

MINUTES

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

Call to Order: By **CHAIRMAN CAROLYN SQUIRES**, on February 14, 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)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

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: SB 234, SB 367, SB 305, SB 302,
2/8/2005
Executive Action: SB 88

HEARING ON SB 234**Opening Statement by Sponsor:**

SEN. MIKE COONEY (D), SD 40, opened the hearing on **SB 234**, Revising identification requirements for voter registration and voting. He informed the Committee that after the 2000 election, the federal government decided the election laws needed to be changed to provide for better security in the election process after September 11, 2001. Congress passed legislation that created the Help America Vote Act (HAVA). The HAVA laid out certain criteria that deals with identification of voters and other changes. He said the states have to adopt this federal legislation for all elections or set up a two-tier system such as; 1) a system for the federal election, and 2) separate system for state elections. Bob Brown, former Secretary of State, put a group together that looked at how to implement the HAVA. Several ideas came out of this group that were presented in the 2003 Legislature, which adopted the federal requirements, such as; identification requirements (I.D.), that requires a new voter to present I.D., or a voter moving into a different precinct and have to show I.D. The Montana HAVA that was developed requires voters to present I.D. every time they vote. He said a list was developed of the various I.D. that voters can use, such as; power bill, telephone bill, etc. He said that provisional balloting was set up for voters who came to vote without any I.D., so they could vote and bring their I.D. in the day after the election or mail it, but it had to reach the election administrator's office in a certain length of time. **SEN. COONEY** stated that any system that is set up where a vote cannot be counted is not a good system. He said voting should be friendly. This bill repeals the law from the 2003 Legislature regarding I.D. He doesn't feel the current system is preventing fraud, and people should not be denied the right to vote for any reason.

{Tape: 1; Side: A; Approx. Time Counter: 7 - 13}

Proponents' Testimony:

Brad Martin, Executive Director of the Montana Democratic Party, distributed a status report of the 2004 election day registration. He stated that the Democratic Party is in strong support of SB 234. He compared the young man in Tiananmen Square in China with the freedom the U.S. Citizens have in voicing their vote. He said there were more than 122 million Americans that voted for the President in 2004, which is 17 million more people, or 8 percent more than the 2000 election. He said there is another bill to be presented that is discriminatory against voter I.D., and asked the Committee for a do pass on SB 234.

EXHIBIT (sts36a01)

Joy Bruck, Volunteer Advocate, AARP Montana, distributed written testimony. She said this bill is a step in the right direction. She urged the Committee to pass SB 234.

EXHIBIT (sts36a02)

Terry Kendrick, Montana Coalition of Women Voters, informed the Committee that the Women Voters' goal in 2004 was to register at least 5,000 people, and they registered 7,300. She urged the Committee to support this bill.

{Tape: 1; Side: A; Approx. Time Counter: 14 - 25}

Opponents' Testimony:

Elaine Gravely, Secretary of State's Office, distributed written testimony. She informed the Committee that 20 other states adopted the same rule as Montana did in requiring two forms of I.D. She said that Montana had a high turnout in this last election, and people didn't have a problem showing I.D. to vote. She said if a person wants to rent a movie at Hastings they have to show two forms of I.D., and do not have a problem doing this. She informed the Committee that this bill isn't needed.

EXHIBIT (sts36a03)

Robert Throssell, representing the Association of Clerks and Recorders, stated the association is in opposition of SB 234 for the above reasons already mentioned. He urged the Committee to not pass this bill.

Duane Winslow, Director of Election Officers of Yellowstone County, Billings, informed the Committee there was not one problem in the last election with the current process. He said if someone didn't have their I.D., they could go to another judge that would call the courthouse and verify that person's identity. He urged the Committee to not pass SB 234.

{Tape: 1; Side: B}

Rita Blouke, Montana Coalition League of Women Voters (LWV), distributed written testimony. She said the LWV is a nonpartisan organization whose membership is open to both men and women. The LWV is not supporting or opposing SB 234, but wanted to go on record regarding their views. She said that the LWV would normally oppose a system in which state requirements for casting a ballot would exceed federal requirements, but they do support

an electoral system that is shown to protect both the security and accessibility of elections. She stated that the LWV urges the Committee's caution on passage of SB 234. She said until the current problem is solved with voter I.D., the LWV urges the Committee to find a solution for a legislative change in the voter I.D. system that the people will understand, and are able to comply with.

EXHIBIT (sts36a04)

Bonnie Ramey, Deputy Election Officer of Jefferson County, Boulder, informed the Committee that it is easier to train election judges on one thing rather than look for other issues. She urged the Committee to not pass SB 234.

Chuck DeNeur, Chairman of the Republican Party, stated that voter I.D. is not onerous. He asked the Committee to not move backwards, and don't pass this bill.

Informational Testimony: None

{Tape: 2; Side: A; Approx. Time Counter: 3.5 - 18.7}

Questions from Committee Members and Responses:

SEN. ELLINGSON asked why the Secretary of State enforced the I.D. in the first place beyond the federal requirements. **Elaine Gravely** responded that they didn't want to get into franchise voting, such as; first-time 18-year-old voters being asked for an I.D. when their parents are not required to show their I.D. She said with voter fraud going on around the country, maybe they could curtail it here by not giving fraud a chance. **SEN. ELLINGSON** asked if any voter fraud has been reported to the Secretary of State's Office. **Ms. Gravely** replied no.

SEN. ELLINGSON asked **Rita Blouke** why the LWV has changed their position now, and was this done nationally. **Ms. Blouke** responded that the national league has never had a position on I.D. requirements.

Closing by Sponsor:

SEN. COONEY closed stating that Mr. Winslow raised a good question about getting the word out before the election so people will not be confused about the different types of I.D. that is required when they go to the polls. **SEN. COONEY** addressed HAVA stating it is a solution looking for a problem.

HEARING ON SB 367

{Tape: 2; Side: B}

Opening Statement by Sponsor:

SEN. MIKE COONEY (D), SD 40, opened the hearing on **SB 367**, Implement same day voter registration. He informed the Committee that **SEN. ELLINGSON** has a same day registration bill that will be heard in this Committee. He asked the Committee not to throw away his bill until they have heard **SEN. ELLINGSON's** bill. He suggested an amendment to the bill if it passes to become effective upon the implementation of the statewide voter file that is required under HAVA.

Proponents' Testimony:

{Tape: 2; Side: A}

Jeanne-Marie Souvigney, Montana Conservation Voters Education Fund (CVEF), stated the CVEF supports the concept of the bill. She stated they recognize the concerns that many of the Clerk and Recorders have on the validity of same day registration. She urged a do pass on SB 367.

Brad Martin, Executive Director of the Democratic Party, stated the Democratic Party strongly supports SB 367. He said "don't penalize the innocent to prevent fraud."

Terry Kendrick, Montana League of Women Voters (LWV), stated the LWV supports same-day voting. She said most people do not think about voting until it is close to elections, and the 30-day cutoff doesn't allow potential voters to get out and vote. The LWV supports same day registration, and urged the Committee for a do pass motion for SB 367.

Opponents' Testimony:

Elaine Gravely, Secretary of State's Office, read a letter received from the Secretary of State's Office in South Dakota. The letter is in regard to people that are registered to vote in South Dakota and Montana. She said there are 45 people registered in South Dakota who are on the voting list in Montana. She isn't aware if these people voted in South Dakota or Montana, or if they voted in both places. She said the Secretary of State's Office is very reluctant about same day registration and voting for this reason. She urged the Committee to not pass this bill.

Chuck DeNeur, Executive Director of the Republican Party, stated this bill doesn't prevent fraudulent voting from voters that are registered in one place and travel to another place to vote a second time. **Mr. DeNeur** said he has a list of 77,000 people registered to vote. He discovered while going door-to-door for the last presidential election that these people have moved to another address or moved out-of-state. He urged the Committee to not pass this bill.

Robert Throssell, representing the Montana Association of Clerks and Recorders, stated the Association is in opposition of SB 367, but are more in favor of the concept in **SEN. ELLINGSON'S** bill on same day registration. He participated in the negotiations on **SEN. ELLINGSON'S** bill, and said that bill addresses more issues than SB 367. He said the amendments from **SEN. COONEY'S** bill can be incorporated in **SEN. ELLINGSON'S** bill. He said by next year there will be a statewide voter registration data list, and each county will have access to this list and check on those people that register on voting day. He said the election administrators are in support of the amendments, but oppose the bill.

Duane Winslow, Election Administrator of Yellowstone County, Billings, informed the Committee that he feels like he is in a strange position again. He also opposed same day registration in 1995, 1997, 1999, 2001, and 2003. He said the idea that will be brought forth in the compromised legislation does meet the concerns of the election officials. He stated that the election administrators have always been concerned regarding the balance of participation, and the integrity of elections. He said there is always a chance that folks can vote fraudulently, and give the appearance of a problem with elections. He said the compromised bill that is coming forth, **SEN. ELLINGSON'S** bill, will control these concerns, because it will be in a courthouse setting where there will be access to the database where information is shared with other judges if a voter has previously voted, or is on another list. He reiterated his opposition to SB 367.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ESSMANN asked if the integrity issue can be resolved on the participation issue which happened in Minnesota with same day registration and voting, and the reason that Jesse Ventura was elected Governor. **Brad Martin** said this is an issue, but there is a need for a gateway of opportunities to get voters to take their democracy seriously.

Closing by Sponsor:

SEN. COONEY closed asking the Committee to add an amendment to include "file for voter cross-check on same day registration." He urged the Committee to pass SB 367.

{Tape: 2; Side: A; Approx. Time Counter: 16.5 - 25}

SEN. COCCHIARELLA chaired for **SEN. COONEY** while he presented SB 305. **CHAIRWOMAN SQUIRES** was attending another Committee hearing.

HEARING ON SB 305**Opening Statement by Sponsor:**

SEN. MIKE COONEY (D), SD 40, opened the hearing on **SB 305**, Senate vacancy must be filled by election. **SEN. COONEY** informed the Committee that this is an interesting bill due to the fact that two committee members, **SEN. JEFF ESSMANN** and **SEN. DAVE LEWIS**, were recently appointed. He informed the Committee that the reason for this bill came about from a constituent that wanted to know why it is that senators don't have to stand for election, and why are they appointed. He said if a person is appointed in the middle of a senate term they will serve two years of that term, then they have the right to run for that same position for another eight years. He said the term limits are there, and senators will serve two 4-year terms. He added that this bill doesn't affect the House of Representatives, because they have to run every two years. This bill states that "unless a vacancy occurs during a session, a special election would be called to fill that vacancy".

Proponents' Testimony:

Darrell Holzer, representing the Montana State AFL-CIO, informed the Committee that he is appearing today as the constituent that **SEN. COONEY** talked about. His concerns came about due to a population loss in the eastern part of Montana, and over time the legislative districts kept getting larger. He said **SEN. LEWIS'S** district has five or six counties. He said the process in the decision for **SEN. LEWIS** appointment was based on the number of votes cast, which involved Lewis and Clark County making the final decision. There is too much emphasis on party, and not enough emphasis on candidates. He urged the Committee for a do pass motion on SB 305.

Brad Martin, Executive Director for the Democratic party in Montana, stated that he is speaking for this bill with some

hesitation, not because of the contents of the bill, but he didn't want to make it a partisan issue. He said this is a good bill. The Democratic Party likes elections, and that people have more confidence in their system of government when they can participate. He said that "we should never rob any Montanan of the opportunity to be involved as a candidate running for office". He asked the Committee to give SB 305 a do pass consideration.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. TROPILA asked **SEN. COONEY** if this is an unfunded mandate on local governments. **SEN. COONEY** replied there is no question that there will be unfunded mandates. He said the county will have to pick up the tab if a special election is called. He said this isn't any different than the current system as it stands today. He stated that the last special election paid for by the state was when Montanans voted whether or not to have a sales tax. He said that the Legislature did appropriate general fund dollars to pass to the counties for the sales tax special election.

{Tape: 2; Side: B}

The Committee and **SEN. COONEY** discussed at length the process that **SEN. LEWIS** and **SEN. ESSMANN** went through to receive their appointments as legislators. They discussed the time-lines, term limits, and the death of officials while in office, and their replacement appointments.

Closing by Sponsor:

SEN. COONEY closed. He thanked the Committee Members and those who participated for a good hearing. He urged a do pass consideration for SB 305.

EXECUTIVE ACTION ON HB 88

{Tape: 2; Side: B; Approx. Time Counter: 16.5 - 25}

Motion: **SEN. SQUIRES** moved that SB 88 DO PASS.

Discussion: She reminded the Committee this is the absentee ballot bill. She asked **Dave Bohyer, LSD**, to distribute and

explain the amendment sb08801.adb, and the effective date of 2005.

Motion/Vote: SEN. ELLINGSON moved that AMENDMENT SB08801.adb BE ADOPTED. Motion carried unanimously by voice vote.

Motion/Vote: SEN. COCCHIARELLA moved that SB 88 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

HEARING ON SB 302

{Tape: 3; Side: A}

Opening Statement by Sponsor:

SEN. JON ELLINGSON (D), SD 49, opened the hearing on SB 302, Election law general revision; HAVA; absentee ballots; and the voting systems. SEN. ELLINGSON said SB 302 is an election reform bill to make elections run more smoothly with the use of electronic voting machines that are verifiable and subject to audit.

He discussed each section of the bill. Section one deals with paper ballots being available for absentee voters. He informed the Committee that he spoke with Vicki Zeier, Clerks and Recorder's Office who had some concerns about the bill in subsection two of Section one, which had administratively put 35 days into place prior for absentee ballots, which will not work for the clerks and recorders. He informed the Committee that he has asked for amendments to address these concerns.

He addressed Section two on the application of absentee ballots. He stated that a problem came about in the last election cycle. He said that an elector could ask for an absentee ballot using the standardized election form provided by the Secretary of State's Office or by making a provisional request. He said there were some election officers that refused to accept anything else other than the standardized form. He wanted to clarify in statute that it could be a written request using the standardized form or a written request that contains the information specified in Section two of the bill.

SEN. ELLINGSON guided the Committee through each section of the bill explaining the application for an absentee ballot. He requested an amendment to strike subsection 4 of Section one, because it is in CHAIRWOMAN SQUIRE'S bill, SB 88,. He discussed the electronic voting machines. On page 4, Section five, the bill requires that the vote still needs to be recorded on paper,

and be manually counted and audited. **SEN. ELLINGSON** discussed the new language, and the language that has been stricken. He said that the election process will have two days to process the votes after election. He discussed the software in the voting machines that could be manipulated and be made fraudulent. He said auditors will be present to make sure that no one can interrupt the process.

Proponents' Testimony:

{Tape: 3; Side: A; Approx. Time Counter: 16.5 - 25}

Jeanne-Marie Souvigney, Montana Conservation Voters Educational Fund (MCVEF), Livingston, informed the Committee they support this bill, because they have an aggressive vote-by-mail effort that is used throughout the state. She said there are many provisions in this bill that deal with vote-by-mail method. She discussed the amendments that are not out yet, but wanted to make sure this bill is consistent with the other bills that also deal with this subject. She said that **SEN. ELLINGSON** didn't mention in Section one, subsection one, working with the Clerks and Recorders that the ballots will be available 45 days before a general election, but will remain at 30 days for a primary election. She stated that according to the bill the MCVEF wants to stay with the 20 days for municipal elections. She discussed Section two that has the same language as HB 177 that was passed out of Committee in the House. She said they inserted the word "or" which states, "you can apply by making a written request using a standardized form 'or' by making a written request to the Clerks and Recorders". She said this language will make all voting consistent.

Vicki Zeier, Missoula Clerks and Recorders, informed the Committee that she would just reiterate what Jeanne-Marie Souvigney said in the above statement. She hoped that this bill and the big bill coming over from the House is consistent. She said this bill mainly addresses the testing of the voting equipment. The Missoula clerks and recorders do their own testing of the machines, and the software is date and time sensitive. **Ms. Zeier** said that her precinct is unique among two other counties that can actually count the ballots as they go through the machine. She urged the Committee to support SB 302.

Rita Blouke, League of Women Voters (LWV), stated the LWV strongly supports SB 302. She said this bill will make voting more accessible for those who rely on using the absentee ballots. She suggested clarification in Section 13, subsection (2), regarding persons who are mentally incompetent. She stated this

could be rewritten to address a person who is judged mentally incompetent by a court.

{Tape: 3; Side: B}

Ms. Blouke said the LWV supports HB 302, because it will increase voters' confidence in the outcome of the elections. She discussed doing random audits to make sure there are no hidden computer codes. She suggested another amendment to ensure that testing will also cover electronic tallying systems. She said it was unclear to the LWV if the bill would require testing of all electronic systems on election day, and feels that is unrealistic. She distributed written testimony that clarifies the language in SB 302.

EXHIBIT (sts36a05)

Brad Martin, Executive Director of the Democratic Party, said they support SB 302. He talked about the other bill that will be presented in Committee that reflects a number of proposed improvements to Montana law on absentee balloting. He said the Democratic Party is in strong support of the amendments, and the compromised bill that deals with the way people can request absentee ballots, which will be presented in Committee later. He stated that he deeply appreciates the Secretary of State's Office, and the willingness of Secretary Brown when he was in office on how the model was applied on ballot requests. He said there is a bill in the House, HB 297, which discusses the use of paper ballots, where **SEN. ELLINGSON'S** bill takes it a step further by aggressively validating any system of voting that calls for computer software. He said it is in the best interests of Montana to make sure that "people have confidence in our elections". He closed urging the Committee to pass SB 302.

Elaine Gravely, Secretary of State's Office, stated they support this bill. She discussed HB 297 that addresses a paper trail, which passed out of Committee in the House, and will be coming to the Senate. She said voter's confidence in the system would be weakened if they didn't have a paper trail.

Anita Rossmann, Legal Counsel for the Montana Advocacy of People with Disabilities, said they are in support of this bill. It recognizes people with disabilities in home settings are liberated with this type of legislation in voting technology. She said they support the amendment by **SEN. ELLINGSON** to eliminate line 27, and half of line 28, on page 2, Section two regarding the election provision of the Constitution which states that "any citizen of the United States, 18 years of age or older, can complete voter registration of residence by-laws unless they

are serving a sentence for felony in a penal institution or is of a unsound mind as determined by a court." She said they support the amendment mentioned in earlier testimony by the LWV, which provides that a person who has been adjudicated, or is somehow incompetent, can be prevented from voting by someone other than a judge. She urged the Committee to pass SB 302.

Claudia Clifford, representing the more than 123,000 members of AARP, stated that AARP supports SB 302, which facilitates absentee ballots. She stated that many of the AARP members rely on the absentee ballot system, and anything that makes that system work better for them is a good bill. She said they echo the striking of the provision in Section three that deals with third parties not being able to collect absentee ballots from persons that are known to be mentally incompetent. She stressed that the validation of the voting software system is the most important part of this bill. She urged a do pass for SB 302.

Darrell Holzer, representing AFL-CIO, said the AFL-CIO supports SB 302. He stated that **SEN. ELLINGSON** has worked very hard on this bill along with the Secretary of State's Office, and everyone agrees this is a very good bill. He asked the Committee to support this SB 302.

Robert Throssell, representing County Clerks and Recorders, said the Clerks and Recorders echo previous testimony, and the agreements that have been reached. He said that the election officers are in favor of those changes. He discussed the two elections done every primary and general election. He talked about the equipment used for state and federal elections. He said there will not be a choice of equipment that will do both state and federal elections. He said that federal mandate will come down and will force states to use certain types of equipment for federal elections. He said the counties and election administrators will be left with the decision of "what will we buy". He hopes that equipment manufacturers will recognize this and develop a product that will handle both state and federal elections. He stated that this will be a market driven determination if the manufacturers can meet Montana standards, or it could be an added expense to Montana.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ESSMANN asked about the earlier provisions that require an electronic vote on secrecy that the audit would be for the

purpose of matching the number of votes cast versus the number of voters that have appeared to cast ballots. **SEN. ELLINGSON** responded that will be one of the issues that will have to be checked in an audit. He deferred to **Vicki Zeier** who replied, when they do a test set they do a hand count against the electronic count for a match. **SEN. ESSMANN** asked if they are counting votes or ballots. **Ms. Zeier** said they can stop what has already been counted and save the electronic count to a disk then run the test back through. She said that increasing counters on direct recording equipment (DRE) will require a random check at the courthouse which she feels will work. She informed the Committee Members that the program card is the most important part of the voting process. **SEN. ESSMANN** said he is concerned that the votes are not being counted in order to determine the accuracy of voting. He felt that information could be transmitted to influence voting efforts. **SEN. TROPILA** interjected that they are not counting the votes. He said the votes are counted all day long, and the machine can be stopped whenever they want to run a test. He added that the vote count total is not put out until the polls are closed.

SEN. BALYEAT asked about testing the electronic equipment beforehand, then testing it again during election day. **SEN. ELLINGSON** responded that testing is not done on election day, because it would be disruptive. **SEN. BALYEAT** discussed a time bomb set in the software. He said that as a CPA they have a paper trail, and asked if the voting machines could spit out a paper trail for each person that votes, then that person can look and say, "yes, that is how I voted". **SEN. ELLINGSON** said there are some machines that are providing this type of feedback now.

{Tape: 4; Side: A}

Vicki Zeier, Clerk and Recorder, Missoula, informed the Committee that DRE has an auto mark that uses the same technique as an optical scan when marking the ballots. She said that a paper trail is the ballot. **SEN. BALYEAT** asked **Ms. Zeier** if the voter is allowed to look at that paper ballot after they have voted. **Ms. Zeier** responded yes, or the paper ballot can be run through the auto mark which will show them, or read to them, if sight impaired, on how they voted.

SEN. COCCHIARELLA commented that when she flew in and out of Orange County, California this last October, there were electronic screens set up in the John Wayne airport, and people were voting. She said they were also having a demonstration that day and she was able to touch the screen to see how it operated. The machine printed a receipt that identified her from the information she provided by identifying herself by address or

driver's license. The machine then printed out a number on the receipt. She said everyone in California has access to these machines, which is also in grocery stores. She asked if this could be done here to eliminate some of these issues. **SEN. ELLINGSON** asked **SEN. COCCHIARELLA** if the receipt she received informed her how she voted. She said no, but it gave her a number to use to get back into the electronic machine, and she could retrieve her ballot that had her voting information.

Closing by Sponsor:

SEN. ELLINGSON closed. He thanked everyone who assisted in the development of SB 302. He said, "if this is a good bill, it is the reflection of your good work." He urged the Committee for a do pass motion.

Information:

Other information received.

A list of counties in Montana showing the I.D. process.

EXHIBIT (sts36a06)

Election Day Registration - Help America Vote.

EXHIBIT (sts36a07)

Securing the Vote - an Analysis of Election Fraud.

EXHIBIT (sts36a08)

Expanding the Vote - the Practice and Promise of Election Day Registration.

EXHIBIT (sts36a09)

ADJOURNMENT

Adjournment: 6:00 P.M.

SEN. CAROLYN SQUIRES, Chairman

CLAUDIA JOHNSON, Secretary

CS/cj

Additional Exhibits:

EXHIBIT ([sts36aad0.PDF](#))