

**MINUTES**

**MONTANA SENATE  
59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **CHAIRMAN CAROLYN SQUIRES**, on February 18, 2005  
at 3:00 A.M., in Room 335 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Carolyn Squires, Chairman (D)  
Sen. Joe Balyeat (R)  
Sen. Vicki Cocchiarella (D)  
Sen. 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 431, 2/11/2005; SB 478,  
2/17/2005; SB 500, 2/17/2005; SB  
490, 2/17/2005; SB 384, 2/11/2005;  
SB 390, 2/11/2005; SB 495,  
2/17/2005; SB 389, 2/14/2005; SB  
393, 2/14/2005; SB 395, 2/14/2005;  
SB 396, 2/11/2005; SB 398,  
2/11/2005

**Executive Action:** SB 302; SB 384; SB 389; SB 390; SB  
393; SB 395; SB 396; SB 398; SB 431;  
SB 478; SB 490; SB 495; SB 500; SB  
234; SB 367; SB 305; SB 230; SB 421

**SEN. JEFF ESSMANN, SD 28, BILLINGS,** chaired for **CHAIRWOMAN SQUIRES.**

**HEARING ON SB 431**

**Opening Statement by Sponsor:**

**SEN. GREGORY BARKUS (R), SD 4,** opened the hearing on **SB 431,** Allow mayor or city manager to discipline a municipal firefighter.

He informed the Committee that SB 431 is at the request of the Kalispell Fire Department. He said SB 431 will set into law for firefighters to be treated consistently the same as all the other public employees in termination and suspension hearings. He said current legislation requires that a firefighter who is suspended or discharged must go before the governing body/city court. He said there was an unfortunate incident that took place in Missoula that caused a tremendous amount of embarrassment to the Missoula firefighters. This bill will eliminate that requirement, but it still leaves it open for the firefighters to have that option. **SEN. BARKUS** said there are some minor changes in the bill for volunteer firefighters on who can discharge or terminate the chief of the fire department, and the assistant chief of the fire department.

**Proponents' Testimony:**

**Randy Brodehl, Fire Chief of the Kalispell Fire Department,** said he wanted to address three areas of SB 431: 1) The first issue he addressed is the right of individuals when they have made a mistake to have a fair hearing without it being on television; 2) The second issue is the right of both city and county governments to establish disciplinary procedures; and 3) The third issue is the right of the city to treat all of its employees equally. He said current Montana Code 7-33-4123, and 4124, was written in 1899, before media, television, and the internet. He said the challenge is different today than it was back in that era. Firefighters that are suspended or discharged must have their case presented to the council in front of the television. **Mr. Brodehl** said that Kalispell and many other towns in Montana have this very public display, and no other public employee is required to go through this. He asked that the firefighters be given a chance by not having to face this public humiliation. He asked the Committee to consider this bill, because it allows communities to establish personnel procedures at the local level without the influence of special interests that state government controls out of their area. He said the third issue is to consider that every municipal employee is equal. Current code

requires that firefighters have special rights whether they want them or not. He said that all government employees should have the same rights. This form of public display toward firefighters has gone on for 105 years. Technology has brought about big changes to firefighters, and it needs to be fixed today. He informed the Committee that there will be special interest groups appearing against this bill to repair this law. He asks that the Committee consider what is right for employees, and what is right for the local governments. He did meet with the opponents to this bill, and amendments can be made to fix the issues that the opponents are concerned about.

**Chris Kukulski, City Manager of Bozeman**, said he has three points he wanted to make toward the bill. He is in favor of the bill, but the bill needs some amendments. He said that Chief Brodehl explained them in his previous testimony. He feels that the amendments will be agreed to by both labor and management parties. He said the first goal is to remove the political body from the final appeal process. He said, "because of the council manager form of government, no other employees at the city level have an appeal process that goes before the political body like the firefighters do. He discussed one case that did work in favor of a firefighter that had gone before the council. The political body didn't want to deal with the disciplinary action at the same time the voters were to vote on the expansion of a new fire station. He said he had talked to a firefighter from Bozeman this morning who informed him that a firefighter had a disciplinary action case that had gone before the commission.

**Mr. Kukulski** couldn't remember how many days of suspension this person had, but by the time this firefighter left the commission's office, the firefighter didn't have a job. He stated that management wise, all public offices have to be consistent, professional, and cannot take the whims of "what may happen" in a political arena as the route used to discipline these firefighters. He said the third issue is the Lauderhill federal court case that guarantees public employees an appeal process that private employees don't have. So there is currently a guarantee through the federal courts that all public employees have a right to a fair hearing. **Mr. Kukulski** said that all disciplinary actions that have financial implications are confusing in some parts of this bill. The title of the bill refers to discharge, and in the body of the bill, it refers to other disciplinary actions. He informed the Committee that the firefighters want to make sure the bill covers the areas that deal with the financial implications. The non-financial implication discipline is already in law. He said the grievance process that should be in place, should be referred to in the local grievance process. This way, the employee will receive the same process that the rest of the public employees have. Currently, all of the departments have unions, but not all

firefighters are protected by that union. He said there is a grievance process that is in all of the labor contracts, and these amendments allow the local grievance process to be used. The process allows the local firefighters to have a fair process. He said it should be a consistent rule. He thanked the Committee for their time.

**Harry Payne, Human Resource Director for the City of Helena,** said they support this bill with some reservations as mentioned by the two previous speakers. He said the main issue is the right to a fair hearing, where the bill provides the process of going through the labor agreement, then to district court. He said there are some firefighters, and some probationary firefighters that are not covered by the labor agreement. He added that some exempt firefighters are also not covered by labor agreements. He said in this instance, they are only allowed to go to district court. **Mr. Payne** said if the bill has language that allows them to use whatever grievance procedure is in place in that municipality, they can have the same rights as the other public employees, and can be processed without having to go to district court.

#### Opponents' Testimony:

**Pat Clinch, representing the Montana State Council Professional Firefighters,** stated that the council stands in opposition to the bill as it is written. He said their primary issue is in Section five of the bill, because it completely repeals Section one. He said the Council likes the way the 1899 law is written, because it states a specific process how a firefighter is charged with an offense, receives notice when the meeting will be held, and gives the firefighter the option to be represented by counsel. He said it also states what happens to a person when they are found not guilty of a specific charge. This bill will make it difficult with labor negotiations, and how to treat the procedures in the different municipalities throughout the state. He said there have been three cases in the last 10 years that have gone before the Montana Supreme Court, and the court decided that the suspension procedures as written must be followed by all cities. He said the council doesn't believe that the exact suspension procedure should be the same throughout the state, but the courts decide which way it should be going at this current time. **Mr. Clinch** said the council doesn't like Section four of the bill, because it takes away the ability of the chief and the assistant chief to hand out suspensions. He didn't feel that any fire chief will agree with this section of the bill. The council has problems with Section one of the bill, because it gives the right to appeal a discharge, but there is nothing about suspension listed in there. He said in Title 7, Chapter 33, Part 41, states

that the fire departments must be operated under the provisions of this law. Under this bill, there wouldn't be anything for a person to appeal to the commission if they have to go directly to the district court when they're not covered by the bargaining agreement. He said that most of the bargaining agreements used in Montana use 7-33-4124 as the suspension procedure, which is also listed in the contract. He added if this section of law is repealed, there will not be a procedure to follow without having to go through the suspension procedure, and there wouldn't be any right to appeal. He urged the Committee to table the bill at this time, and allow them the ability to meet with the firefighters, fire chiefs, and the league of cities and towns during the interim to develop a suspension procedure that everyone can live with. He asked the Committee to consider his request, because there isn't enough time to draft another bill or amendments before transmittal takes place.

**EXHIBIT (sts40a01)**

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. COONEY** asked **Mr. Clinch** if he knew about amendments to the bill that were mentioned in **SEN. BARKUS'S** opening. He also asked if this bill makes the council more powerful. **Mr. Clinch** replied that the council has watched the bill from the drafting to discussions with Chief Brodehl. He said at this time he isn't sure if the proposed amendments address all of the council's concerns. He added that he isn't sure if the amendments even help the bill at this time. He didn't know if they can amend the part of the bill that has been repealed on the suspension procedure, or if they would even be allowed to change it back into the body of the bill. He said without having the opportunity to talk with the rest of the board of directors located throughout the state, he isn't sure if they could even accept the amendments that **SEN. BARKUS** has proposed.

*{Tape: 1; Side: A; Approx. Time Counter: 14.7 - 20.1}*

**SEN. COONEY** asked **SEN. BARKUS** where are the amendments, or are they conceptual amendments. **SEN. BARKUS** said he understands there is a battle going on between Chief Brodehl and Mr. Clinch, and he didn't know there were amendments until this afternoon.

**SEN. COONEY** asked **Chief Brodehl** if he would respond to the amendments, and what type of amendments did he have in mind. **Mr. Brodehl** replied they did have some close language that had been presented to Mr. Clinch approximately 8 to 10 days ago. That

language is in the new Section one regarding the right to a fair hearing on the suspension or termination of a firefighter's employment. Firefighters said they would agree to discipline and financial implications, rather than being discharged as a result of a decision by the mayor, city mayor, and jurors, and have the right to appeal. He said this is pursuant to the terms of the grievance procedure contained in the firefighter's contract agreement, which states: if the firefighter is covered by a collective bargaining agreement, or if the employee is not covered by a collective bargaining agreement pursuant to the terms of the municipalities personnel process, or if the personnel process has not been abided by the municipalities to the district court of the county where the firefighter was employed, the appeal to a district court must be made within 30-days from the date of discharge. He said that he and Mr. Clinch did discuss leaving the Fire Chiefs and the Assistant Fire Chiefs out of this process.

**SEN. LAIBLE** asked **Mr. Kukulski** if this bill supercedes the collective bargaining agreement that he has in his community. **Mr. Kukulski** replied, no. He said the 1899 law allows the final appeal to appear before the political body. The end goal he would like to see is the political appeal process not going before the political body, because it is an administrative matter. **Mr. Kukulski** said this bill cannot go through the collective bargaining process, because the state law specifically states that a firefighter has the right to go before the city commission to have their decision heard, and also have the right to appeal their decision. He said this bill is above and beyond what they currently have in statute.

**Closing by Sponsor:**

**SEN. BARKUS** closed, stating there has been some dialogue, and he hoped these issues can be resolved. He asked the Committee if they will accept some conceptual amendments. He said they need to be drafted before executive action is taken on this bill. He asked **SEN. ESSMANN** if he could have these amendments drafted.

**SEN. ESSMANN** responded that the amendments have to be presented in Committee tonight, due to transmittal taking place tomorrow.

**HEARING ON SB 478**

***{Tape: 1; Side: A; Approx. Time Counter: 20.1 - 26}***

**Opening Statement by Sponsor:**

**SEN. STEVEN GALLUS (D), SD 37**, opened the hearing on **SB 478**, Restrict emergency rulemaking for implementing a budget reduction.

He said this bill will not allow administrative rules to be used to implement an administrative budget reduction. This will apply specifically to providers for services under contract with the state. He said this bill is a result of the collaboration with the Department of Health and Human Services (DPHHS).

**Proponents' Testimony:**

**Keith Colbo, representing AWARE, Inc.**, stated this bill is the same concept which appeared in the last legislature as SB 305. He said the Appropriations Committee wrote language into the bill last session that concerned both the House and the Senate on the use of emergency rules to reduce budgets administratively. He informed the Committee that there was a 12-month period where emergency rules were used six times to reduce budgets. These reductions were done without a hearing for the impacted individuals or contractors who provided the service. He said SB 478 is modeled after SB 305 heard in the last legislature. He read the language which states: emergency rules may not be used for administrative budget reduction. He said it is the AWARE's intention that emergency rules are not appropriate for use as administrative budget reductions. He said both parties impacted by this, the client and the contracting agency, should have the opportunity to speak at the hearings. He added that current law excludes the public's right to know, and the public's right to impact on that rule.

***{Tape: 1; Side: B}***

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:** None.

**Closing by Sponsor:**

**SEN. GALLUS** stated that this bill in statute will go a long way in stabilizing the relationship between providers and the DPHHS.

He hoped that the end result from this bill will be in better provider services for the people that the state of Montana services.

**HEARING ON SB 500**

***{Tape: 1; Side: B; Approx. Time Counter: 3 - 16.4}***

**Opening Statement by Sponsor:**

**SEN. JOHN COBB (R), SD 9**, opened the hearing on **SB 500**, Revise election laws to facilitate voting by disabled persons.

**SEN. COBB** distributed written points how this bill will adjust the voting process for the disabled people. The bill standardizes the definition of a signature for the purpose of the election laws; Allows electors with disabilities to authorize an election official to sign election documents for them, or designate an agent for that purpose; Requires that future polling places comply with the ADA accessibility guidelines; and Requires that election officials ask an elector if the elector wants assistance.

**EXHIBIT (sts40a02)**

**Proponents' Testimony:**

**Beth Brenneman, attorney for the Montana Advocacy Program**, stated that the advocacy program supports SB 500. She said they put together a comprehensive program to ensure that people with disabilities can participate in the electoral process. She informed the Committee that when the comprehensive program met, they were able to identify issues that should be addressed with legislation. She closed stating she is available for any questions the Committee may have, and urged the Committee to pass SB 500.

**Elaine Graveley, Elections Deputy for the Secretary of State's Office**, said the office supports SB 500. She said the Office feels strongly that everyone should have the right to vote. She urged a do pass for SB 500.

**Robert Throssell, representing the Montana Association of Clerks and Recorders and the election administrators**, stated they support SB 500, and urged the Committee to give SB 500 a do pass.

**Brad Martin, Executive Director of the Montana Democratic Party,** said they strongly support SB 500. He said SB 500 increases access, and increases participation.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:** None.

**Closing by Sponsor:**

SEN. COBB closed.

#### **HEARING ON SB 490**

*{Tape: 1; Side: B; Approx. Time Counter: 16.4 - 23}*

**Opening Statement by Sponsor:**

SEN. JOSEPH (JOE) TROPILA (D), SD 13, opened the hearing on **SB 490**, Allow state employees to serve as election judges while on state time.

**Proponents' Testimony:**

**Michael O'Brien, Chief Deputy Secretary of State,** said that SB 490 is a simple bill. This bill solves a pending problem about the age of election judges. He said the average age of elections judges foreshadows pending shortages. This bill creates a new pool of election judges by allowing state employees to apply. SB 490 will allow the state employees to be paid the same as if they were still working at their job, plus this bill will give them an extra 8 hours as an incentive to work in the program. The program is entirely at the discretion of the department director. SB 490 will create a human resource managerial decision, rather than a direct fiscal impact. He said the bill was somewhat difficult to draft because they had to get all parties together; such as, Tom Schneider, Eric Feaver, and those in the Public Employees Union, who have offered their support for the bill. The Department of Labor and Industry (DLI), and Department of Administration (D of A) also concluded that SB 490 conforms with all of the state employee practices. He urged the Committee to pass SB 490.

**Robert Throssell, representing the Montana Association of Clerks and Recorders,** said the election administrators do not have a position on state pay. He said they do welcome the support for

anyone they can get as election judges. It is becoming a problem to find election judges and said they need all the help they can get.

**Vicki Zeier, Missoula County Clerk and Recorder, Treasure County,** informed the Committee that Missoula County used 32 county employees to work as election judges in the last election. She offered her assistance to the Committee for any questions they may have.

**Opponents' Testimony:** None.

**Informational Testimony:**

**John Andrew, Employment Relations Division (ERD), Department of Labor and Industry,** informed the Committee that he assisted with the draft of SB 490. He is available for any questions the Committee may have.

**Questions from Committee Members and Responses:**

**SEN. LAIBLE** asked **Mr. Andrew** if there should be a fiscal note for the bill, especially for state employees. **Mr. Andrew** said he wasn't sure, because they had the D of A involved in the drafting of the bill. **Mr. Andrew** asked **SEN. LAIBLE** if he could defer the question to someone from the Secretary of State's Office to comment on the fiscal note.

**Mr. Mike O'Brien, Secretary of State's Office,** responded that he didn't think the fiscal note has moved through the process yet. He informed the Committee that there will be a small fiscal impact to the state over the biennium of approximately \$14,000. He said a part of that will be a cost savings passed on to the counties, so the counties would not have to pay a state employee while they served as election judges.

**SEN. LAIBLE** commented that it looks like this bill is allowing a state employee an extra day off with pay.

**SEN. TROPILA** stated that he felt the state employee should take the day off as a vacation day.

**SEN. COONEY** commented that as he recalls, general election day is a state holiday. If a state employee serves in this capacity during the general elections, what would be the impact as a result of this. **Mr. O'Brien** said the state employee would take that day as a holiday, and then be given the incentive of the extra 8 hours. He said there are eight elections days over a four-year period. He said that two of those days are holidays

for state employees. The state employee would be compensated as if they had gone to work. **SEN. COONEY** asked about a primary election which isn't a holiday. The state employee would be paid their wage for that day from the state agency if they agreed to allow that employee to go be a judge, then that employee would receive an extra eight hours, but they wouldn't be paid for the eight hours at that time. **Mr. O'Brien** commented that he didn't feel there will be that many state employees that will participate.

**Closing by Sponsor:**

**SEN. TROPILA** closed.

**EXECUTIVE ACTION ON SB 478**

*{Tape: 1; Side: B; Approx. Time Counter: 23 - 25}*

**Motion:** **SEN. GALLUS** moved that SB 478 DO PASS.

**Discussion:** **SEN. LEWIS** discussed a budget cut, and that contractors would be exempt under this bill, and the rest of the agency will have to absorb that cut. He said when the agency has a million dollar budget and there is a 1 percent or 2 percent cut, then the contractors are exempt. He stated that he wanted to make sure that the Committee understood this.

**SEN. GALLUS** said he agreed with **SEN. LEWIS**. He said that they cannot cut up emergency rules, they will have go back to the standard rule, codify it, place a notice in the publication, so the people this affects will have time to organize a response, then, 30-days later, they will have a hearing. He said this can be done with the standard rules, but the language in this bill only states that it cannot be done overnight.

**SEN. LAIBLE** stated that he feels that this bill ties the hands and takes away the tools of the agencies.

**Vote:** **SEN. GALLUS** moved that SB 478 DO PASS. A vote was taken, but **SEN. GALLUS** asked that the Committee delay action on the Motion because there were no proxies.

HEARING ON SB 384

*{Tape: 2; Side: A}*

Opening Statement by Sponsor:

**SEN. KELLY GEBHARDT (R), SD 23**, opened the hearing on **SB 384**, Clarify authority of Secretary of State to adopt rules to implement duties.

He said this bill adopts Administrative Rules of Montana (ARM). He. said all this bill does is establish rules to make it easier for people to understand.

Proponents' Testimony:

**Jean Branscum, Secretary of State's Office**, said that the Secretary of State's office supports SB 384. She said it is a straight-forward bill. It clarifies what the Secretary's Office is already doing, and has been doing since the early 1970s. The office is given the duty in statute for format and style of the rules. She urged a do pass motion.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

**SEN. GEBHARDT** closed.

HEARING ON SB 390

*{Tape: 2; Side: A; Approx. Time Counter: 7.5 - 14}*

Opening Statement by Sponsor:

**SEN. JOE BALYEAT (R), SD 34**, opened the hearing on **SB 390**, Campaign reform -- clean campaign act.

**SEN. BALYEAT** informed the Committee that SB 390 is an election reform bill. It applies the discovery process to politics. He added that he had presented this bill in the last legislative session. The bill states that, in the last 10 days before election, the opponent must provide the other person they are running against with copies of any new advertisement so the other

person has an opportunity to respond to that ad. He said that SB 390 keeps campaigns from being negative, and sometimes prevents untrue advertising in the closing days of a campaign. He distributed a newspaper article which he read.

**EXHIBIT (sts40a03)**

**Proponents' Testimony:**

**Harris Himes, representing Montana Family Coalition,** said the Family Coalition strongly supports SB 390. He said there isn't any need for dissension. He urged the Committee to pass SB 390.

**Opponents' Testimony:**

**Jean-Marie Souvigney, Montana Conservation of Voters, Livingston,** said they opposed this bill two years ago, and they oppose this bill now. She said she has been involved with the Legislature for the last 16 years, and can appreciate the message that **SEN. BALYEAT** is trying to imply. She did say that the interpretation of this bill is very important; such as, Section 2 requires that political committees shall send copies of their material to all other candidates that are running for office, it doesn't mention the opposing candidate. It doesn't mention that the opponent has to be mentioned by name. It also requires that the materials be sent to all opponents, regardless of what they are running for. She discussed the ballot issue committee in Section 2, having to report to another ballot issue committee, and she feels this isn't clear. She added that it mentions the materials have to be provided to the media for publication, not when it is aired. She said, does this mean the opponents have to be mentioned in the notification, or is it intended to mean "only that opponent". She discussed Section 5 on civil liability, stating it doesn't give anyone the opportunity to talk about a particular bill. She urged the Committee to not pass SB 390.

**John Shontz, representing Lee Enterprises, Inc.,** informed the Committee that this bill is a continuation of a discussion that took place last session. He said there are several disconcerting issues in the bill that require the media to publish what is or what isn't an attack. Does this bill also require that the newspaper provide space and keep it open before it is run to press or when is the deadline. He said it isn't clear if the publications are attack ads. He inquired, "who makes that call, the Commissioner of Political Practices"?

**{Tape: 2; Side: A; Approx. Time Counter: 14 - 15.2}**

**Jim Fall, Executive Director of the Newspaper Association,** said his comments echo the words of **Mr. Shontz**. He said this bill will put the newspapers in serious imposition of subscription of advertisement placement, especially in a weekly newspaper that represents 73 of the association's 84 members. He is available for any questions the Committee may have.

**Greg MacDonald, President and CEO of the Montana Broadcasters Association,** stated that he represents the interests of 135 radio stations and 23 television stations in Montana. He informed the Committee that during the last election cycle, it can be argued that many campaign ads were downright negative. He added that SB 390, as currently written, will do little to counter that trend.

**EXHIBIT (sts40a04)**

**Brad Martin, Executive Director of the Democratic Committee,** stated they are in opposition to SB 390. He said it is a complicated bill in search of a complicated solution. He said the bill has good intentions, but the other opponents of the bill have addressed the serious problems to SB 390. He added this is an unnecessary solution when there are good laws in place to handle civil procedures.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. GALLUS** asked **SEN. BALLYEAT** about television ads. He added that he has never run a negative campaign ad, but his ads were always cut off by federal campaign ads. He said if there is a given amount of time, will the broadcasters be liable for civil charges or civil penalties with this bill if a person is cut off from a rebuttal. **SEN. BALLYEAT** said, "the media is reading into this bill a lot of ghosts that are simply not there". He informed the Committee if they look on lines 23 and 24, it states, "the response opportunity must be provided at the next practical publication of the broadcast date". He stated, if it isn't practical, the media doesn't have anything to worry about. He said this bill doesn't state that the next practical date has to be before the election.

***{Tape: 2; Side: A; Approx. Time Counter: 15.2 - 26}***

**SEN. GALLUS** asked **Brad Martin** if he would comment on his remarks about the discrepancies in the 2003 press release read in previous testimony by **SEN. BALLYEAT**. The article reads "Brad Martin, Executive Director for the Montana Democratic Party, called the bill an example of "good merit and good thinking".

(see Exhibit 3) **SEN. GALLUS** wanted to know what made him change his way of thinking in the last couple of years, and asked if it is because he had more time to look at the issue. **Mr. Martin** replied that is correct.

*{Tape: 2; Side: B}*

**SEN. BALYEAT** commented that he is willing to work with the Committee regarding the issues on penalties from the Commissioner of Political Practices.

**SEN. ELLINGSON** commented to **SEN. BALYEAT** that the media is having difficulties with Section 3 of the bill, the practical next publication date, and wanted to know if the Committee were to strike Section 3, and Section 2 curtailed to provide an expedited communication of ads to other parties in the last 10-days. **SEN. BALYEAT** commented that his bills are all numbered in the 300s, and didn't know why they were delayed until this time to be heard. He stated he would be willing to strike Section 3, and move on with the bill.

**SEN. LEWIS** commented that when he ran for the 2002 Legislative race, that a PAC came in on a Friday afternoon before election, and spent \$9,000 in a negative radio ad in the last four days. He said he made a response to that ad, and wanted to know if he would have been required to give a 10-day notice for his response. **SEN. BALYEAT** responded that this bill doesn't require a 10-day notice. This bill states in the last 10-days before election, and that is the only time this bill applies.

Closing by Sponsor:

**SEN. BALYEAT** closed. He stated that SB 390 only applies to copies, transcripts, or e-mails to give the opponents the opportunity to respond to the ads.

HEARING ON SB 495

*{Tape: 2; Side: B}*

Opening Statement by Sponsor:

**SEN. DUANE GRIMES (R), SD 39**, opened the hearing on **SB 495**, Revise campaign ethics laws; discourage certain solicitations of contributions.

He stated that his original idea for this bill, was to prohibit solicitation for contributions of those people that are under

regulatory control. He gave an analogy on **SEN. CROMLEY**, who told the story on the floor the other day about how bad **SEN. CROMLEY** felt when he had an appeal before a certain judge, who solicited him for campaign purposes. In Title 33-18-305, it states that political contributions are expressly prohibited by people that are in the insurance business. He stated that in discussing this with **Greg Petesch, Chief Legal Counsel**, prior to the legislative session, **Mr. Petesch** said that the law brushes up against a prohibition. **SEN. GRIMES** said the ideas are contained in Montana's ethic laws. He read from the bill on lines 28 and 29, is there for purposes of "if a candidate for a office is not included in Subsection 3, wishes to subscribe may". He discussed regulatory oversight or immediate control, such as; judges, PSC candidates, and the Insurance Commissioner's office, the Secretary of State, Attorney General, or the Governor who could exercise some control in the decisions that people make. He said on page 1, the last line states, "that a candidate for the Public Service Commission, district court judge, justice and/or chief justice of the Supreme Court, or State Auditor is discouraged from specifically soliciting campaign contributions." He informed the Committee that he kept using the word "actively" soliciting. He said they can still accept them, but there is a difference between accepting them from a bunch of lawyers if that person is a judge candidate, or going out there with an expressed list. He said specifically soliciting campaign contributions from an individual or principal of an individual whose economic and personal business interests are reasonably likely to come before the candidate, that candidate is elected.

**Proponents' Testimony:** None.

**Opponents' Testimony:** None.

**Informational Testimony:**

**Gordie Higgins, Commissioner of Political Practices**, informed the Committee that he is available for any questions they may have.

**Questions from Committee Members and Responses:**

**SEN. LEWIS** asked **Mr. Higgins** if this bill covers legislative candidates. **Mr. Higgins** said in speaking with **SEN. GRIMES** that intent wasn't there.

**SEN. COONEY** commented that looking at anyone running for office, people could be identified that would be impacted by a person's election. **SEN. GRIMES** responded that he meant to target those who exercise direct regulatory authority, or in the case of

judges....he stopped, and said this is different than someone having the power to act alone.

**SEN. ESSMANN** asked **SEN. GRIMES** to discuss the constitutional limitations the code commissioner's office has against using the word "prohibited", and "actively". **SEN. GRIMES** said that actively wasn't the problem, but prohibited is, because it is a free speech issue.

**SEN. ESSMANN** asked **Gordie Higgins** about the contribution disclosure when a candidate files. He wanted to know about disclosure not being available through electronics at this time, and if this bill will address any of these issues. **Mr. Higgins** said that feasibly the access to electronic disclosure could let them know who is getting what and to whom. He said what **SEN. GRIMES** is trying to convey is the discouragement of taking a stand. He feels that his office could address the issues of disclosure in a better way, but wasn't sure it was what **SEN. GRIMES** is trying to do in this bill.

Closing by Sponsor:

**SEN. GRIMES** closed. He said SB 390 was introduced to show the legislature's intent on what good campaign ethics are in regard to solicitations, not contributions, but the efforts of those who exercise a great deal of authority over the livelihoods of those in Montana's communities.

HEARING ON SB 389

*{Tape: 3; Side: A}*

Opening Statement by Sponsor:

**SEN. JOE BALLYEAT (R), SD 34**, opened the hearing on **SB 389**, Revise constitution to limit redistricting to plus or minus 1 percent deviation.

**SEN. BALLYEAT** distributed written testimony, which he read. (see Exhibit 5) He also distributed a handout on the National Conference of State Legislatures-Redistricting 2000 Population Deviation Table. The table shows the year 2000 Congressional Plan for all states, then the breakdown between the 2000 State House, and State Senate Plan for all states. (see Exhibit 6)

[EXHIBIT \(sts40a05\)](#)

[EXHIBIT \(sts40a06\)](#)

*{Tape: 3; Side: A; Approx. Time Counter: 5.4 - 13}*

**Proponents' Testimony:**

**Michael O'Brien, Chief Deputy Secretary of State**, stated they are in support of SB 389. He said if this ceases to be a political football, it will not be a problem for the Secretary of State's Office in 2015. He urged the Committee for a do pass.

**Esther Fishbaugh, representing self, Bozeman**, informed the Committee that she is 9/10ths of what a voter looks like. She said this is a partisan issue, and the legislature can go a long way by reducing this charge by not being partisan, and removing the penalty on jerrymandering. She asked the Committee to vote yes for SB 389.

**Opponents' Testimony:**

*{Tape: 3; Side: A; Approx. Time Counter: 13 - 25}*

**Joe Lamson, representing self**, also informed the Committee that he is a former citizen member of the 2000 Redistricting Commission. He stated his opposition for the bill, but gave his compliments to **SEN. BALLYEAT** for bringing this issue forth again. He thanked **SEN. BALLYEAT** for inserting the language of the Constitution. He said there was much confusion in the last legislature on SB 389, because they were unconstitutional. The bill causes bad public policy. His reason for the comment is, whether you live in Helena, or Wibaux, one size doesn't fit all. He said this is looked at in terms of placing state mandates on locals, as well as federal mandates on states. He stated that Montana being the fourth largest state, with its geographical situation, and diverse population, demands that a person has to show full representation to the variety of communities throughout the state, and make sure that everyone's voice is heard at this legislature, rather than nominated by one particular political point of view. He said there needs to be flexibility within the population so towns are not split, and communities of interest are not being split. He talked about the five percent being in conflict with the 14th Amendment. All of the court cases, using the five percent that they based the redistricting on which was chosen by the last commission, was based on upholding the 14th Amendment. He discussed the explosion of growth in population. If growth is to be balanced, the flexibility needs to be there to move the districts around by plus or minus five percent. He talked about a larger population deviation, which resulted in the domination of one party for the legislature. He commented that this has never been done before. He said when he was involved, it was their vision to break the districts up equally so everyone

would have an equal opportunity to elect someone who had their same point of view. He urged the Committee to give future commissions the five percent that will recognize the unique character of Montana communities, and take that into account when redistricting, so there would truly be a legislature that represents the richness of all the communities in Montana.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. SHOCKLEY** asked **SEN. BALYEAT** to explain what is "jerrymandering". **SEN. BALYEAT** gave a scenario: If the Republicans were in charge, but it was an evenly divided election, they would create a few districts that would lean heavily Democrats, and create more districts that would lean slightly Republican. He said the population of each district would be approximately equal, or randomly disbursed; such as, some of the older populated districts would be Republicans, and some would be Democrats, there wouldn't be any games played with the population size. He went on to say that in a typical jerrymandering, there was a down side, which meant that person would lose some of those slightly Republican districts if the margin is cut too thin. He said with new technology using computer generated models, the population jerrymandering doesn't have a downside. He said under current law, if the Republicans in Montana were in charge, they would be able to gain five house seats and two or three senate seats without risking anything by using the ten percent population discrepancy.

***{Tape: 3; Side: B; Approx. Time Counter: 00-00}***

**SEN. ELLINGSON** asked **Joe Lamson** about using the one percent redistricting deviation, are we losing values, and what is wrong with that. **Mr. Lamson** responded, yes. He said the Voting Rights Act has to be upheld, keep communities together, and individual towns and counties together.

**SEN. TROPILA** asked **Joe Lamson** about boundaries and precinct boundaries. **Mr. Lamson** said with the exception of precincts, they were recommended by the Clerks and Recorders, with the new census data being gathered specifically on precinct lines, so they can adhere to those that are matched in various other elections; such as, school board elections, and city and county elections.

**SEN. SHOCKLEY** commented about his friend **REP JAYNE**. He said that **REP. JAYNE** has a political problem. He stated that her district starts in Arlee, and goes clear to Cut Bank. She has five

counties, and approximately three of them don't have anyone in them because it is in the wilderness area, then her district stops just south of Cut Bank.

*{Tape: 3; Side: B}*

**Closing by Sponsor:**

**SEN. BALLYEAT** closed. He asked the Committee to pass this bill, because redistricting takes the politics out. He added that SB 389 also removes the incentive in engaging in jerryandering. The Constitution calls for a one percent, plus or minus. He distributed a handout that references the Montana Codes Annotated. (see Exhibit 7)

**EXHIBIT (sts40a07)**

**SEN. COONEY** asked **SEN. ESSMANN** if he could ask a question of the Secretary of State's Office. **SEN. COONEY** asked **Mark Simonich, Secretary of State's Office**, if this bill is asking for a referendum, should there should be a fiscal note. **Mr. Simonich** said most of these bills that come over to the Secretary of State's Office, indicate to submit to the electorate at the next general election in 2006. He said in view of this, there are a number of ballot issues, and candidates. He didn't know if that will constitute a fiscal note.

**HEARING ON SB 393, SB 395, SB 396, SB 398**

*{Tape: 3; Side: B; Approx. Time Counter: 8.5 - 25}*

**Opening Statement by Sponsor:**

**SEN. JOE BALLYEAT (R), SD 34**, opened the hearing on all four bills, **SB 393, SB 395, SB 396, and SB 398**.

**SB 393**, Partisan election of supreme court justices & cross-party endorsement.

**SB 395**, Const. referendum to require election of supreme court justices from districts.

**SB 396**, Limit campaign contributions for supreme court elections.

**SB 398**, Procedure in constitution for recall of state and local officers.

**SEN. BALYEAT** distributed written testimony, which he read. (see Exhibit 8)

**SEN. BALYEAT** informed the Committee that the reason they need to consider these bills is, the court, without self-restraint can start legislating from the bench; and the reason people must enact some sort of restraint on them, which is through these bills.

**{Tape: 4; Side: A}**

He said, otherwise, what you have is not just another legislative body, but a super legislature, with all of the power and none of the constraints which Montana's citizens have placed on its true legislature, a citizen legislature, who must live and work in the real world under the laws that it passed. He continued that this super legislature is so powerful that it can pass laws retroactively - true Orwellian (Orwellian >adjective relating to the work of the British novelist George Orwell (1903-50), especially the totalitarian state depicted in 1984) consequences. He said when legislators change laws, those changes only apply retroactively from that date onward. But when the Supreme Court does it, as they did with CI-75, that change goes back to the origin, and invalidates elections of the people, which was perfectly legal based on case law at the time of the election.

**EXHIBIT (sts40a08)**

**Proponents' Testimony:**

**Esther Fishbaugh, representing self, Bozeman,** said she has been very frustrated with the direction that courts have taken, not only in Montana, but all over the nation. She said about 20 years ago, the courts abandoned the strict interpretation of the law, and why we obey the law, as their jurisdiction of what they contribute to the balance of power. She said it was the philosophy that the justices needed to do social engineering from the bench, by taking a reluctant nation, and "move them into a more socially fair construct."

**Harris Himes, Montana Family Coalition,** stated he wasn't going to reiterate what was said in previous testimony, but commented that it is amazing how a small bar; such as, the Supreme Court, in Montana can hold so many people hostage. He said, "if you dare cross the line, you criticize the Supreme Court." He wanted to talk about an issue that hasn't been addressed yet. He said it is the Supreme Court's responsibility under the statute when rendering an opinion on a decision, that the judges are required

to make a written decision to go with it. He urged a do pass on all four bills.

**{Tape: 4; Side: A; Approx. Time Counter: 18 - 25}**

**Opponents' Testimony:**

**Chris Manos, Executive Director for the State Bar of Montana,** said even though the bills are well intended, and some people may feel some form of judicial reform is necessary, these bills do not do that. He discussed SB 393, the partisan election of supreme court justices in cross-party endorsement. He stated that in 39 of the 50 states, the judges must stand for election in one form or another by retention, a non-partisan and by-partisan election process. The election of judges is exclusive to the United states, and began in the early century. In 1999, a national survey, funded by the First Corporation, reported that 78 percent of Americans though elected judges are influenced by having to raise campaign funds. He said if people have problems with this by making it a partisan election, will not reduce the number in the minor election, but increases it. He said 81 percent of the people in the same survey agreed that politics influences these positions, so making it a partisan election doesn't reduce this statistic.

He said SB 395 could look attractive by having five of seven districts as the bill proposes, where Supreme Court justices are elected. He said the present system is adequate, there has been no disagreement and no testimony that states this is justified. He said that 22 of the 42 district judicial justices are currently elected, and are represented by those districts that have cases presented in them. He discussed the Supreme Court justices, who play a different role by looking at statewide issues. He continued his comments about the same survey he discussed above, and that 80 percent of Americans feel that our justice system is the best in the world. He urged the Committee to not pass these bills.

**Mary "Marty" Phippen, representing the Montana Association of Clerks of District Court,** stated their opposition to SB 398. She informed the Committee that the clerks of district court, as officials of local government, oppose these bills. She said the language is disconcerting, and urged a do not pass.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. COONEY** asked **Ms. Fishbaugh** about the recent supreme court decision on school funding, and did they have a social agenda. He wanted to know what facts she based her comments on. **Ms. Fishbaugh** replied that, Montana Teachers have not had adequate pay for some time. She said this is a union topic. She correlated this with the average salary from other states.

*{Tape: 4; Side: B}*

**SEN. COONEY** commented that is not a fact, but a personal opinion.

**SEN. COONEY** asked **SEN. BALYEAT** about SB 398, on page 1, line 24, it states a recall petition must be filed with the Secretary of State, and wanted to know what happens if the Secretary of State is the subject of the recall. **SEN. BALYEAT** responded that he didn't see this as problematic. **SEN. COONEY** commented that this is something that should be looked at.

*{Tape: 4; Side: B; Approx. Time Counter: 12.7 - 18}*

Closing by Sponsor: **SEN. BALYEAT** closed.

#### EXECUTIVE ACTION ON SB 302

*{Tape: 5; Side: A}*

Motion: **SEN. ELLINGSON** moved that SB 302 DO PASS.

Motion: **SEN. ELLINGSON** moved that AMENDMENT SB030201.ash BE ADOPTED.

#### EXHIBIT (sts40a09)

Discussion: **SEN. ESSMANN** said he is comfortable with this bill and the amendment.

The Committee members discussed the statewide database, and the data system that is available in every state, and is also recognized and approved by HAVA. **Elaine Graveley, Secretary of State's Office**, informed the Committee that the database is federally mandated.

A conceptual amendment, substitute bill for SB 302, was handed to the Committee Secretary, but no discussion on the bill nor executive action was taken on the substitute bill.

#### EXHIBIT (sts40a10)

**Motion/Vote:** SEN. ELLINGSON moved that SB 302 DO PASS AS AMENDED. Motion carried 10-1 by voice vote with SEN. SHOCKLEY voting no.

**EXECUTIVE ACTION ON SB 384**

*{Tape: 5; Side: A; Approx. Time Counter: 5 - 6}*

**Motion/Vote:** SEN. COONEY moved that SB 384 DO PASS. Motion carried unanimously.

**EXECUTIVE ACTION ON SB 389**

*{Tape: 5; Side: A; Approx. Time Counter: 6 - 10}*

**Motion:** SEN. BALYEAT moved that SB 389 DO PASS.

**Discussion:** The Committee discussed SB 389, and the consensus of the members is, there will always be politics involved when there is redistricting. SEN. SHOCKLEY, SEN. LAIBLE, and SEN. COONEY said they couldn't support this bill.

SEN. LEWIS commented that he would vote for the bill just to get it on the Senate floor.

SEN. GALLUS informed the Committee that redistricting was very good for Butte.

*{Tape: 5; Side: A; Approx. Time Counter: 16 - 18}*

SEN. BALYEAT explained what his bill will accomplish.

**Substitute Motion/Vote:** SEN. SQUIRES made a substitute motion that SB 389 BE TABLED. Substitute motion carried 6-5 by roll call vote with SEN. BALYEAT, SEN. ESSMANN, SEN. LAIBLE, SEN. LEWIS, and SEN. SHOCKLEY voting no.

**EXECUTIVE ACTION ON SB 390**

*{Tape: 5; Side: A; Approx. Time Counter: 18-25}*

**Motion:** SEN. GALLUS moved that SB 390 DO PASS.

*{Tape: 5; Side: B}*

**Discussion:** SEN. SHOCKLEY informed the Committee that he has a conceptual amendment. On page 1, line 26, delete the word "or" after office. He wanted to add another amendment on page 2, line 2, and a amendment on page 3, lines 17 through 24. There was discussion about the word "scheduled", the time the material hits the air. The Committee was informed that SB 390 is a revenue bill, and executive action can be taken after transmittal. The Committee decided to continue to get the bill out.

**Motion/Vote:** SEN. GALLUS moved that SB 390 DO PASS AS AMENDED. Motion carried 7-4 by roll call vote with SEN. COCCHIARELLA, SEN. COONEY, SEN. GALLUS, and SEN. SQUIRES voting no.

#### EXECUTIVE ACTION ON SB 393

*{Tape: 5; Side: B; Approx. Time Counter: 7 - 9}*

**Motion/Vote:** SEN. BALYEAT moved that SB 393 DO PASS. Motion failed 4-7 by roll call vote with SEN. BALYEAT, SEN. COCCHIARELLA, SEN. LAIBLE, and SEN. SHOCKLEY voting aye.

**Motion/Vote:** SEN. ESSMANN moved that SB 393 BE TABLED AND THE VOTE REVERSED. Motion carried 7-4 by roll call vote with SEN. BALYEAT, SEN. COCCHIARELLA, SEN. LAIBLE, and SEN. SHOCKLEY voting no.

#### EXECUTIVE ACTION ON SB 395

*{Tape: 5; Side: B; Approx. Time Counter: 9 - 12}*

**Motion/Vote:** SEN. BALYEAT moved that SB 395 DO PASS. Motion failed 5-6 by roll call vote with SEN. BALYEAT, SEN. ESSMANN, SEN. LAIBLE, SEN. LEWIS, and SEN. SHOCKLEY voting aye.

**Motion/Vote:** SEN. ESSMANN moved that SB 395 BE TABLED AND THE VOTE REVERSED. Motion carried 6-5 by roll call vote with SEN. BALYEAT, SEN. ESSMANN, SEN. LAIBLE, SEN. LEWIS, and SEN. SHOCKLEY voting no.

#### EXECUTIVE ACTION ON SB 396

*{Tape: 5; Side: B; Approx. Time Counter: 12 - 22}*

**Motion:** SEN. BALYEAT moved that SB 396 DO PASS.

**Motion:** SEN. GALLUS moved a conceptual amendment to raise the limit to \$21,500.

**Discussion:** SEN. BALLYEAT explained what this bill will do. He felt that the Committee should not table the bill at this time until SB 302, SEN. ELLINGSON'S bill has been completed through the House Committee. SEN. COONEY asked SEN. BALLYEAT about the Supreme Court Judges having limits, and he thought that the judges currently had limits. The question was deferred to Dave Bohyer, LSD, who explained to the Committee the limits for Supreme Court Judges. On page 1, line 17 of the bill, the current language for a candidate for any other public office, the individual contribution cannot exceed \$130. On page 2, line 7, the contribution from a political committee or for any other public office cannot exceed \$650. He said there is no limit on the amount of money a candidate can receive from any number of political committees. He said by placing this \$2,150 limit on the candidate that can be received from any political committee would be established at the same level as a state senator.

SEN. COONEY asked about the current limit level of other statewide candidates. He asked if a person is running for governor, is it higher than if they were running for secretary of state. Dave Bohyer, LSD, informed the Committee about the difference of the amount of money that can be contributed by one political action committee, and the amount of money that can be received by the candidate by all of the political committees. He said what SEN. BALLYEAT'S bill does in Section two is to establish that limit on receipt of the total contributions from political committees at \$2,150. Mr. Bohyer said there isn't any cap at this time on how much Supreme Court Judges can receive.

SEN. COONEY asked SEN. BALLYEAT if he designed this bill to address redistricting, and if so, if judges were running for districts could this be used for statewide elections. SEN. BALLYEAT said there are limits in the bill, and it is his intention that if a supreme court is in effect a "legislature", that these judges should be subject to the same type of campaign limits that legislators are subject to. He said the people of Montana placed limits on the legislators for a reason. He said that the people want a legislature that is elected by the common people, and the same with contributions, and the reason for the limits on monies from political committees. SEN. COONEY stated that the comments made by SEN. BALLYEAT that the supreme court is like the legislature, makes him unable to support this bill. He said if the dollar amount was raised for a candidate that is running for a statewide office, then he could endorse the bill.

**SEN. BALYEAT** asked if he could offer a substitute conceptual amendment to make it \$18,000, which would make the dollar amount received in contributions the same as the governor and the lieutenant governor. **SEN. ESSMANN** informed him there are two motions on the floor now.

*{Tape: 6; Side: A}*

**Substitute Motion/Vote:** **SEN. LAIBLE** made a substitute motion to adopt a **CONCEPTUAL AMENDMENT** to change the amount of \$2,150 on line 20, to \$18,000 **DO PASS**. Substitute motion carried unanimously by voice vote.

**Substitute Motion:** **SEN. GALLUS** made a substitute motion on a **CONCEPTUAL AMENDMENT** to strike Section two, part 4, and strike Section 3 in its entirety **DO PASS**. (Exhibit 13 was given to the secretary the next day after executive action-the reason that Exhibits 11 and 12 come after Exhibit 13)

**EXHIBIT** (sts40a13)

**Discussion:** **SEN. ESSMANN** asked **SEN. BALYEAT** to address the conceptual amendment. **SEN. BALYEAT** asked the Committee to not do this, because Section 3 is the guts of the bill.

**SEN. SHOCKLEY** said that the argument against the constitutionality has a very good chance, especially when it goes against the supreme court. He commented that the whole bill will not fail if that conceptual amendment that **SEN. GALLUS** proposed was passed. He deferred his comment to **Dave Bohyer, LSD**, who responded that it is his own opinion that Section 3 could be thrown out, and Section 1 and 2 would stand by themselves. **SEN. SHOCKLEY** said that **SEN. GALLUS'S** amendment would still stand, because it is still placing a limit on how much can be collected statewide. He said "the amendment is limiting the aggregate to \$18,000, which he said is the same as the Governor, and Lieutenant Governor, and right now there isn't a limit."

**SEN. LAIBLE** asked **SEN. GALLUS** if he could amend his amendment so the conceptual amendment will just address Section 3. **SEN. GALLUS** replied yes.

**SEN. GALLUS** withdrew his 1st motion.

**Motion:** **SEN. GALLUS** moved a **CONCEPTUAL AMENDMENT** to strike Section 3 in its entirety **DO PASS**.

**Vote:** Voice vote carried 9-2 with SEN. BALYEAT and SEN. SHOCKLEY voting no.

**Motion/Vote:** SEN. LAIBLE moved that SB 396 DO PASS AS AMENDED. Motion carried 7-4 by roll call vote with SEN. BALYEAT, SEN. COONEY, SEN. SQUIRES, and SEN. TROPILA voting no.

**EXECUTIVE ACTION ON SB 398**

*{Tape: 6; Side: A; Approx. Time Counter: 8 - 12}*

**Motion/Vote:** SEN. SHOCKLEY moved that SB 398 DO PASS. Motion failed 4-7 by roll call vote with SEN. BALYEAT, SEN. GALLUS, SEN. SHOCKLEY, SEN. TROPILA voting aye.

**Motion/Vote:** SEN. COONEY moved that SB 398 BE TABLED AND THE VOTE REVERSED. Motion carried 7-4 by roll call vote with SEN. BALYEAT, SEN. GALLUS, SEN. SHOCKLEY, and SEN. TROPILA voting no.

**EXECUTIVE ACTION ON SB 431**

*{Tape: 6; Side: A; Approx. Time Counter: 12 - 15}*

**Motion:** SEN. GALLUS moved that SB 431 DO PASS.

**Discussion:** Dave Bohyer, LSD, distributed an amendment sb043101.ash, and explained that the amendment adds new language for determining suspension, demotion, or discharge, and giving the firefighter the option how they want that disciplinary action served.

**Motion/Vote:** SEN. LEWIS moved that AMENDMENT SB043101.ash BE ADOPTED. Motion carried unanimously by voice vote.

**EXHIBIT** (sts40a11)

**Motion/Vote:** SEN. SHOCKLEY moved that SB 431 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

**EXECUTIVE ACTION ON SB 478**

*{Tape: 6; Side: A; Approx. Time Counter: 15 - 17}*

**Motion/Vote:** SEN. GALLUS moved that SB 478 DO PASS. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 490

*{Tape: 6; Side: A; Approx. Time Counter: 17 - 25}*

**Motion:** SEN. TROPILA moved that SB 490 DO PASS.

**Discussion:** SEN. LEWIS asked Mark Simonich, Secretary of State's Office, to explain what the bill will do. He said the whole issue of the bill seems to not apply to general elections, because it is a holiday. Mr. Simonich informed the Committee that the Counties will pick up the costs. He said the state employees already receive pay for a paid holiday. Other election days that are not a paid holiday, the employee will receive a paid day off. The incentive part of the bill for the state employees is any day they serve as an election judge, they will receive an additional paid day's wage. The bill specifies that day has to be taken within a 15-month period, and cannot be hashed out. Mr. Simonich feels that there will not be that many state employees that will offer to do this.

**Substitute Motion/Vote:** SEN. COONEY made a substitute motion that SB 490 BE TABLED. Substitute motion carried 9-2 by roll call vote with SEN. LEWIS and SEN. SHOCKLEY voting no.

EXECUTIVE ACTION ON SB 495

*{Tape: 6; Side: B}*

**Motion:** SEN. SHOCKLEY moved that SB 495 DO PASS.

**Substitute Motion/Vote:** SEN. GALLUS made a substitute motion that SB 495 BE TABLED. Substitute motion carried 9-2 by voice vote with SEN. BALYEAT and SEN. SQUIRES voting no. SEN. BALYEAT and SEN. SQUIRES voted no by proxy. SEN. COCCHIARELLA voted aye by proxy

EXECUTIVE ACTION ON SB 500

*{Tape: 6; Side: B; Approx. Time Counter: 2 - 3}*

**Motion/Vote:** SEN. COONEY moved that SB 500 DO PASS. Motion carried unanimously by voice vote. SEN. BALYEAT, SEN. COCCHIARELLA and SEN. SQUIRES voted aye by proxy.

EXECUTIVE ACTION ON SB 234

*{Tape: 6; Side: B; Approx. Time Counter: 3 - 4}*

**Motion/Vote:** SEN. COONEY moved that SB 234 BE TABLED. Motion carried unanimously by voice vote. SEN. BALYEAT, SEN. COCCHIARELLA and SEN. SQUIRES voted aye by proxy.

EXECUTIVE ACTION ON SB 367

*{Tape: 6; Side: B; Approx. Time Counter: 4 - 5}*

**Motion/Vote:** SEN. COONEY moved that SB 367 BE TABLED. Motion carried unanimously by voice vote. SEN. BALYEAT, SEN. COCCHIARELLA and SEN. SQUIRES voted aye by proxy.

EXECUTIVE ACTION ON SB 305

*{Tape: 6; Side: B; Approx. Time Counter: 5 - 10}*

**Motion:** SEN. COONEY moved that SB 305 DO PASS.

**Discussion:** SEN. COONEY distributed an amendment, sb030521.adb, and explained what the amendment does. He said when there is a vacancy in the Senate that will be filled by a special election, will be "filled the same as a U.S. Senate seat". SEN. COONEY and the Committee discussed the appointment of SEN. ESSMANN when John, Bohlinger was asked to be Lieutenant Governor.

**EXHIBIT**(sts40a12)

**Motion/Vote:** SEN. COONEY moved that AMENDMENT SB030521.adb BE ADOPTED. Motion carried 10-1 by voice vote with SEN. LEWIS voting no. SEN. BALYEAT, SEN. COCCHIARELLA and SEN. SQUIRES voted aye by proxy.

**Motion:** SEN. COONEY moved that SB 305 DO PASS AS AMENDED.

**Discussion:** The Committee discussed SB 305, and the manipulation and no incentive of political motivation. SEN. LAIBLE said he agrees with the election process, but the \$20,000 cost to the Senate districts will have an adverse effect when some of the districts do not have \$20,000.

Motion/Vote: SEN. GALLUS moved that SB 305 DO PASS AS AMENDED. Motion failed 3-7 with SEN. COONEY, SEN. ELLINGSON, and SEN. GALLUS voting aye. SEN. BALYEAT, SEN. COCCHIARELLA and SEN. SQUIRES voted no by proxy.

Motion/Vote: SEN. ESSMANN moved that SB 305 BE TABLED AND THE VOTE REVERSED. Motion carried 7-3 by roll call vote with SEN. COONEY, SEN. ELLINGSON, and SEN. GALLUS voting no. SEN. BALYEAT, SEN. COCCHIARELLA and SEN. SQUIRES voted aye by proxy.

EXECUTIVE ACTION ON SB 230

*{Tape: 6; Side: B; Approx. Time Counter: 10 - 18}*

Motion: SEN. GALLUS moved SB 230 be taken off of the table.

Discussion: SEN. ESSMANN informed the Committee this is the cross-party candidate endorsement.

Vote: Motion to take SB 230 off of the table failed 5-6 with SEN. BALYEAT, SEN. GALLUS, SEN. LAIBLE, SEN. LEWIS, AND SEN. SHOCKLEY voting aye. SEN. BALYEAT voted aye by proxy. SEN. COCCHIARELLA and SEN. SQUIRES voted no by proxy.

EXECUTIVE ACTION ON SB 421

*{Tape: 6; Side: B; Approx. Time Counter: 18 - 23}*

Motion: SEN. ESSMANN moved SB 421 be taken off of the table. Motion failed 4-7 with SEN. ESSMANN, SEN. GALLUS, SEN. SHOCKLEY, and SEN. TROPILA voting aye. SEN. BALYEAT, SEN. COCCHIARELLA and SEN. SQUIRES voted no by proxy.

**ADJOURNMENT**

Adjournment: 9:00 P.M.

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SEN. CAROLYN SQUIRES, Chairman

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CLAUDIA JOHNSON, Secretary

CS/cj

Additional Exhibits:

**EXHIBIT ([sts40aad0.PDF](#))**