



## State Administration and Veterans' Affairs Interim Committee

### 60th Montana Legislature

**SENATE MEMBERS**  
KELLY GEBHARDT  
VERDELL JACKSON  
LARRY JENT  
CAROLYN SQUIRES

**HOUSE MEMBERS**  
FRANKE WILMER--Chair  
GARY MACLAREN--Vice Chair  
PAT INGRAHAM  
VERONICA SMALL-EASTMAN

**COMMITTEE STAFF**  
DAVE BOHYER, Lead Staff  
DAVID NISS, Staff Attorney  
FONG HOM, Secretary

# MINUTES

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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November 30, 2007

Room 102, Capital Building  
Helena, Montana

### **COMMITTEE MEMBERS PRESENT**

REP. FRANKE WILMER, Chair  
REP. GARY MACLAREN, Vice Chair

SEN. KELLY GEBHARDT  
SEN. VERDELL JACKSON  
SEN. LARRY JENT  
SEN. CAROLYN SQUIRES

REP. PAT INGRAHAM  
REP. VERONICA SMALL-EASTMAN

### **STAFF PRESENT**

DAVE BOHYER, Lead Staff  
SUE O'CONNELL, Research Analyst  
DAVID NISS, Staff Attorney  
FONG HOM, Secretary

## Visitors and Agenda

Visitors' list, Attachment 1  
Agenda, Attachment 2

### COMMITTEE ACTION

- The committee directed staff attorney to draft legislation that would strengthen MAPA requirement for the rationale that underpins the need for rulemaking announcements.
- The committee directed staff to proceed with draft legislation to clean up election laws and present it to the January meeting.
- The committee directed staff to draft legislation to call for a pilot project on voting by mail.

### CALL TO ORDER AND ROLL CALL

00:00:31 REP. WILMER called the meeting to order at 8:32 a.m. The committee secretary took roll visually.

### AGENDA

#### UPDATE OF SECRETARY OF STATE'S OFFICE - Brad Johnson, Secretary of State

00:01:19 Mr. Brad Johnson, Secretary of State, reviewed the status of the Secretary of State's Office, introduced key staff of the Office of Secretary of State, and talked about the survey that was sent out to all election administrators in the state.

#### RULE UPDATE AND STATUS OF LAWSUIT - David Niss, Staff Attorney, LSD

00:12:11 Mr. Niss, Staff Attorney, gave a report on three civil actions (**EXHIBIT 1**) as contained in his memorandum dated November 28, 2007.

#### Questions

00:22:41 REP. MACLAREN asked Mr. Niss why he said that paragraph B was not necessary. Mr. Niss said that as the Code Commissioner pointed out that the duty of the committee and the legal staff is statutory, that they review all rules proposed by state agencies no matter how the decisions of the Montana Supreme Court reads.

REP. WILMER asked if the Supreme Court's decision pursuant to the Board of Nursing was insufficient or inadequate. Did the Supreme Court make a distinction between inadequacy not affecting the status of the statement, or by claiming that it is inadequate, is that saying that it is also unnecessary? Mr. Niss said that the notice published by the Board of Nursing was inadequate in that it did not address the scope of practice issue that was brought to the Court by the anesthesiologists. The statement of rationale did not address the issue and so it was deficient in that it didn't address the particular issue.

REP. MACLAREN asked if MAPA requires a statement of necessity. Mr. Niss said that 2-4-305(6)(b), states that there must be a statement of reasonable

necessity.

SEN. SQUIRES said that a motion would be appropriate to request draft legislation that would require rules promulgated by an agency to include a statement of necessity that addresses the rationale for the rule action.

SEN. SQUIRES wanted to know why PERB thinks that they do not have the ability to provide actuarial material to the Police Association, which now necessitates a court situation. Mr. Niss said that the Committee could invite the legal staff of PERB to come before the Committee to explain their rationale.

Mr. Bohyer said that Mr. Niss' explanation of where the Committee is and where the MPERA is in this process and his advice to the Committee to let the court deal with it is sound advice. This is a constitutional issue over right to privacy.

### **Recess**

Rep. Wilmer recessed the meeting at 9:20 a.m., so that Committee members could attend former Lt. Governor Karl Ohs funeral.

### **Reconvene**

04:32:51 Rep. Wilmer reconvened the meeting at 1:04 p.m.

Sen. Squires **moved** to direct staff to draft legislation that would strengthen MAPA requirement for the rationale that needs to be attached to rulemaking announcements. The motion **passed** unanimously.

### **HJR 46 STUDY OF ELECTION LAWS - Sue O'Connell, Research Analyst, LSD**

04:35:11 Ms. O'Connell said that she brought forth to the Committee at the last meeting the issue of election laws. The Committee had asked for more information, which request resulted in presentations today by three panels that will address the issues of how: (1) school elections are conducted and whether there should be any changes; (2) funding and resource issues that have come up in terms of administering elections; and (3) and mail ballot elections.

#### **04:37:46 Panel 1: School Elections: How and When?**

- Lynda Brannon, Montana Association of School Business Officials
- Bob Vogel, Montana School Boards Association
- Duane Winslow, Yellowstone County Elections Administrator

Lynda Brannon, Montana Association of School Business Officials, provided a written response from the Montana Association of School Business Officials to questions that were posed regarding school elections (**EXHIBIT 2**).

Bob Vogel, Montana School Boards Association, talked about the Association's concerns regarding school elections versus other elections. He said that Title 13 and Title 20, MCA, are relevant to school elections as well as general elections. He did not agree with county election administrators about conducting school elections and did not think that combining the May school elections with the June primary elections was a good idea.

Duane Winslow, Yellowstone County Elections Administrator, provided written comments to the committee (**EXHIBIT 3**) on the merit of combining school elections with general elections. He said that there are problems in doing that and that is why interim committees are formed to solve those issues and draft legislation that addresses those issues.

## QUESTIONS

05:02:48

SEN. SQUIRES asked if there will be precincts that open during election day or will voting be strictly by mail ballots. Mr. Winslow said that because Yellowstone County did it as a mail ballot election, there were no polling places per se (other than the courthouse) available if someone had a ballot that they had lost or destroyed. The drop off sites that he was referring to were places for people to drop off their completed ballots.

SEN. JACKSON wanted to know how to assure people of the integrity of the process when you have the same people sending ballots out, the same people receiving the completed ballots, and the same people counting the ballots. Mr. Winslow said that there are a number of safeguards built into the mail ballot election that people are not aware of: 1) the ballots are only mailed to the active registered voters, and 2) when the ballots come back, the signatures are checked against their voter/registration signature.

REP. WILMER asked Mr. Winslow to comment on the 4000 undelivered mail ballots in Billings. Mr. Winslow said that they sent out about 54,000 ballots to active voters and around 5000 came back as undeliverable ballots. That was because those ballots could not be forwarded. Yellowstone County did send out a notice saying that the ballot came back, and that you (the elector) need to update this registration. Yellowstone County had about 1000 of the 5000 correct their mailing addresses.

05:20:07

### Panel 2: Election Funding and Resource Issues

- Janice Hoppes, Pondera County, for Rina Moore, Cascade County Clerk and Recorder
- Jeanne-Marie Souvigney, Montana Conservation Voters Education Fund
- Beth Brenneman, Montana Advocacy Program
- Lisa Kimmet, Secretary of State's Office
- Angus MacIver, Legislative Audit Division

Janice Hoppes, Pondera County, presented Rina Moore's written testimony that outlined the costs of running an election (**EXHIBIT 4**). She also distributed a copy of an Official Ballot and talked about the cost of printing a ballot.

Jeanne-Marie Souvigney, Montana Conservation Voters Education Fund, read her written testimony (**EXHIBIT 5**).

Lisa Kimmet, Elections Deputy for Secretary of State, said that because of her experience as a former County Clerk and Recorder she can see the perspective of the county election administrators as far as resources needed to run elections. She talked about the Help America Vote Act.

Angus MacIver, Legislative Audit Division, presented the Legislative Audit Report on the performance audit of the Help America Vote Act. He discussed Audit Recommendation #14 of the Audit Report (**EXHIBIT 6**). He said that the changes that are in the recommendation are needed not only for the success of implementing the Help America Vote Act but also because of numerous election reform efforts over the past years that require a long term commitment and adequate funding. He said that the nature of audit recommendations is that they can make recommendations to the Executive Branch agencies but, ultimately, once the Auditors make the recommendation, they leave it up to the agencies on how they wish or don't wish to implement those recommendations.

Beth Brenneman, Montana Advocacy Program, said that MAP advocates for the civil and human rights for people with disabilities. Ms. Brenneman distributed a map that showed how many people with disabilities live in Montana (**EXHIBIT 7**) and a document offering training for election judges who are people with disabilities (**EXHIBIT 8**). Ms. Brenneman discussed the pros of voting on Saturdays. She said that there is nothing in the Montana Constitution that prohibits moving elections to Saturdays.

SUE O'CONNELL discussed the Overview of Saturday Elections and voter turnout in the Louisiana Gubernatorial Elections (**EXHIBIT 9**).

#### Questions

06:06:13 REP. INGRAHAM said that she would like a copy of the action plan from the Secretary of State's Office. She asked Ms. Hoppes for the statistics from her presentation.

#### **Report on NCSL on Election Law - Sen. Jent and Rep. Ingraham**

06:08:54 SEN. JENT and REP. INGRAHAM each gave a short presentation on the NCSL Conference on election laws that was held in Aspen, Colorado, that they had attended. Sen. Jent talked the theme that state election administrations can't be trusted to handle elections. Both said that the use of voting centers was discussed.

#### **Mail Ballot Elections - Sue O'Connell, Research Analyst, HJR 46**

06:35:50 Sue O'Connell briefed the Committee on mail ballot elections (**EXHIBIT 10**). She said that the HJR 46 Work Group had agreed on a range of options for consideration by the Committee which include: no change in existing laws; give counties the option to conduct all elections by mail; conduct a pilot project for selected counties over a limited time period that would require them to gather specific information to report back to the 2011 Legislature for further consideration of how to deal with mail ballot elections; and the last option, which was considered but not introduced in the 2007 Session, to require mail ballot elections for all counties and all elections.

#### **Panel 3: Mail Ballot Elections**

- Vickie Zeier, Missoula County Clerk and Recorder
- Lisa Kimmet, Secretary of State's Office

- Janice Hoppes, Pondera County
- Sara Busey, League of Women Voters
- Alysha Jannotta, Outreach Director for Montana Women Vote

Vickie Zeier, Missoula County Clerk and Recorder, gave a presentation on her views of mail ballots **(EXHIBIT 11)**.

Lisa Kimmet, Secretary of State's Office, talked about the survey that the Secretary of State's Office conducted regarding the mail ballot elections that were held in 2007. She said that just because there wasn't consensus on the HJR 46 Work Group, she hopes that the SAVA Committee continues to study the mail ballot issue.

Janice Hoppes, Pondera County, talked about mail ballot elections in municipalities and on Indian Reservations in the state.

Sara Busey, League of Women Voters, said that there is no perfect voting system but it is up to the Committee to weigh the pros and cons. The League of Women Voters supports voting by mail and suggests that the Committee institute a pilot program of vote by mail to be held during a federal election. She also talked about voter turnout and voting fraud **(EXHIBIT 12)**.

Alysha Jannotta, Outreach Director for Montana Women Vote, provided written testimony to the Committee **(EXHIBIT 13)**.

#### Questions

07:36:27

Rep. Small-Eastman asked Ms. Hoppes to give her a copy of the report that she had presented to the Committee. She wanted to know if Ms. Hoppes kept demographic records from each election showing the number of Native Americans who had voted. Ms. Hoppes said that they do not track ethnicity in registration or in the election results.

Rep. Small-Eastman asked what will happen to the same day voter registration process if the state went to the mail ballot system. Ms. O'Connell said that Mr. Niss stated in his memorandum that any changes to the mail ballot laws would not affect same day registration, that same day registration still had to be made available.

Rep. Small-Eastman asked if there was a reason why tribal IDs are not accepted at registration as opposed to voting. Ms. Kimmet said that a provision of the Help America Voting Act states that you have to provide either a state driver's license or the last four digits of your social security number because election administrators check ID for voter registration through the motor vehicle records.

Mr. Bohyer said that the Legislature passed a law stating that a tribal ID works for both voter registration and for voting. If Native Americans are being denied the right to register because they want to use their tribal ID, then whoever is denying them that opportunity is in violation of the law. It's not a problem with the law, it's a problem with whoever is denying them the right to register.

Sen. Squires asked Ms. Zeier if federal law supercedes state law. Ms. Zeier said that you need your Montana driver's license or Montana ID number, or the last four digits of your social security number. There is an exception to the law that if you don't have a Montana driver's license or a Montana ID number, you can register using other forms of ID which means a tribal ID can be used.

Sen. Jent suggested giving people the option to vote by mail before election day and yet still allow people to vote at the polls. Ms. Zeier said that the period for applying for absentee ballots is open, but when they have a polling place election, they are required to have a minimum of three judges regardless of how many voters you have.

#### Public Comment

07:51:32 Joy Bruck, AARP Montana, provided her written comments to the Committee **(EXHIBIT 14)**.

Theresa Keaveny, Executive Director, Montana Conservation Voters Education Fund, provided written comments to the Committee **(EXHIBIT 15)**.

Sen. Carol Juneau, District 8, said that her recommendations are: easy access to voting; support the late registration law that currently exists; support prepay for the voter of mail-in ballots; make the actual voting process clear and easy; the use of tribal ID should be allowed to register and vote; offering off-site voter registration and late registration.

08:12:29 Beth Brenneman, Montana Advocacy Program, talked about the cost of the ballots and the expense of postage to mail the ballots back. She said that there are a certain number of people with disabilities who like to vote by mail and they do it now by becoming a permanent absentee voter. There are quite a few people who can't do it that way because they can't read the ballot, they can't see it, or they can't fill it out because they can't use their hands or they can't hold a pencil. The system as it is right now gives an opportunity to vote both by absentee and at the polling place. She talked about the "automark" machines in the voting process and said the machines should be available to people with disabilities in remote locations.

08:16:09 **COMMITTEE DISCUSSION**  
Sue O'Connell said that the Committee's answers to the questions on the Decision Log Sheet **(EXHIBIT 16)** would give her some guidance regarding county administration of school elections.

08:17:00 **Clarify and clean up election laws.** There was a discussion on the draft bill [LC 9050] to clarify and clean up election laws. Ms. O'Connell said that the draft bill will be brought to the Committee at the January meeting for discussion.

Sen. Jent **moved** to direct staff to proceed with the cleanup bill to be acted upon at the January meeting. The motion **passed** unanimously.

08:30:18 **Standardization issue.** Sen. Jent talked about what is involved in

standardization and the discussion on combining election dates. He said he would not support draft legislation on that. The Committee decided that there should not be any instruction to Ms. O'Connell on combining school elections and primary elections.

08:49:00 **Funding and resource issue.** Sen. Squires said that the Secretary of State's Office should assume responsibilities as Chief Election Officer to help with the counties' costs of running elections. Sen. Jent wanted to know whether or not the SAVA Committee is the right committee to do look at that issue. Ms. O'Connell said that if the committee was interested, she would work with the Clerks and Recorders and solicit ideas or information related to funding issues and present them at the next meeting.

08:51:57 **Vote by mail issue.** There was a discussion on conducting a pilot project for voting by mail, the complexity of drafting legislation for that, and the funding of such a project.

Rep. Ingraham **moved** to proceed with draft legislation to call for a pilot project to fund costs for vote by mail. The motion **passed** with Sen. Jent and Rep. Small-Eastman voting nay.

#### **Adjournment**

09:15:10 Rep. Wilmer adjourned the meeting at 5:47 pm.

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