

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN LARRY JENT**, on February 17, 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: HB 575, 2/11/2005; HB 616,
2/11/2005; HB 564, 2/11/2005; HB
653, 2/14/2005; HB 590, 2/11/2005;
HJ 31, 2/16/2005; HB 640, 2/11/2005
Executive Action: HB 575; HB 564; HB 263; HB 279; HB
373; HB 524; HB 570

CHAIRMAN JENT announced that due to deadlines and the number of bills yet to be heard, each bill would be allotted twenty minutes.

HEARING ON HB 575

Opening Statement by Sponsor:

REP. JIM KEANE (D), HD 75, opened the hearing on **HB 575**, Revise disposal of property by FWP. **REP. KEANE** requested that the Committee table HB 575.

EXECUTIVE ACTION ON HB 575

Motion/Vote: **REP. A. OLSON** moved that **HB 575 BE TABLED**. Motion carried unanimously by voice vote; **REP. DICKENSON** voted aye by proxy.

(**REP. JACOBSON** left at 8:10 A.M.)

HEARING ON HB 616

Opening Statement by Sponsor:

REP. JIM KEANE (D), HD 75, opened the hearing on **HB 616**, Require certain natural resource damage positions to be located in Butte. **REP. KEANE** reviewed the history of the Natural Resource Act with the Committee, contending that because of its mining industry, Butte was the backbone of Montana's economy from 1880 to 1990. When the pumps were shut off in 1983, millions of dollars worth of equipment was flooded; the Legislature used money out of the Coal Trust Fund and sued the Atlantic Richfield Company; part of the lawsuit was finally settled in 1999 for \$215 million, with the potential for another \$180 million. Part of the former settlement, namely the Upper Clark Fork Fund, is dedicated to the restoration of the Clark Fork River Basin; the remainder will be used to clean up contamination in Silver Bow Creek. The anticipated \$180 million will be used for clean-up in areas around Butte and Anaconda. His contention was that the jobs involved with this process should be based in Butte, not in Helena.

Proponents' Testimony:

Mark Staples, Attorney, self, contended that Butte has paid an enormous price in terms of environmental and health issues while the State reaped tax benefits from Butte's mining industry. He claimed Butte deserved to have the jobs needed to reverse the damage.

Ashleigh Franklin, Butte Central Catholic High School, submitted written testimony.

[EXHIBIT\(sth39a01\)](#)

Sean Dudley, Butte Central Catholic High School, provided a list of his classmates and written testimony.

[EXHIBIT\(sth39a02\)](#)

[EXHIBIT\(sth39a03\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 19.8}

Sarah Columbe, Butte Central Catholic High School, rose in support of HB 616.

Bill Melvill, self, stated he is a third-generation Butte resident whose grandfather, an Irish immigrant, worked at the mines and died of emphysema at the age of 38. **Mr. Melvill** has been involved with the Butte-Silver Bow County Commission and has dealt with this issue for a number of years. He lauded REP. KEANE and the High School Seniors for their efforts to bring the Damage Program Office to Butte.

Opponents' Testimony:

Jim Flynn, self, stated that even though his county suffered extensively due to the mining and smelting, he felt the Natural Resource Damage Program should stay in Helena because it was the seat of State government and all involved agencies and departments were located there. He commended the Program for taking the lead in coordinating efforts between various agencies, the university system, the Justice Department, the Legislature, and the Environmental Protection Agency (EPA). **Mr. Flynn** stressed that the restoration and remediation lay with the Department of Environmental Quality (DEQ) at the State level, and with the EPA at the Federal level, which required much interaction; therefore, relocating the office was not in the best interest of the State.

Chris Tweeten, Chief Legal Counsel, Department of Justice, reviewed the history of the lawsuit against the Atlantic Richfield Company (ARCO). He added the Natural Resource Damage Program was created and located in Helena for the purpose of conducting the litigation because before its inception, outside counsel had been retained at a great expense to the State. **Mr. Tweeten** stressed that all of the costs incurred up to the settlement were paid by ARCO as would be future expenses. After the settlement and the creation of the restoration fund, the Natural Resource Damage Program was transformed from a litigation program to a restoration program which created a process for the distribution of the funds for worthy restoration projects in the

Upper Clark Fork River Basin. He provided a graphic showing how these funds have been allocated thus far. **Mr. Tweeten** lauded the Program's efforts and described in glowing terms how the area would be restored, adding that all this activity had taken place due to a program located within State government.

EXHIBIT (sth39a04)

{Tape: 1; Side: B}

Matt Clifford, Conservation Director, Clark Fork Coalition, stated that his group has been involved with the Natural Resource Damage Program since its inception and was instrumental in getting some of the affected sites listed. He stressed that the Natural Resource Damage Suit was designed to remedy certain specific injuries to natural resources, and these injuries had occurred throughout the Upper Clark Fork River Basin. He stated that the Program has been impartial, and not influenced by local politics or perceptions, in determining where the funds should go; this process was greatly helped by being located in a neutral location, namely in Helena. He noted the suit was brought on behalf of the people of Montana and not on behalf of a specific location; it has provided economic benefits to the Butte area as the vast majority of the funds have been spent there. In closing, he pointed out that the representatives of the people of Montana in the lawsuit are located in Helena.

Questions from Committee Members and Responses:

REP. GARY MACLAREN, HD 89, VICTOR, asked the Sponsor why there was no fiscal note. **REP. KEANE** replied a fiscal note would be necessary should the bill pass; he did not know why none had been issued.

CHAIRMAN JENT interjected the fiscal note had not yet been printed.

Closing by Sponsor:

REP. KEANE closed, stating it was a mockery to have a program dealing with restoration in the Butte area located in Helena.

The following statements pertaining to HB 616 were provided at the end of all testimony.

EXHIBIT (sth39a05)

EXHIBIT (sth39a06)

(REP. A. OLSON left at 8:40 A.M.)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 11.7}

HEARING ON HB 564**Opening Statement by Sponsor:**

REP. JOHN WITT (R), HD 28, opened the hearing on **HB 564**, Provide for sale of Montana Agricultural Center & Museum of Northern Plains.

Proponents' Testimony:

Doug Monger, Department of Fish, Wildlife & Parks (FWP), submitted written testimony.

EXHIBIT(sth39a07)

Opponents' Testimony: None

Questions from Committee Members and Responses:

VICE CHAIR DEE BROWN, HD 3, HUNGRY HORSE, asked about the amount of the 1985 appropriation. **Mr. Monger** recalled it was in the \$250,000 range; half of it came from the general fund and the other half was state parks' funding. **VICE CHAIR BROWN** inquired about the maintenance cost to the taxpayer. **Mr. Monger** advised that the original legislation required that there be no future cost to the State which has been heeded. He added since it was State property, it was insured for liability and replacement cost through the Department of Administration; the River and Plains Society reimbursed the State for those costs.

VICE CHAIR BROWN ascertained that twenty years ago, the State paid \$250,000 for this property and was going to give it away now. **Mr. Monger** explained HB 564 provided for the sale of the property to a local government entity for less than full market value, adding a price had not been established as yet. **VICE CHAIR BROWN** inquired if the Department would be amenable to an amendment specifying a sales price. **Mr. Monger** advised he was not sure as price had not been discussed with the Museum's current operators. **VICE CHAIR BROWN** surmised that it could be sold for as little as \$1. **Mr. Monger** opined the intention was for a low-cost or no-cost transfer.

REP. BERNIE OLSON, HD 10, LAKESIDE, asked the Sponsor whether Choteau County would assess a mill levy in support of the museum. **REP. WITT** replied the City of Ft. Benton would bear the cost, adding many volunteers were involved in the fund-raising effort. **REP. B. OLSON** wondered if there was a chance that the county could be a partner in this venture. **REP. WITT** anticipated that the county would want to be involved. **REP. B. OLSON** inquired

whether the county would assess levies to help defray maintenance costs. **REP. WITT** advised the county would not.

CHAIRMAN LARRY JENT, HD 64, BOZEMAN, surmised that the intent was to have the property revert back to the Department if it was not used as intended, which **Mr. Monger** confirmed; he added the property could not sold for a profit, either. **CHAIRMAN JENT** noted that the fiscal note showed zero impact because Ft. Benton had been operating the Center for the past 20 years at no cost to the State.

REP. GORDON HENDRICK, HD 14, SUPERIOR, asked if there would be any loss of jobs. **Mr. Monger** advised there should be no visible change as the State has no involvement with the Museum other than advancing the insurance cost. **REP. HENDRICK** wondered if payment of the insurance would cease upon the property's transfer. **Mr. Monger** opined that an owner other than the State could obtain better insurance rates elsewhere. The insurance issue had actually precipitated the transfer request as it was believed that it would save the Society thousands in operating expenses.

REP. JOAN ANDERSEN, HD 59, FROMBERG, asked the Sponsor whether the River and Plains Society had incurred costs pertaining to the renovations needed to house the exhibits and displays. **REP. WITT** advised everything was done through volunteers and their fund-raising efforts. He described how they had turned an old manufacturing plant into the beautiful facility it was today. **REP. ANDERSEN** wondered how much money had gone into the project. **REP. WITT** estimated it to be several millions.

REP. WILLIAM JONES, HD 9, BIGFORK, was curious whether anything like this had been done before and whether there were plans for such projects in the future. **REP. WITT** could not speak to this issue. **REP. JONES** asked the same question of **Mr. Monger** who replied he was not aware of other similar projects. He added that FWP would grant federal dollars to local communities through its "grants and aids" programs for parks and recreation projects. He pointed to one similar piece of legislation that would allocate half a million dollars of general fund money to FWP for a museum in Malta.

VICE CHAIR BROWN asked if FWP could decide on their own to go out and purchase land for museums or heritage projects without the Legislature. **Mr. Monger** replied they could not, adding that all of their funding for operations, capital improvements, land acquisitions, or development came from appropriations through the Legislature. In addition, the Fish, Wildlife and Parks Commission must approve expenditures regarding land acquisition

or disposal; if more than 100 acres or more than \$100,000 in value were at issue, the State Land Board would have to approve the transaction as well.

Closing by Sponsor:

REP. WITT closed, adding that Ft. Benton would be host to some of the Lewis & Clark signature events this June and July.

{Tape: 2; Side: A}

(REP. JACOBSON returned at 9:10 A.M.)

HEARING ON HB 653

Opening Statement by Sponsor:

REP. ARLENE BECKER (D), HD 52, opened the hearing on **HB 653**, Limit certain claims for Montana guaranty fund. She reviewed the provisions of the bill, adding that workers' compensation claims covered by property and casualty insurance companies were exempt from the bill's provisions.

Proponents' Testimony:

Terry Hunt, Vice Chair, Montana Insurance Guarantee Association, explained the Association paid the claims for insurance companies who have become insolvent or have been liquidated by the courts. Its revenue comes from liquidation proceeds and from premium assessments on member companies, adding the more money was obtained through liquidation proceeds, the less would be charged to the member companies, which in turn would benefit Montana's policy holders as it would result in lower premiums. He explained that currently, there was no time limit on claims; the bar date in HB 653 would set a time limit, which would aid the Association in determining the extent of their exposure and liability during the early phases of a claim. The revenue obtained from the liquidator was based on the amount of exposure and liability faced by the Association; the earlier the Association knew what their share would be, that is, if claims were filed in a timely fashion, the higher the proceeds.

Larry Kibbee, Property Casualty Insurance Association of America, American Insurance Association, stated that the Associations' member companies are the ones who step in and make the guarantee for a company which has become insolvent. He contended there were not many industries which would come to the aid of one of their own. He advised that most claims coming into an insolvency, particularly those of large companies, will be known

at the time of the company's demise because they would be filed quickly to ensure they can be paid from the estate. Occupational disease claims, however, were not covered within the bar date in HB 653 because symptoms may not show up for years; these claims can be brought at anytime. Once the liquidation funds are exhausted, the Association steps in and covers any remaining claims. As an example, he cited Glacier General Insurance Company which went under about twelve years ago; the liquidation is now closed, and the remaining claims are being paid by a yearly assessment on every property/casualty insurer doing business in the State. He explained that some of the claims which were still being processed were workers' compensation claims which had been approved but were taking years to get paid off. The Montana Insurance Guaranty Association may assess up to \$20 million per year to pay off claims. HB 653, with its 36-month time limit, attempts to provide more certainty about the number of claims still pending and the cost involved.

Dwight Easton, Farmers Insurance Group, explained that after the date of insolvency, policy holders no longer have coverage; the claims referred to in prior testimony are those which have occurred prior to the insolvency. **Mr. Easton** advised that bar dates are already in place; they vary among the different markets but are predominantly set at three years, adding this bill was not breaking new ground but was a welcome tool for the industry.

Patrick Driscoll, Chief Legal Counsel, State Auditor's Office, advised that the State Auditor, John Morrison, appoints the members of the Guaranty Association and was in full support of this legislation as it provided a safety net for the State's policy holders.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 15.3}

Opponents' Testimony: None

Informational Testimony:

Keith Messmer, Chief, Workers' Compensation Regulation Bureau, Department of Labor and Industry, thanked the Sponsor for working with the Department in ironing out some of their concerns with language contained in HB 653 and stated he was available for questions.

Questions from Committee Members and Responses:

CHAIRMAN JENT referred to Title 33, Chapter 10, and ascertained that HB 653 established a 36-month statute of limitations for filing claims against an insurance company which is no longer in business. **Mr. Driscoll** corrected him, stating the trigger for

the guaranteed funds was the liquidation date. The State had built in an additional safety net so claims would be fully paid, and the claimant would not merely get pennies on the dollar as it happened with bankruptcies. **CHAIRMAN JENT** surmised that Title 33, Chapter 10, set up the fund, and the bill dealt with claims against the fund, not the liquidation administration process. **Mr. Driscoll** advised the claims were related as the Association itself had a claim against the liquidation estate and may get 50 cents on the dollar; for the claimant, though, it was a back-up as they made their claim directly to the Association.

REP. MACLAREN asked Mr. Easton to define the term "bar date."

Mr. Easton stated he would like to defer to someone with more legal expertise, and **CHAIRMAN JENT** advised it was the end date of the statute after which no more claims could be filed. **REP.**

MACLAREN asked about the make-up of the Association and the location of their offices. **Mr. Easton** advised that while there were a number of associations within the State, his group was part of the Western State Association, the Montana Insurance Guaranty Association was made up of industry and non-industry members and watched over insolvencies which would affect people in the State.

Closing by Sponsor:

REP. BECKER closed, saying the bill resulted from collaborative efforts between the Auditor's Office and various insurance companies.

{Tape: 2; Side: A; Approx. Time Counter: 15.3 - 21.3; Comments: CHAIRMAN JENT announced a 10-minute break; the Committee reconvened at 9:35 A.M.; REP. DICKENSON did not return}

HEARING ON HB 590

Opening Statement by Sponsor:

REP. ROSALIE (ROSIE) BUZZAS (D), HD 93, opened the hearing on **HB 590**, Revise elector reactivation. She reviewed current law and added HB 590 would eliminate voter confusion, and clarify and standardize procedures used by election judges.

Proponents' Testimony:

Robert Throssell, Montana Association of Clerk and Recorders, repeated current law, stating that HB 590 made it possible for an inactive voter to get back to the active list by participating in any election.

Linda Gryczan, League of Women Voters; and Montana Women Vote, read from written testimony, signed by Teresa Jacobs, Chair.

EXHIBIT (sth39a08)

Vickie Zeier, Missoula County Clerk and Recorder/Treasurer, stated her Association stood in support of the bill because after redistricting, a mass-mailing went to both active and inactive voters, notifying them about the changes in House and Senate Districts. This prompted inactive voters to try and vote in the first election after receipt of the document; they were turned away according to current law because it was a school election.

Brad Martin, Montana Democratic Party, stated he encouraged any measure that would increase voter participation and hoped for the Committee's full support of HB 590.

Elaine Graveley, Election Deputy, Secretary of State's Office, lauded the measure as it provided consistency.

Opponents' Testimony: None

Questions from Committee Members and Responses:

VICE CHAIR BROWN asked how many states had laws such as this one. **Mr. Throssell** did not know, and deferred to **Ms. Graveley** who offered to provide this information.

{Tape: 2; Side: B}

Closing by Sponsor:

REP. BUZZAS closed, stating once voters had become disenfranchised, they tended not to come back as readily.

HEARING ON HJ 31

Opening Statement by Sponsor:

REP. JILL COHENOUR (D), HD 78, opened the hearing on **HJ 31,** Study implementation of legislative policy regarding state information technology. **REP. COHENOUR** stated the time was right to study the implementation of SB 131 from the 2001 Session which dealt with the Information Technology (IT) plan. She submitted and reviewed information pertaining to the biennial IT report, making special mention of the policies outlined on Page 41, Exhibit (9). **REP. COHENOUR** pointed to "Agency Operating Expenses" on Page 45 which show the IT percentage at 6.8% of the budget. The last handout shows a list of boards and councils associated with IT which were

set up as a result of SB 131. In closing, she added an amendment was being drafted to add SB 131 language into the Resolution to clarify its intent.

[EXHIBIT\(sth39a09\)](#)

[EXHIBIT\(sth39a10\)](#)

[EXHIBIT\(sth39a11\)](#)

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:

Jeff Brandt, Department of Administration, supplied written testimony.

[EXHIBIT\(sth39a12\)](#)

Tony Herbert, Montana Information Technology Alliance (MITA), explained the Alliance is a new trade association comprised of Montana-based IT companies who are already working with the State and are looking to expand to all agencies. He offered to answer any questions.

Questions from Committee Members and Responses:

VICE CHAIR BROWN asked Mr. Brandt whether there had been any heartburn on the part of agencies when the IT positions were created as a result of SB 131. **Mr. Brandt** advised that traditionally, IT has been provided to assist in centralizing IT efforts on a statewide basis, and the IT staff is employed by the various agencies. With passage of SB 131, some of the statutory IT requirements were shifted to the Department of Administration, and this has been the topic of many discussions and debates in other agencies.

REP. ALAN OLSON, HD 45, ROUNDUP, inquired whether the IT Services Division had a stand-alone budget, which **Mr. Brandt** confirmed.

REP. A. OLSON held that a large portion of said budget was buried in the other agencies' budgets. **Mr. Brandt** replied this was correct as agencies had to budget for the rates charged by the IT Division, based on estimated usage. **REP. A. OLSON** stated he would like to see the charges which now are buried in various agencies' budgets be identified and be a part of the Division's budget coming before the Appropriation's Committee; he requested Mr. Brandt to include this in the study. **Mr. Brandt** agreed and added that their budget was the sum of all charges to be incurred by the agencies. **REP. A. OLSON** repeated his suggestion, saying it would clearly show what was actually spent on IT.

VICE CHAIR BROWN surmised this information could be provided quickly, which **Mr. Brandt** confirmed, adding he would obtain it for the Committee.

Closing by Sponsor:

REP. COHENOUR closed, adding the questions were representative of the bill's intent, namely to monitor the progress and establish oversight over IT expenditures.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 18.6}

HEARING ON HB 640

Opening Statement by Sponsor:

REP. HAL JACOBSON (D), HD 82, opened the hearing on **HB 640**, Revise requirements for state IT contracts. **REP. JACOBSON** stated HB 640 recognized the importance of IT companies and provided incentives for IT work contracted by the State to be completed by Montana-based companies. The purpose of the bill was to encourage IT companies to locate in Montana, to provide growth in this sector of Montana's economy, and for these companies to perform the work needed for State IT contracts whenever possible. He proceeded to review the provisions of HB 640 with the Committee.

Proponents' Testimony:

Glen Gromley, President, MITA, stated the Alliance was formed for the sole purpose of encouraging and fostering the IT community in Montana as it was an important part of the State's economy: it is environmentally clean, pays good wages, represents a highly educated workforce, and its products are highly exportable. **Mr. Herbert** stated HB 640 created an inventory where businesses would self-register; out-of-state companies will have access to information about these companies and it is anticipated that new partnerships will be forged for the good of Montana's economy. In closing, he touched on a few more of the bill's provisions, adding it was a step in the right direction.

Dana Glatz, President, WESCO, stated that WESCO was a systems integration company which had been based in Helena since 1978. He explained how his company was instrumental in devising FWP's Automated Licensing System, which was made possible because of the Department's insistence on local bidders. Subsequently, the company became a nationally recognized expert in FWP systems with national and international contracts.

{Tape: 3; Side: A}

Mr. Glatz agreed that Information Technology was an area where the State could have a significant impact on economic development.

Bonnie Lorang, Montana Independent Telecom Systems (MITS), gave a brief history of the association, which was made up of rural telephone companies, stating its members provided high quality telecommunication and information technology services. Rural companies were the first to introduce fiber-optics, DSL and Broadband in the State. **Ms. Lorang** contended they were successful because of collaboration and partnerships with other companies and pointed to VisionNet which is providing internet services to the entire State.

Donna Cain, Bearing Point, stated Bearing Point, a MITA member, was a global company which has provided IT and business consulting services to State agencies for the past seven years and looked forward to providing continued expert IT solutions to Montana.

Ryan Wiser, President, PAX MIT Solutions, Missoula, stated HB 640 was a fair bill which provided economic opportunity to the State as well as in-state and out-of-state IT companies.

Tony Herbert, MITA, stood in support of HB 640.

Opponents' Testimony:

Jeff Brandt, Department of Administration, provided written testimony.

[EXHIBIT \(sth39a13\)](#)

Janet Kelly, Department of Administration, recounted Governor Schweitzer's commitment to fostering and promoting economic development. She commended REP. JACOBSON for promoting economic development through HB 640 but voiced concern with some of the technical aspects as outlined by Mr. Brandt. As an alternative to HB 640, she suggested the formation of a partnership between the agency and legislators interested in promoting Montana businesses.

Informational Testimony:

Aidan Myhre, FAST Enterprises, submitted an article from the Louisiana Department of Revenue. She stated that FAST's motto is to locate their employees in the community.

[EXHIBIT \(sth39a14\)](#)

Questions from Committee Members and Responses:

Due to time constraints, **CHAIRMAN JENT** asked the Sponsor to close.

Closing by Sponsor:

REP. JACOBSON referred to the costly fiasco which arose from the POINTS System the State had purchased, adding there had been no accountability. He stated his objection to the fiscal note resulting from Section 3 (2) of the bill. He agreed with the Department's prerogative to charge a fee for administering the inventory but felt this could be dealt with between the companies. **REP. JACOBSON** added that other agencies were already required to have a Montana residency component when contracts are awarded. In closing, he repeated this bill provided economic opportunity and accountability.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 18.3}

EXECUTIVE ACTION ON HB 564

Motion: **REP. ANDERSEN** moved that HB 564 DO PASS.

Discussion:

REP. ANDERSEN noted that the building was in a dilapidated state when it was purchased by FWP, and the people of Ft. Benton had stepped up and transformed it into the wonderful museum it is today. She referred to the provision that it could not be sold for a profit, and when it ceased to be used in the designated manner, it would revert back to the Department.

CHAIRMAN JENT stated, while he had not visited the museum, he had been impressed by the volunteer work done to spruce up the town's historic district in preparation for the Lewis & Clark events.

REP. A. OLSON echoed his remarks.

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

EXECUTIVE ACTION ON HB 590

VICE CHAIR BROWN reminded the Chairman that she wanted to wait for information to be provided by Elaine Graveley before executive action. **CHAIRMAN JENT** agreed to postpone the vote.

REP. BERNIE OLSON, HD 10, LAKESIDE, had not been present for the hearing and asked whether HB 590 allowed for same day registration, which **CHAIRMAN JENT** denied.

{Tape: 3; Side: A; Approx. Time Counter: 18.3 - 24.8}

EXECUTIVE ACTION ON HB 263

VICE CHAIR BROWN asked to reconsider HB 263 which had been tabled in Committee two weeks prior.

Motion/Vote: **REP. BROWN** moved to **RECONSIDER ACTION** on HB 263 and take it off the table. Motion carried 10-4 by voice vote with **REP. EATON, REP. HAMILTON, REP. HENRY, and REP. SMALL-EASTMAN** voting no.

Motion: **VICE CHAIR BROWN** moved that **HB 263 DO PASS.**

Discussion:

VICE CHAIR BROWN reminded the Committee this bill provided for a uniform complaint form; it had been assumed it dealt with just one agency, namely the Department of Health and Human Services, and should be solved by said agency. She added that conversations with the Sponsor revealed it was to provide uniform complaint forms for boards to ensure that complaints were actually heard and dealt with. She contended this was important as boards had the propensity to bury or lose complaints.

Sheri Heffelfinger, Legislative Services Division, reminded the Committee that the bill had two amendments which were adopted; therefore, the bill was being considered for a do pass as amended.

Motion: **CHAIRMAN JENT** restated the motion that **HB 263 DO PASS AS AMENDED.**

Discussion:

REP. MACLAREN asked **VICE CHAIR BROWN** where complaint forms could be obtained and where they should be filed. **VICE CHAIR BROWN** advised that under this bill, he would be sent a generic form which would apply to any board.

REP. ANDERSEN wondered how the fact that uniform complaint forms had to be made available would prevent complaints from being buried. **VICE CHAIR BROWN** that it would be in statute and people would be able to rely on being heard. **REP. ANDERSEN** felt that Committee members could count on having constituents approach

them with their complaints rather than going to the boards because of past frustrating experiences.

{Tape: 3; Side: B}

VICE CHAIR BROWN added laws are made for the people who do not follow the rules and not for those who do.

Vote: Motion that HB 263 DO PASS AS AMENDED carried 9-7 by roll call vote with REP. EATON, REP. HAMILTON, REP. HENRY, REP. JACOBSON, and REP. SMALL-EASTMAN voting no; REPS. DICKINSON and CAFERRO voted no by proxy. (HB 263 held in Committee until 2/18/05.)

(REP. CAFERRO returned.)

EXECUTIVE ACTION ON HB 279

Motion: REP. BROWN moved that HB 279 DO PASS.

Motion: REP. HENDRICK moved that AMENDMENT HB027901.ash BE ADOPTED.

[EXHIBIT \(sth39a15\)](#)

Discussion:

Ms. Heffelfinger explained that by striking "public officers," the bill would affect legislators only. She proceeded to review the balance of the amendments.

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

Motion: REP. OLSON moved that HB 279 DO PASS AS AMENDED.

Discussion:

REP. B. OLSON felt this bill was not necessary as he had not seen any such abuse.

CHAIRMAN JENT agreed, saying this might be a solution looking for a problem.

VICE CHAIR BROWN disagreed, explaining that the issue of ethics was a priority for Governor Schweitzer, and she believed it was a good idea to put this in statute.

REP. HENDRICK concurred.

REP. TERESA HENRY, HD 96, MISSOULA, believed **REP. WAGMAN** introduced this bill because of his own situation as a city firefighter, and she did not think it was a solution looking for a problem; being a State employee herself, she felt the bill was needed.

REP. A. OLSON advised that he worked for the Department of Natural Resources and Conservation (DNRC) and was taking a leave of absence. He added that he did not see a problem with the bill, though, adding that it clarified a recurring issue.

REP. HENDRICK told of constituents believing that he was being paid by the State as a legislator and also in his job at the High School which was not the case. He added this was public perception, though, and felt HB 279 was addressing this issue.

CHAIRMAN JENT asked Ms. Heffelfinger to summarize the bill as amended. **Mr. Heffelfinger** explained that by striking "public officers," the bill revised the prohibition for dual compensation for legislators only. This meant they could not be compensated from two separate but overlapping public employment positions; in other words, they cannot "double-dip." The exceptions in statute do remain for other public employees and public officers.

REP. B. OLSON wondered how this would affect people under collective bargaining agreements, such as substitute teachers.

REP. ROBIN HAMILTON, HD 92, MISSOULA, advised that teachers who were also legislators had varying agreements with their school districts. No one, though, received their full teacher's pay and the legislative salary.

VICE CHAIR BROWN stated that **REP. WAGMAN's** concern and reason for the bill was the issue whether he was an employee of the State in his capacity as a legislator, or whether he could perform his regular job as a city employee. Since he could not perform his job as a firefighter, he was not employed by the City of Livingston, and neither were the teachers in the Legislature.

VICE CHAIR VERONICA SMALL-EASTMAN, HD 42, LODGE GRASS, stated many teachers still kept in contact with their schools and submitted lesson plans and the like; their bargaining agreements would specify how to handle this situation.

REP. HENDRICK asked whether she was implying that she was receiving pay as a teacher while serving in the Legislature.

VICE CHAIR SMALL-EASTMAN advised she was on a sabbatical without pay, even though she still did her lesson plans for the

substitute teacher. **REP. HENDRICK** stated this should be considered "volunteer work" and had nothing to do with HB 279.

REP. HENRY stated that she, too, had responded to curriculum questions in her free time, without being compensated, but in her opinion, this also did not address the ethical issue brought up by **REP. WAGMAN**.

CHAIRMAN JENT asked to discuss the issue of collective bargaining agreements and how it was affected by this bill. He asked whether Ms. Heffelfinger could elaborate. **Ms. Heffelfinger** advised that she had perused the bill to see if it contained a savings clause, explaining that if a bill could affect a contract, a savings or an applicability clause was added which would stipulate that only future contracts would be affected. She was not familiar with collective bargaining contracts, whether or not they would state the employee could simply take a leave of absence. She opined these contracts would come into effect when the employee did not take actual leave.
{Tape: 3; Side: B; Approx. Time Counter: 0 - 16.3}

REP. B. OLSON recounted that one of the teacher/legislators who continued to receive her teacher's pay gave that amount as compensation to her substitute; he stated this was a bargaining agreement.

REP. A. OLSON wondered if a clause could be added which would exempt current negotiated agreements and have the restrictions apply to all future contracts. **Ms. Heffelfinger** advised this would be adding savings and applicability clauses to the bill. She explained that a savings clause states that contracts cannot be encumbered or changed; the applicability clause specifies that it apply to future contracts.

REP. A. OLSON advised, with regard to dealing with contracts, the Legislature had mandated that school districts go to binding arbitration.

CHAIRMAN JENT advised he would allow a conceptual amendment because of the time constraints.

REP. B. OLSON suggested polling Committee members to see if there was support for the bill before voting on an amendment, adding he would vote against the bill regardless. **CHAIRMAN JENT** was not inclined to do so, stating proper procedure should be followed and asked that the amendment be moved.

REP. A. OLSON opined that the votes were not there, even with the conceptual amendment.

Substitute Motion/Vote: REP. EATON made a substitute motion that HB 279 BE TABLED. Substitute motion carried 10-6 by roll call vote with REP. ANDERSEN, REP. BROWN, REP. HENDRICK, REP. JONES, REP. MACLAREN, and REP. OLSON voting no; REP. DICKENSON voted aye by proxy.

EXECUTIVE ACTION ON HB 373

Motion: REP. BROWN moved that HB 373 DO PASS.

Discussion:

CHAIRMAN JENT advised he had been asked by REP. HARRIS to postpone executive action on this bill because he disagreed with the fiscal note and wanted to wait until the Sponsor's fiscal note had been printed. He explained that a Sponsor's fiscal note served to rebut the yellow one issued by the Budget Office, and proceeded to review the bill for the Committee.

VICE CHAIR BROWN agreed that the Sponsor had a good point; however, every time a bill required there would have to be a commission, it made her queasy as she envisioned all of the agencies coming in, wanting to add FTE's to go through their codes and such. Therefore, she would vote against the bill.

CHAIRMAN JENT agreed it was a good idea, adding sometimes one had to spend money to save money; he stated he would vote for the bill as it might make the Legislature's job easier if someone could examine all of the Montana Code.

REP. EMELIE EATON, HD 58, LAUREL, stated the bill specified the Board should consist of two House and two Senate members as well as one member from the general public, adding this would preclude agencies from asking for additional personnel.

REP. A. OLSON did not agree with the fiscal note as there was travel and compensation involved; moreover, several agencies were not even mentioned; he did not see how \$52,000 would cover expenses.

CHAIRMAN JENT stated the question was whether only the people listed on the Sponsor's fiscal note would be involved in the manner stated; the Legislative Services and the Legislative Audit Divisions would be primarily impacted by this bill.

Vote: Motion failed 8-8 by roll call vote with REP. CAFERRO, REP. EATON, REP. HAMILTON, REP. HENRY, REP. JACOBSON, REP. JENT,

and REP. SMALL-EASTMAN voting aye; REP. DICKENSON voted aye by proxy.

{Tape: 4; Side: A}

EXECUTIVE ACTION ON HB 524

Motion: REP. BROWN moved that HB 524 DO PASS.

Motion/Vote: REP. A. OLSON moved that AMENDMENT HB052401.ash BE ADOPTED. Motion carried unanimously by voice vote; REP. DICKENSON voted aye by proxy.

EXHIBIT (sth39a16)

Motion: REP. A. OLSON moved that HB 524 DO PASS AS AMENDED.

Discussion:

CHAIRMAN JENT explained that each party picked two people to serve on the redistricting committee and if they cannot agree on the fifth member, he or she will be appointed by the Supreme Court.

REP. JONES wondered how one would know if a prospective member was a member of a political party.

CHAIRMAN JENT advised he saw two constitutional problems with this bill; one of them dealt with the right of association, and the second was how much the Supreme Court may be restricted in its appointment of the fifth commissioner. He stated that in the past, the Legislature had appointed the fifth member which was changed by the adoption of the Montana Constitution in 1972; now, the Legislature is only allowed to make recommendations. He commented that he would vote against the bill.

REP. A. OLSON stated similar sideboards had been put on the Commissioner of Political Practices, and he would support the bill as amended.

REP. BRUCE MALCOLM, HD 61, EMIGRANT, referred to his notes which said this may not be constitutional. **CHAIRMAN JENT** agreed for the reasons he had touched on.

Vote: Motion that HB 524 DO PASS AS AMENDED failed 7-9 by roll call vote with REP. ANDERSEN, REP. BROWN, REP. HENDRICK, REP. JONES, REP. MACLAREN, REP. A. OLSON, and REP. B. OLSON voting aye; REP. DICKENSON voted no by proxy.

Substitute Motion: REP. HENDRICK moved that HB 524 BE TABLED AND THE VOTE REVERSED. Without objection, it was so ordered.

EXECUTIVE ACTION ON HB 570

Motion: REP. HENDRICK moved that HB 570 DO PASS.

Discussion:

REP. B. OLSON asked for an explanation of the bill.

Ms. Heffelfinger advised that if a state employee was regularly scheduled to work an alternative schedule of more than eight hours, and they had to work on a holiday, they would get paid the actual hours worked, not the traditional eight.

(REP. DICKENSON returned at 11:20 A.M.)

REP. MALCOLM stated the contention had been that workers would receive 20% more under this bill but in reality, they did not. If one works four seven-hour days, he would have a four in seven chance of hitting a holiday; and with twelve-hour shifts, the chances of getting a holiday were at 50%. He felt that in the end, all would come out even; the bill was merely a fairness bill, and he felt if someone worked on a holiday, they should be compensated for the actual hours worked.

REP. JONES disagreed, contending that senior staff gets to choose holiday work and they do, which would do away with the calculation of percentages.

REP. MALCOLM replied these were policy decisions which did not have anything to do with the bill. The fact that some could "work" the system should not kill the bill.

REP. HENRY remarked that a Full Time Equivalent (FTE) worked 2080 hours; if someone worked a twelve-hour holiday shift, they would be eligible to bank those twelve hours for future time off.

VICE CHAIR BROWN contended that full-time State employees made choices with regard to their schedules, whether they worked four ten-hour shifts or holidays and felt a bill like this should not be supported.

REP. EATON disagreed, saying many people work these schedules to accommodate their employers, such as in a hospital setting; they should not be punished for it.

REP. HENRY stated that it worked both ways, adding alternative schedules were sometimes negotiated to mitigate lower pay scales.

VICE CHAIR SMALL-EASTMAN added that law enforcement officers should be considered as well, as they cover all holidays.

REP. MACLAREN referred to the fiscal note and asked if "significant local government impact" was amended out of the bill.

CHAIRMAN JENT advised the operative part of the bill was a "full-time State employee," meaning it could not have any other impact.

VICE CHAIR BROWN was curious why this was in the fiscal note when it had no meaning.

Ms. Heffelfinger referred to Lines 24 and 25, where it stated "appropriate administrative officer under 2-18-604," and stated there was a technical inconsistency in the bill as drafted as this section applied to local government. She agreed with the Chairman, though, that the bill specified "State employees."

For the purpose of providing clarification, **CHAIRMAN JENT** read Chapter 2-18-604 aloud, stating the inconsistency in the bill was a drafting error.

REP. MACLAREN was not clear on compensation of holiday hours, and **Ms. Heffelfinger** repeated that under current law, employees working a 10- or 12-hour shift would be compensated for eight; upon passage of this bill, though, compensation would reflect actual hours worked.

VICE CHAIR BROWN stated she would feel better about the whole concept if the fiscal note said that it was included in the executive budget, rather than having the \$250,000 come out of the general fund.

CHAIRMAN JENT advised, while he supported fairness for public employees, he would vote against the bill because it purported to address State employees but made reference to a statute including local government employees, and he was not in favor of sending the bill to the House floor with the idea of adding amendments which had not been presented to Committee. He agreed with **VICE CHAIR BROWN** about the trade-offs. His main concern was Section 1 (c) which could lead to litigation.

Vote: Motion failed 6-10 by roll call vote with **REP. CAFERRO, REP. DICKENSON, REP. EATON, REP. HENRY, REP. JACOBSON, and REP. SMALL-EASTMAN** voting aye; **REP. ANDERSEN** voted no by proxy.

Motion: REP. HENDRICK moved that HB 570 BE TABLED AND THE VOTE REVERSED. Without objection, it was so ordered by CHAIRMAN JENT.

ADJOURNMENT

Adjournment: 11:40 A.M.

REP. LARRY JENT, Chairman

MARION MOOD, Secretary

LJ/mm

Additional Exhibits:

EXHIBIT ([sth39aad0.PDF](#))