

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN CAROLYN SQUIRES**, on April 1, 2005 at 3:00 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Carolyn Squires, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Vicki Cocchiarella (D)
Sen. Jon Ellingson (D)
Sen. Rick Laible (R)
Sen. Dave Lewis (R)
Sen. Jim Shockley (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: Sen. Mike Cooney (D)
Sen. Steven Gallus (D)
Sen. Jeff Essmann (R)

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 411, 3/9/2005; HB 211, 3/9/2005;
HB 386, 3/9/2005; HB 85, 3/9/2005
Executive Action: HB 177; HB 297; HJ 19

HEARING ON HB 411**Opening Statement by Sponsor:**

REP. JACK WELLS (R), HD 69, opened the hearing on **HB 411**, Clarify allocation of tobacco funds to veteran's nursing homes.

He said this bill clarifies language in the statutes that will continue to support and provide maintenance for the Montana Veterans' Homes that is funded through cigarette tax. He discussed the misunderstanding when I-149 was passed, and language was inserted in Section 10-2-417 that gave the interpretation on the allocation of taxes. This language was not specific to include the funding for the Montana Veterans' Homes. The bill clarifies any conflict that was created with the passage of I-149, by ensuring that the tax will now be allocated to the Montana Veterans' Homes.

Proponents' Testimony:

Roger Hagan, representing the Officers and Enlisted Associations of the Montana National Guard, distributed written testimony, which he read. He discussed how the language in I-149 came out of the Senate Tax Committee in the 2003 session, and made the funds vulnerable to be used elsewhere. He said the Association joins with several veterans service organizations, and military membership organizations in urging support of the passage of HB 411 (see Exhibit 1). **Mr. Hagan** distributed another exhibit showing the MCA Codification of Ballot Measures approved in the November 2, 2004 election. He discussed Title 10, Military Affairs and Disaster and Emergency services as mentioned in Chapter 2, Part 4, for the Montana Veterans' Homes (see Exhibit 2). **Mr. Hagan** distributed a third handout that addresses the I-149 lawsuit, Department of Montana Veterans of Foreign Wars, the American Legion, Montana Petroleum Marketers and Convenience Stores Association, Montana Wholesale Distributors Association, U.S. Smokeless Tobacco Company, and R.J. Reynolds Tobacco Co., v. state of Montana through Bob Brown, Secretary of State, and Mike McGrath, Attorney General for the Department of Justice. He urged the Committee's support for HB 411 (see Exhibit 3).

EXHIBIT(sts69a01)

EXHIBIT(sts69a02)

EXHIBIT(sts69a03)

Cliff Christian, Alliance for Healthy Kids and Healthy Montana, the Montana Heart Association, Montana Hospitals' Association, and the Medical Associations, said they support HB 411. He urged the Committee to support HB 411.

Joe Foster, Administrator for the Montana Veterans' Affairs Division, Department of Public Health and Human Services (DPHHS), said he is also representing the Board of the Veterans' Affairs, stated their support for HB 411, and urged the Committee to pass HB 411.

Bob Pavlovich, member of the interim Committee on Veterans' Affairs, discussed when he was a Representative in 1993, and passed the two-cent increase on cigarette tax to fund the Veterans' Homes of Montana. He said if the legislature passes this bill, it will add another two cents to the two cents they are currently receiving, so they can build another veteran's home in Montana. He added, with the war that is going on in Iraq and the other countries, we will need more veterans' homes. He urged the Committee to support this bill.

Gary White, representing the Montana American Legion, stated the Legion supports this bill. He urged a do pass motion.

Kelly Williams, Administrator for the Senior and Long Term Care Division, DPHHS, informed the Committee that her division oversees the operation of the Montana Veterans' Homes. She urged the Committee to support this bill.

Dan Antoinette, State Legislative Chairman for the Veterans of Foreign Wars, said the Veterans of Foreign Wars supports this bill and asked the Committee's to support. He said that the language on I-149 was confusing, and this bill clarifies where the money is supposed to go.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. LEWIS asked **Kelly Williams** about the revenue from the cigarette tax which has dropped dramatically this first quarter, and wanted to know if this bill makes sure the money comes off the top, or do they receive a percentage of the total. **Ms. Williams** said that 8.3 percent is dedicated to a special account for the operation of the veterans' facility. She said there is currently \$2 million in the account, and the balance of the revenue reverts to the general fund.

Closing by Sponsor:

REP. WELLS closed. He said only the wording has been changed, not the amount of the assessment of the tax. The veterans'

nursing homes will still receive their share. He stated that the \$2 million is the cap, and will maintain at that level. He urged the Committee to support HB 411.

HEARING ON HB 211

{Tape: 1; Side: A; Approx. Time Counter: 14 - 18}

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, opened the hearing on **HB 211**, Revise term of supreme court.

SEN. PARKER informed the Committee that this bill is a housekeeping bill. HB 211 brings the state Code into compliance with the Supreme Court. He said the current language dates back to territorial law. He added that the Supreme Court is in session continuously, and this bill reflects that change.

Proponents' Testimony:

Ed Smith, Supreme Court, verified that the bill does date back to the territorial days. He said the Supreme Court is always in session, there is no terms.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ELLINGSON commented that the Supreme Court occasionally holds court in Missoula for the education of the law school students, and wanted to know if this bill requires the term be at the seat of government. **Mr. Smith** responded that the supreme court does travel, and has visited Red Lodge , Kalispell, Glendive, Billings, Butte, Great Falls, and the University of Montana.

Closing by Sponsor:

REP. WELLS closed.

HEARING ON HB 386

{Tape: 1; Side: A; Approx. Time Counter: 18 - 26.5}

Opening Statement by Sponsor:

REP. JOHN SINRUD (R), HD 67, opened the hearing on **HB 386**, Revise laws governing commissioner of political practices.

He informed the Committee that this bill is a result of the interim committee that met at the request of the Governor. He said there is some minor clarifying language that states on page 2, lines 19 and 20, wherein the Governor's decision to remove the Commissioner of Political Practice must be done in writing, and is subject to a judicial review. He stated that if the Governor has received a complaint against the Commissioner, that the Governor and the Commissioner can hold a hearing. He addressed page 4, that directs how the Commission must be appointed, and the requirements for refusal, and addresses the powers and duties of the Commissioner.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. COCCHIARELLA commented that in the bill, it states how the Commissioner can be precluded from being a candidate for two years from any political office, and felt that it is unconstitutional. She added this bill also amends the appointment from five years to two years. **REP. SINRUD** responded, yes. **SEN. COCCHIARELLA** asked if that language is removed, what would be the result. **SEN. SINRUD** said the position that the bill takes is not to allow people to further their aspirations. He said that was the reason why the Committee in the House changed the language from five years to two years. It was felt that the Commissioner could gather data/information, a potential for knowledge from other people to further a career or goals. This bill allows the relationships between the Commissioner, and those people that were involved during that term, to hopefully be dissolved. He commented that when developing the bill, they tried to remove as many hindrances as possible from the process. He added this also applies to lobbyists.

{Tape: 1; Side: B}

SEN. LEWIS talked about the drafting of the bill, and wanted to know how a person whose position has been terminated be told they cannot run for another political office. He felt this is a civil rights issue, and wanted to know if the interim committee

discussed this issue. **SEN. SINRUD** said this wasn't addressed in the drafting of the bill, but in the House Committee. He asked, can the federal or state government places parameters on a person whose job is top secret so that when they have left that job that cannot be allowed to run for another office for a certain length of time.

SEN. LEWIS stated that it is different to say a person cannot exercise their constitutional right to run for office any more than to say that person cannot reveal top secret information.

SEN. SHOCKLEY asked if this bill could be amended to state "if a person waived their right to run before the appointment," would it have a an effect on the bill. **SEN. SINRUD** replied that he wouldn't have a problem trying to clarify that issue, but commented if the bill is amended, will it pass out of Committee and make it through a hearing on the Senate floor by this coming Wednesday.

SEN. ELLINGSON commented that amendments cannot be placed on bills any later than Wednesday, so the Committee could place conceptual amendments on the bill today, or leave it the way it is.

CHAIRWOMAN SQUIRES wanted to know what kind of a problem **SEN. SINRUD** was trying to solve with this bill. **REP. SINRUD** said they were trying to consolidate "muddy waters" that had taken place in the Office of Political Practices. He stated that is not the case at this time, but self incrimination is currently not allowed when there is personal conflict. They wanted to give the Governor the ability to terminate at any cause he sees fit. He commented that all the bill does is modify existing language. **REP. SINRUD** said the bill also allows a deputy or another person that can handle the position to replace the Commissioner when there is a refusal process.

{Tape: 1; Side: B; Approx. Time Counter: 6.3 - 8}

SEN. TROPILA commented to the Committee members that he remembered when Ed Argenbright had to refute himself.

Closing by Sponsor:

REP. SINRUD closed. He stated this is an ethics issue, and he informed the Committee that the Office of Political Practices is "just that". He said that all politicians should be evaluated equally, and not have the fear of the potential of being fired. He urged the Committee to support his bill.

HEARING ON HB 85

{Tape: 1; Side: B; Approx. Time Counter: 8 - 13}

Opening Statement by Sponsor:

REP. CHRISTINE KAUFMANN (D), HD 81, opened the hearing on **HB 85**, Eliminate outdated reports from the Department of Revenue to the legislature.

Some bills were passed in 1999 dealing with the lowering of personal property tax reporting on certain companies. She said these reporting requirements have now been eliminated, and no longer needed. She said a bill was passed in 2001 that revised the income taxation of "pass-through entities". There was a process in place that reviewed this issue, and determine what other states were doing. She added that another bill followed in 2003, but there is no longer a need for this to be reported to the interim committee.

Proponents' Testimony:

Larry Finch, Administrator of the Research Office, Department of Revenue, informed the Committee this is a cleanup bill to remove language that served its purpose, and is now out-of-date. He discussed SB 200 and SB 121, that were passed in the 1999 Legislature, which provided for no other tax on tangibles of corporations that were assessed. He stated that language specifically provided the reporting through the 2001 Legislature, and this language should have been taken out in the 2003 Legislature. He said a working group of tax accountants, tax lawyers, and people from the Department of Revenue did a study and made a recommendation to the legislature on the taxation pass-through entities. Since that time, the group has been disbanded, and the law is no longer required. He urged the Committee to support this bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ELLINGSON commented that he felt it was a terrible mistake the legislature made to exempt intangible personal property, and asked if the language should be left on the books so they will know what is left when trying to rectify a mistake, and be able to handle it better. **REP. KAUFMANN** replied that it would be a

mistake to fix a past problem, and it wouldn't be the right language for a new problem.

Closing by Sponsor:

REP. KAUFMANN said this bill applies to cleanup language to a law that is no longer serving its intended purpose. She asked the Committee to support this bill.

EXECUTIVE ACTION ON HB 177

{Tape: 1; Side: B; Approx. Time Counter: 17.6 - 25}

Motion: SEN. BALYEAT moved that HB 177 BE CONCURRED IN.

Motion: SEN. LEWIS moved that AMENDMENT HB017713.ash BE ADOPTED.

EXHIBIT(sts69a04)

Discussion: SEN. ELLINGSON asked Sheri Heffelfinger, LSD, filling in for Dave Bohyer, LSD, to explain the amendments. Ms. Heffelfinger walked the Committee through the amendments section by section. She discussed the new language inserted that addresses questionable votes and what the voters intent is.

{Tape: 2; Side: A}

SEN. ELLINGSON asked if the amendment is part of the Supreme Court hearing regarding the over-vote in Polson this last election. Ms. Heffelfinger replied that was part of it, but the Supreme Court did review the rules of the Secretary of State's Office. She said the rules allow a election official to clarify a ballot. She said this language isn't in statute, but it is the way that the Secretary of State has written the rules. She said what happened in Lake County is, stickers were placed over votes that the election judges didn't think valid. Then the judges placed the ballot back in the machine to count the vote correctly, because the machine counted an over-vote. The plaintiff pulled out five ballots, and informed the election judges that those ballots should not have been clarified. The Supreme Court then took the statute and the rules, and declared that the voter's intent was not clear. She read the amendment that states, each questionable vote on the paper ballot set aside under 2(a) or 3(b), manual or by machine, must be counted if the voters intent can be clearly determined and agreed upon by a majority of the election judges.

SEN. ELLINGSON asked **Mark Simonich** if he could comment on the amendments. **Mr. Simonich** said what the Secretary of State's Office was trying to do with this amendment is to take the human element out of the voting process. If a election judge is looking at the ballot, and sees that the elector has voted for two different individuals in the same race, the amendments state that a judge cannot guess which one that elector intended to vote for. He stated that if this amendment and bill had been law in the last November race at Polson, the outcome would have been the same as what is seen today, Rep. Windham would have been declared the winner. He said what the amendment does is keep someone from having an over-vote, or if they had been resting their pen and made a mark on the ballot, then it would have been marked as an over-vote, and the machine wouldn't have counted it.

SEN. BALYEAT commented that he didn't feel that **Mr. Simonich** was quite right. He said if this bill had been law at that time, those people would have requested another ballot. **Mr. Simonich** replied, you are right.

CHAIRWOMEN SQUIRES asked **Elaine Gravely** to respond. **Ms. Gravely** said that the new machines will now accept two counts of the vote. She said that the machines can now be set to count under-votes even if they are marked with an ink pen instead of a pencil.

Vote: Motion to adopt amendment HB017713.ash carried unanimously by voice vote with **SEN. COONEY, SEN. GALLUS, AND SEN. ESSMANN** voting aye by proxy.

{Tape: 2; Side: B}

Motion: **SEN. COCCHIARELLA** moved that AMENDMENT HB017701.adb BE ADOPTED.

EXHIBIT(sts69a05)

Discussion: **Ms. Gravely** explained that the amendment requires that an absentee ballot has to be postmarked before the polls close, and be received at the courthouse by 3:00 p.m. of the next Monday.

Vote: Motion carried unanimously by voice vote. **SEN. COONEY, SEN. GALLUS, AND SEN. ESSMANN** voted aye by proxy.

Motion/Vote: **SEN. COCCHIARELLA** moved that HB 177 BE CONCURRED IN AS AMENDED. Motion carried unanimously by voice vote **SEN. COONEY, SEN. GALLUS, AND SEN. ESSMANN** voting aye by proxy.

EXECUTIVE ACTION ON HB 297

{Tape: 2; Side: B; Approx. Time Counter: 10 - 16}

Motion: SEN. SHOCKLEY moved that HB 297 BE CONCURRED IN.

Motion/Vote: SEN. SHOCKLEY moved that AMENDMENT HB029704.ash BE ADOPTED. Motion carried unanimously by voice vote. SEN. COONEY, SEN. GALLUS, AND SEN. ESSMANN voted aye by proxy.

EXHIBIT(sts69a06)

Motion/Vote: SEN. SQUIRES moved that AMENDMENT HB029702.ASH BE ADOPTED. Motion carried unanimously by voice vote. SEN. COONEY, SEN. GALLUS, AND SEN. ESSMANN voted aye by proxy.

EXHIBIT(sts69a07)

EXECUTIVE ACTION ON HJ 19

{Tape: 2; Side: B; Approx. Time Counter: 18 - 26.3}

Motion: SEN. SQUIRES moved that HJ 19 BE CONCURRED IN.

Motion/Vote: SEN. ELLINGSON moved that AMENDMENT HJ001901.adb BE ADOPTED. Motion carried unanimously by voice vote. SEN. COONEY, SEN. GALLUS, AND SEN. ESSMANN voted aye by proxy.

Discussion: Sheri Heffelfinger, LSD, distributed, and explained amendment HJ001901.adb.

EXHIBIT(sts69a08)

Motion/Vote: SEN. COCCHIARELLA moved that HJ 19 BE CONCURRED IN AS AMENDED. Motion carried unanimously by voice vote SEN. COONEY, SEN. GALLUS, AND SEN. ESSMANN voting aye by proxy.

Dave Bohyer, LSD, had distributed a handout at the request of CHAIRWOMAN SQUIRES from the hearing on March 21, 2005. The handout is in response to negotiations involving Jim Darby, Easton Sports, Van Nuys, Calif., and SPEAKER GARY MATTHEWS, to draft amendments pertaining to the language in the original bill as seen in exhibit 8.

EXHIBIT(sts69a09)

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. CAROLYN SQUIRES, Chairman

CLAUDIA JOHNSON, Secretary

CS/cj

Additional Exhibits:

EXHIBIT ([sts69aad0.PDF](#))