

MINUTES

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

Call to Order: By **CHAIRMAN CAROLYN SQUIRES**, on April 13, 2005 at 3:00 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Carolyn Squires, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Vicki Cocchiarella (D)
Sen. Mike Cooney (D)
Sen. Jon Ellingson (D)
Sen. Jeff Essmann (R)
Sen. Steven Gallus (D)
Sen. Rick Laible (R)
Sen. Dave Lewis (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Joseph (Joe) Tropila (D)

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: SR 15, 4/11/2005; SR 19, 4/4/2005
Executive Action: SR 19; SR 15

HEARING ON SR 15

Opening Statement by Sponsor:

SEN. MIKE COONEY (D), SD 40, opened the hearing on **SR 15**, Confirm Shane Colton.

SEN. COONEY asked for a favorable recommendation from the Committee. He said this is a resolution that will confirm the nomination of the appointment made by Governor Schweitzer. He said that he had to leave to chair his Senate and Finance Committee.

Proponents' Testimony:

Patti Keebler, Appointments Coordinator from the Governor's Office, presented the introduction for Shane Colton, Commissioner, appointee by Governor Schweitzer. **Ms. Keebler** distributed three letters in support of the appointment of Mr. Colton. They are: 1) Keith Glass, rancher from Denton (see Exhibit 1), 2) Shane Colton, the appointee Commission in question (see Exhibit 2) and 3) Edwards, Frickle, Anner-Huges, Cook & Culver, Montana Trial Lawyers (see Exhibit 3).

EXHIBIT(sts79a01)

EXHIBIT(sts79a02)

EXHIBIT(sts79a03)

CHAIRWOMAN SQUIRES presented telephone messages to the secretary that she received in support of Mr. Colton.

EXHIBIT(sts79a04)

Dave Bohyer, LSD, presented a letter at the request of **SEN. BALLYEAT**, that describes the Commission of Fish, Wildlife, and Parks. He read the letter to the Committee, and informed them that the board is a five-member board, and at least one member must be experienced in the breeding and management of domestic livestock. The Commission is designated as a quasi-judicial board, and three members of the board serve terms concurrent with the governor, and two members serve terms that begin and end at the midpoint of the governor's term. **Mr. Bohyer** included in the letter a list of the board members names, their term dates, the districts they are commissioned to, and the location of their commission.

EXHIBIT(sts79a05)

SEN. SHOCKLEY asked **Mr. Bohyer** if there are any opinions or case law from the attorney general's office defining what the required experience is. **Mr. Bohyer** replied, no.

SEN. GALLUS wanted to know the history of the language, breeder/management, or when the language was added to the statute, and did it originate from the original statute. **Mr. Bohyer** responded that he didn't do a legislative history on that section of the law. He said if that information is important to the Committee before they make a decision, he will research that section of the law and bring it back to the Committee before they make a decision.

Chris Gallus, representing himself, informed the Committee he has been acquainted with Mr. Colton since he got him through law school. He stated that Mr. Colton is of very sound character, and said he would make a fine Commissioner.

Bill Kennedy, Yellowstone County Commissioner, representing himself, said that Shane Colton is one of his constituents in Yellowstone County. He said that **Mr. Colton** has been practicing law in Yellowstone County, and is very actively involved in the community. **Mr. Kennedy** informed the Committee that **Mr. Colton** is involved with the Big Brothers and Sisters program, and various other community organization. He said that **Mr. Colton** is very outstanding in volunteering his time and dollars in assisting various organizations. **Mr. Kennedy** said that **Mr. Colton** is an asset to the community, and he will be an asset to this board. He added that **Mr. Colton** will be a great representative for the district.

John Wilson, Trout Unlimited, said he has had the opportunity to see **Mr. Colton** in action in the last two Fish and Game Commission meetings. He stated that **Mr. Colton** is very knowledgeable, and he brings a dimension to the Commission which the members feel is important with his legal background. He stated that the law background that **Mr. Colton's** law background brings a perspective to the Commission. The members find **Mr. Colton** balanced, considerate, thoughtful, and they support his nomination.

Robert Throssell, Montana Wildlife Federation, stated they support the nomination of **Mr. Colton**. He feels the **Mr. Colton** will bring a balanced perspective to the commission, and urged the Committee to support this nomination.

Cody Ferguson, representing the Northern Plains Council, stated their support for **Mr. Colton**.

Opponents' Testimony:***{Tape: 1; Side: A; Approx. Time Counter: 8.3 - 12}***

SEN. KEITH BALES, SD 20, OTTER, informed the Committee that he is the one that asked to have Shane Colton segregated out of the appointments from the Governor. He stated that this has nothing to do with Mr. Colton. He said that Mr. Colton is probably a good attorney, and a good asset for the various things in the city of Billings. He added that he wished that Mr. Colton had been appointed to one of the other positions. He stated his reason for bringing this up, is Mr. Colton was appointed as the position that "at least one member must be experienced in the breeding and management of domestic livestock". He said that if there is experience, the practice has always been on previous appointment that has been designated by a republican and by democratic governors and that it was the intention from ranching communities, to be actively engaged in the breeding and management of domestic livestock. He said if the people looked back through the history of the commission, they will find there has been a person that is actively involved in the business of ranching on everyone in the commission back through history. He stated, "we are setting a new precedent of appointing an attorney, even though he may be very qualified and maybe very knowledgeable, to very good in a position that has traditionally been filled". He felt that the intent of the law was to have the position filled by someone that is actively in it. He said it is important to have somebody that is involved in agriculture on the commission, because much of the habitat that the game of this state uses is also land that is owned, operated, and is managed by people who are actively in the business to raise livestock. He said the input from that individual on the commission is critical: which leads to a better balanced and understanding of the issues of the commission; and of agriculture; and of management and the relations of game; and the relationship of game and agriculture. So, for that reason, and not for any reason against Mr. Colton, he asked for this to be segregated and that somebody, hoped that the committee can reject this one. He hoped that Governor Schweitzer can appoint somebody that is actively involved in agriculture.

John Youngberg, Montana Farm Bureau Federation, said that like **SEN. BALES,** he don't know Mr. Colton, and he was sure that he is a well-balanced individual. He jokingly said that the only thing he had against him was his association with **Mr. Gallus.** Like **SEN. BALES,** his concern was the fact that he isn't actively involved. When he read the biography on him in the paper, it stated that he is a lawyer; it mentioned nothing about an attorney that is actively involved in or experienced with

breeding and management of domestic livestock. He said that perception has a lot to do with this; 75 percent of Montana livestock live on private land. One must have a good working relationship with farmers and ranchers if we are going to continue with the good management with the animals that we have in Montana. He urged the Committee to not support this nomination.

Informational Testimony:

SEN. GREGORY BALES, SD 4, KALISPELL, informed the Committee that he is a former Fish and Game Commissioner. From 1989 to 1993, he served under Governor Stevens on the Fish and Game Commission. He said he will be happy to respond to any questions, but wanted to make it clear that the requirement that the Commission have somebody that is experienced in the management or animal husbandry is not by accident. There are critical decisions to be made on a daily basis, and that kind of input is invaluable to serve on that commission. He had never met Shane Colton, but he said that he was sure he is a wonderful person. It is a shame that they had to saddle him with this responsibility.

CHAIRWOMAN SQUIRES asked Shane Colton to respond.

{Tape: 1; Side: A; Approx. Time Counter: 15 - 24}

Questions from Committee Members and Responses:

Shane Colton went over his biography from the Governor's Office:

"Qualification: resident of District 5, experience in breeding and management of domestic livestock. Colton is a partner at Edmiston, Schermerhorn & Colton Law Firm in Billings. He has been a practicing attorney since 1996. Colton grew up working on farm and ranch operations in the Denton, Montana area. He is a member of the Spotted Ass Sporting Clays Club and the Billings Rod and Gun Club. Colton graduated from Denton High School in 1987. He received his bachelor's degree from Montana State University and his Juris Doctorate from the University of Montana School of Law."

Shane Colton said it appears he needs to clarify some things. He said he appreciates **Chris Gallus** getting him through law school. He appreciated in some ways **SEN. BALES** bringing up some opposition. He felt there is a bit of a personal issue here based on some of his interactions lately with Commission members from past administrations. He said, "we have had light discussions". He presented the Committee with information on his

background, and experience as a kid growing up on ranches, working with cattle, and his farm experience. (see Exhibit 2)

In the middle of his presentation, he became emotional, and said he is upset that he is being accused of not knowing anything about ranching, nor capable of this position.

He said that Fish, Wildlife and Parks is his passion. He has fished all over the world. As an attorney, he has been involved in representing farmers and ranchers, drafted countless leases for farmers and ranchers, drafted countless cow sale contracts, and grazing leases. He added to not forget that he is a son of a crop duster, and understands what that means quite well: the recruiting coordination issues of agriculture growers and cow producers. He said that these and hunters interact. He discussed breaking wild horses and colts. He said he isn't super-political, but he is a Democrat. He wants to be on this commission because it is his passion. When he isn't practicing law, he is hunting and fishing. He stated, the statute states, "experience in the management of domestic livestock," not that someone has to be actively involved. Custom doesn't override the definition. Under that definition, someone could move here from Michigan, buy 10,000 acres down by the Bitterroot, and start raising pigmy goats, and say they are actively engaged in domestic livestock. He doesn't have a political agenda. In his short lifetime, he has seen the drastic, and dramatic change in the hunting opportunities for regular Montanans. He said if he had an "axe to grind" it would be to continue Montana's hunting heritage. He firmly believes that his years of working with and operating farms and ranches, have provided him the experience required. He encouraged the Committee, and he apologized for his emotions. He stated he would be happy to answer any questions the Committee may have.

SEN. GALLUS asked **John Youngberg** if he is an attorney. **Mr. Youngberg** replied, no. **SEN. GALLUS** asked if he was a representative of ag business. **Mr. Youngberg** replied, not ag business, but farmers and ranchers, rural Montanans. **SEN. GALLUS** asked how long had he been a lobbyist, and if he had been around some law, legislation. **Mr. Youngberg** responded 12 years. **SEN. GALLUS** said that he must have some understanding of law. **SEN. GALLUS** asked **Mr. Youngberg** if based on what he just heard from **Mr. Colton** if he met the statutory language in breeding and management of domestic livestock based on what he just heard. He added, just a yes or no.

{Tape: 1; Side: B}

SEN. GALLUS asked, based on the fact that **Mr. Colton** has actively breed and managed cattle, and horses, how **Mr. Youngberger** could come to the conclusion that he is not experienced in the breeding and management of domestic livestock. **Mr. Youngberger** said he didn't have the rules in front of him, but said he isn't sure that management consists of managing somebody or taking care of someone else's animals. He said that he thought in a management operation, the manager is the guy that has the paychecks and is responsible for the operation. **SEN. GALLUS** said, that he believed that he heard **Mr. Colton** testify that he actively co-owned a herd with his former wife, and they co-owned as a married couple livestock that she brought into the marriage, and since he was married, he helped manage livestock. He couldn't understand how **Mr. Youngberg** came to that conclusion that **Mr. Colton** is not experienced in the breeding and management of domestic livestock. **Mr. Youngberg** responded that "he missed that part."

Mr. Youngberg said the position has always been a rancher/landowner on the commission, because of the interaction between private land and public wildlife. He said, again, 75 percent of the wildlife in Montana is on private land. He said, although it doesn't say the position must be filled by a private landowner, he thought that had been a tradition. He went back to the fact that the committee is dealing with farmers and ranchers in Montana that are housing the game in Montana. The commission needs someone that can deal with those people. **SEN. GALLUS** asked **Mr. Youngberg** if now that he knows he has formally owned cattle, that he has engaged in the breeding of those cattle, and he has helped manage cattle, and predators of cattle, if he thinks that **Mr. Colton** meets the statutory language of having experience in breeding and management of domestic livestock. **Mr. Youngberg** replied, he probably does.

SEN. LAIBLE commented that he is baffled by this whole thing. He understood that one member must be experienced in breeding and management of domestic livestock, and he asked **SEN. GALLUS** why was there testimony from **Chris Gallus, a lobbyist, Bill Kennedy, Commissioner of Yellowstone County, John Wilson, Trout Unlimited, Bob Throssell, Northern Plains, Cody Ferguson**. Knowing that this was an issue, why wasn't someone here to say they know there are some concerns about the fact that he doesn't have the experience in the management of domestic livestock. He said that he understands the viewpoint of both **Mr. Colton** and **SEN. GALLUS**, but he wondered why there wasn't that type of witness in the hearing to testify. **SEN. GALLUS** responded that he had a couple of ideas. One was that those people are busy with calving. He also said that the Committee should just accept his testimony as truth.

SEN. BALLYEAT commented that even if people aren't here, the letters received all verify that he does have this experience.

SEN. LEWIS asked **SEN. BALES** about his view of the commission, and the tenuous balance between the landowners and stockgrowers and those that use the wildlife resource. It has always been a challenge to keep that balance. **SEN. BALES** said the issue is not with the statute, because **Mr. Colton** knows how to manage livestock. He thought it was statute for a perception of the livestock community so that they know that they are truly represented on the commission.

SEN. GALLUS told **SEN. BALES** that he understands what he is saying, and he went on to say that **SEN. BALES** has been a legislator for a long time too, and he knows the importance of specificity in law. This particular statute says nothing about "actively involved;" it doesn't say "a member from this general community;" it says, "experience in the breeding and management of livestock". As a legislators of the State Senate, the committee must interpret that for what it says, not for what it is intended. **SEN. GALLUS** asked **SEN. BALES** if he agrees that based on the wording of the statute that **Mr. Colton** technically qualifies for the position. **SEN. BALES** replied that he thought that he does, on the basis of law. He said that he doesn't have a vote on the committee, like **SEN. GALLUS**. The committee must make the decision. He said that the Governor should have scrutinized the situation more.

SEN. BALLYEAT told to **Mr. Colton** that the only issue he had any question about was following statute. He said that he felt **Mr. Colton** did, and he felt that he would make a fine Commissioner. **Mr. Colton** thanked **SEN. BALLYEAT**. **SEN. BALLYEAT** said he is going to maintain consistency throughout the appointments, unless they are clearly unfit to serve. He felt that one appointee was not confirmed because of a "board squabble," and he didn't feel that was right. He said that livestock interests should have been more carefully phrased in statute if this wording did not reflect their desires. He told **Mr. Colton** that he didn't feel that **SEN. BALES** overstated; there is a very delicate balance between livestock producers, landowners, and sportsman. **SEN. BALLYEAT** asked **Mr. Colton** if he thought that he will be able to effectively maintain that delicate balance. **Mr. Colton** responded that he absolutely does. He said after he left his practice in Stanford, Montana, those farmers and ranchers still call him. He informed the Committee that he is a insurance attorney who sues insurance companies to this day. For a number of years, he represented the ranchers in their business dealings. He said he understands what is going on in farm households. He sad that his

family was very dependent on agriculture. He said that he can "be that bridge," because he understands the balance system. He said that he was surprised to see that only livestock interests are represented on the commission, and not farming interests. He said the statutes should be more clear about the needs of the population if that is truly what it wants.

SEN. COONEY asked **SEN. BALES** if he knew of any of the previous commissioners in this seat, and experienced in breeding management of domestic livestock, have been a member of the Montana Stockgrowers Association. He wanted to know how this criteria was defined. He said according to previous witness that management meant ownership, and he didn't believe that was the case. He said they are two different things. **SEN. BALES** said, when he was on the commission, he served under **Mr. Galt**, who was involved in many ag organizations, such as Farm Bureau, livestock, stockgrowers, etc. He commented that "it is back to the decision that the Governor makes". The Governor chooses to put Colton forward in this position, he is doing so, interpreting statute as everyone else has. It is about how the folks that are out there, going to work with the department, whether it is block management, game manage, all these issues, perceive they are being represented on the commission.

CHAIRWOMAN SQUIRES asked **Patti Keebler, Governor's Office**, when she and the Governor made this decision, and a investigation was done before the decision was made to appoint **Mr. Colton**, how they arrived at that decision. **Mr. Keebler** replied, the Governor has felt that citizen boards and commissions are really the most important, and decisions he has to make for the direct line for citizens to be involved in government. It's the eyes and ears that keep communities, stakeholders, and constituency. The Governor had been thinking about the appointments since November 4th. All of the discussions have taken place since the election and the appointments were made in early January. Without getting inside the Governor's mind, and knowing what he is thinking, I know what he felt passion for. He is a farmer/rancher, he raises livestock, and he is involved in ag. The Governor has stated repeatedly that Montanans have a passion to uphold the tradition, culture, and heritage of hunting, fishing, and active outdoor people. That is who we are as Montanans. This is who **Shane Colton** is, he represents Montana.

{Tape: 2; Side: A; Comments:}

Closing by Sponsor:

SEN. COONEY closed. He stated that the nominee meets the statutory requirements. He commented that it is **SEN. BALES**

prerogative to take action to have individuals brought forward from the list of the Governor's appointees. He said he felt that this nominee has answered the questions properly. He said this nominee meets the statutes. If there are questions regarding this statute, the legislature needs to take another look at the language, and clarify it. It should be more easily defined as to the type of membership, and the ambitions of that particular position. He mentioned two current members on the Fish and Game board that are currently not active in their field according to their appointments, and **Mr. Colton** doesn't lack the experience to fill this position. He asked the Committee to look favorably on this nomination.

HEARING ON SR 19

{Tape: 2; Side: A; Approx. Time Counter: 11.8 - 12.8}

Opening Statement by Sponsor:

SEN. CAROLYN SQUIRES (D), SD 48, opened the hearing on **SR 19**, Confirm certain appointments.

She informed the Committee there are several corrections for this bill, and **Dave Bohyer, LSD**, has amendments.

Proponents' Testimony:

Patti Keebler, Appointments Coordinator for the Governor's Office, presented the appointments in SR 19. She encouraged the Committee to give favorable recommendation to their colleagues in the Senate.

Pat Clinch, representing the Montana State Council of Professional Firefighters, said they are in support of SR 19, because of **John Paul** being nominated to the Board of Investments. He said that **Mr. Paul** was a member of their advisory board, and a member of the Public Employees Retirement Board. He urged the Committee to support this resolution.

Jim Fall, Executive Director of the Montana Newspaper Association, stated their support for several members from the newspaper industry, that have been appointed to the boards.

John Shontz, representing Lee Enterprises, said they also endorse the two appointees mentioned by **Mr. Fall**. He encouraged the Committee to support these nominations.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: CHAIRWOMAN SQUIRES said she is offering the amendment at this time. Dave Bohyer, LSD, distributed the amendments to the Committee, and CHAIRWOMAN SQUIRES explained what they do. The amendment changes the effective date for terms; on page 2, line 10 from 2007 to 2008. On page 2, line 23, the effective date is changed from 2006 to 2007. She said these are all terms. On page 2, line 24, the date is changed from 2006 to 2007, and the same on page 2, line 25, from 2006 to 2007.

EXHIBIT(sts79a06)

EXECUTIVE ACTION ON SR 19

{Tape: 2; Side: A; Approx. Time Counter: 14 - 16}

Motion: SEN. ELLINGSON moved that SR 19 DO PASS.

Motion/Vote: SEN. ELLINGSON moved that AMENDMENT SR0001901.adb BE ADOPTED. Motion carried unanimously by voice vote.

Motion/Vote: SEN. ELLINGSON moved that SR 19 DO PASS AS AMENDED. Motion carried unanimously by voice vote. SEN. TROPILA voted aye by proxy.

EXECUTIVE ACTION ON SR 15

{Tape: 2; Side: A; Approx. Time Counter: 16 - 25}

Motion/Vote: SEN. ELLINGSON moved that SR 15 DO PASS. Motion carried 9-2 by roll call vote with SEN. LAIBLE and SEN. LEWIS voting no. SEN. TROPILA voted aye by proxy.

Other Information received:

A fax was received from Cheryl Dooley, President, Ravalli County Fish & Wildlife Association, in support of the Shane Colton appointment.

EXHIBIT(sts79a07)

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. CAROLYN SQUIRES, Chairman

CLAUDIA JOHNSON, Secretary

CS/cj

Additional Exhibits:

EXHIBIT ([sts79aad0.PDF](#))