. B. OLSON's** intentions regarding over-votes; he added that the Secretary of State intended to bring a separate bill dealing with this issue. Without objection, he asked **Ms. Graveley** to confirm. **Ms. Graveley** affirmed this, adding that neither over-votes nor under-votes would be counted.

CHAIRMAN JENT advised the title of the bill did not include criteria of whether a ballot was valid or not, and this raised a legal question as the amendment was not germane to the bill. Even though he supported the idea contained in the amendment, he had a legal concern with it and asked **REP. B. OLSON** for his thoughts.

REP. B. OLSON stated he was not aware a bill dealing with this issue was being drafted.

Without objection, **REP. B. OLSON** withdrew his motion.

REP. DICKENSON ascertained that when the bill was introduced on the House floor, it would include all of the amendments the Committee had adopted, which **CHAIRMAN JENT** confirmed, adding they would appear underlined and in capital letters.

REP. HENRY recalled Mr. Throssell had indicated during the hearing that he would request an amendment; she asked if this had been included in Amendment HB017711.ash. **Ms. Heffelfinger** advised that the part dealing with write-in candidates had been included; the second amendment was to strike "A provisional ballot cast by an elector whose voter information is verified before 5 P.M. on the day after the election must be removed from its provisional envelope, grouped with the other ballots in a manner that allows for the secrecy of that ballot to the greatest extent possible and counted as any other ballot." Since this was not requested by a legislator, she did not draft it.

Vote: Motion that HB 177 DO PASS AS AMENDED carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 11:00 A.M.

REP. LARRY JENT, Chairman

MARION MOOD, Secretary

LJ/mm

Additional Exhibits:

EXHIBIT ([sth33aad0.PDF](#))