



# State Administration and Veterans' Affairs Interim Committee

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

## 57th Montana Legislature

**SENATE MEMBERS**  
DON HARGROVE - CHAIRMAN  
JOHN BOHLINGER  
GLENN A. ROUSH  
KEN TOOLE

**HOUSE MEMBERS**  
LARRY JENT - VICE - CHAIRMAN  
EDITH J. CLARK  
RALPH L. LENHART  
ALLAN WALTERS

**COMMITTEE STAFF**  
SHERI HEFFELFINGER  
RESEARCH ANALYST  
DAVID NISS, STAFF ATTORNEY  
LOIS O'CONNOR, SECRETARY

## MINUTES

September 5, 2001

Room 102, State Capitol  
Helena, Montana

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

### COMMITTEE MEMBERS PRESENT

Rep. Allan Walters (Chairman)  
Rep. Larry Jent (Vice-chairman)  
Sen. John Bohlinger  
Sen. Ken Toole

### STAFF PRESENT

Sheri Heffelfinger, Research Analyst, LSD  
David Niss, Legislative Attorney, LSD  
Miko Owa, Secretary

### VISITORS LIST AND AGENDA

Visitors' list (ATTACHMENT #1)  
Agenda (ATTACHMENT #2)

### CALL TO ORDER AND ADOPTION OF MINUTES

Chairman Allan Walters called the meeting to order at 9:10 a.m.

Roll Call was taken, all Committee members were present. (ATTACHMENT #3)

### INTRODUCTION OF NEW STAFF

Sheri Heffelfinger introduced Miko Owa, legislative secretary.

## **ADMINISTRATIVE DUTIES**

**Sheri Heffelfinger, Research Analyst, Legislative Services Division**, introduced a resource notebook (EXHIBIT 1, SAIC Main File, HJR 8 Resource Notebook, Separate File, Legislative Services Division) to be used by Subcommittee members

## **REVIEW OF LEGAL ISSUES RELATED TO BUSH V. GORE**

**David Niss, Legislative Attorney, Legislative Services Division**, reviewed the case of George W. Bush v. Albert Gore, Jr., \_US\_ (No. 00-949) per his memo to Subcommittee members (EXHIBIT #2, SAIC Main File, HJR 8 Resource Notebook, Legislative Services Division). Primarily discussed was the December 12, 2000 Supreme Court decision.

The Florida Supreme Court ruling ordered manual recounts, specified that the intent of the voter was to be followed by the manual recount teams, but failed to adopt any standards as how to determine that intent.

Mr. Niss stated the meaning of the opinion and its implication to Montana and other states lies in the language of the opinion. The language is clear that the U.S. Supreme Court is speaking directly to the Florida Supreme Court and its opinion. In this opinion, the U.S. Supreme Court has chosen not to specifically state whether it is a due process violation for different counties to use different voting systems.

Mr. Niss noted an error in his memo on page 3, paragraph 6, item 7 which should read "(7) requires the adoption by state legislatures of uniform voting standards between counties, between technologies, or both."

Mr. Niss concluded that the opinion of the U.S. Supreme Court is just one of a number of factors that the Subcommittee needs to consider. He also stated that there may be very good policy reasons for discontinuing the punch card ballot systems, but the opinion does not give any legal reasons to do so.

Rep. Jent asked if Baker v. Carr provided equal protection in voting via the 14th amendment. Mr. Niss responded that it does address the issue of one person one vote, however it does not provide the Subcommittee with specific guidelines or rules of what standards need to be issued to assure the 14th amendment is upheld. Mr. Niss further stated that he knows of no case law that has set forth any such standards. Rep. Jent concurred that he is unaware of any such guidance for the Subcommittee via case law. Rep. Jent asked if the constitutional mandate simply stated that with respect to voting there be equal protection under the law. Mr. Niss stated that was the case.

## **REVIEW OF HJR 8 ISSUES, TASK FORCE STUDIES, AND FEDERAL AND STATE LEGISLATION ON VOTING SYSTEMS**

**Sheri Heffelfinger, Research Analyst, Legislative Services Division**, began with an overview of the study plan and summary of HJR 8 (EXHIBIT #3, SAIC Main File, HJR 8 Resource Notebook, Legislative Services Division). Ms. Heffelfinger identified the Subcommittee's tasks as:

- ? Identify current voting methods and systems
- ? Identify any current or anticipated problems with these voting systems
- ? Examine experiences of other states and nations
- ? Assess capabilities and costs of various technologies and potential impacts on state and localities
- ? Evaluate findings and recommendations of various other commissions
- ? Consider options
- ? Develop recommendations

Ms. Heffelfinger also identified the policy goals in HJR 8 as:

- ? Accuracy
- ? Security
- ? Accessibility
- ? Address problems with recounts and determination of voter intent

Ms. Heffelfinger stated that the Subcommittee needs to define the scope of the policy discussions. The policy goals listed can be either broadly or strictly interpreted. Based upon the prior list of tasks, the focus seems directed toward technology. However, other studies have included such non-technology issues as registration, polling place processes, voter education, and voter participation. She asked that the Subcommittee decide what questions it would like to address with respect to voting technology or the broader non-technological issues.

Ms. Heffelfinger then reviewed a Summary of Election Study Recommendations (EXHIBIT #4, SAIC Main File, HJR 8 Resource Notebook, Legislative Services Division). Ms. Heffelfinger addressed the primary themes in the election studies and some of their recommendations. The issues are as follows:

#### Voter Registration/Access

- ? Computerized network for voter registration
- ? Restoration of voting rights for people who have dropped off the rolls or are convicted felons that need their voting rights restored
- ? Special considerations for people with disabilities or language minorities

Ms. Heffelfinger cautioned that these recommendations did veer from the technology issue.

#### Absentee Voting

- ? Some studies want to make the process easier
- ? The Cal Tech study recommended abolishing absentee voting based upon issues of accuracy and security. Cal Tech suggested an early voting possibility.

#### Polling Place Process

- ? National Election day holiday
- ? Increased training for poll workers
- ? Increased pay for poll workers
- ? Have poll workers paid by employers in a fashion similar to jury duty
- ? Accessibility of polling places for people with disabilities

#### Equipment/Technologies/Ballot Design

NCFER Foundations Sponsored Study

- ? States should set performance benchmarks for each system used

- ? Federal government should determine uniform set of voting equipment standards, certification and decertification

#### CalTech/MIT Technology Project

- ? Replace punch cards, lever machines and older DREs with paper ballots optically scanned at the polling place by the voter, or with any other electronic technology proven in field tests

#### NCSL Legislative

- ? Improve election technology, systems, and ballot design
- ? Implement well-defined, consistent standard for what counts as a vote throughout the election process, ensuring accurate vote counts with minimal errors

#### NASS Secretaries of State

- ? Adopt and adhere to the Voluntary Federal Voting Systems Standards
- ? Modernize voting systems as necessary
- ? Implement well-defined, consistent standard for what counts as a vote throughout the election process, ensuring accurate vote counts with minimal errors

#### NCESR NACo and Clerks

States should:

- ? Determine what constitutes a vote for each type of voting equipment
- ? Require all new equipment to provide a means of minimizing voting errors
- ? Gather voting system data so equipment can be evaluated
- ? Adopt procedures to certify and decertify voting equipment
- ? Set ballot certification deadlines 60 days prior to an election

#### Montana Secretary of State Plan

- ? Encourage county election administrators to replace punch card ballots with either paper or optical scan ballots.

Sen. Toole asked for a definition to DRE. Ms. Heffelfinger identified direct reporting electronics as a system using no ballot or mechanical lever machine. The voter directly enters his or her choice via a touch screen or other device. The voter's choice is stored in the machine via a memory card. Montana currently has no direct reporting electronic machines.

#### Voter Education/Information

- ? NCFER and CalTech study did not offer recommendations
- ? NCSL recommended educating citizens on representative democracy and election processes and systems
- ? Montana Secretary of State Plan recommended greater outreach and education via public service announcements, improvement of teaching civics in schools, coordinate a "State Civics Day"

#### Information for election administrators/Perception of partisanship

- ? Provide a more professional development atmosphere for election administrators, possible certification and training
- ? Montana Secretary of State recommends providing election training to school clerks in conjunction with School Business Officials workshop as well as using the Secretary of State as a resource for election questions

### Strategic Planning

- ? NCFER recommended establishing an Election Administration Commission to administer election procedures as well as establishing a nonpartisan Elections Commission
- ? CalTech suggested the Federal govt. should establish and fund an election technology research program
- ? NASS recommended:
  1. Collect data and election information on a regular and consistent basis
  2. Federal government should be a resource for research and establishment of voluntary guidelines, which should remain a function of the Office of Elections Administration
  3. Any new study commission or task force should include Secretaries of States and other individuals responsible for election administration
- ? NCESR suggested that the federal Office of Election Administration should be funded to gather and disseminate information on running elections as well as having counties track error rates to evaluate and improve equipment and systems

### Funding/Costs

- ? Grant program or matching funds where the federal government would establish certain guidelines and provide funding to the states and the states would facilitate funding to the counties. Some of the recommendations are specific as to a 50/50 basis for that, while others include a formula based cost sharing analysis.
- ? Election class postage rate
- ? Difference in level of compliance recommended by each study. Some cases are 100% compliance with the Federal government where others recommend simply giving the money to the states and allowing the states to determine how to spend the funds.

Ms. Heffelfinger concluded that the committee should be aware when reading the detailed recommendations of the studies that the study questions are not necessarily uniform. Each study's recommendations should be taken in context with what they determined to be the issues. She further stated that the Subcommittee needs to determine which issues they want to address.

Ms. Heffelfinger referenced the CalTech "Fast Facts" document (EXHIBIT #5, SAIC Main File, HJR 8 Resource Notebook, Legislative Services Division) which refers to how many votes were lost in certain elections.

Ms. Heffelfinger referenced page 10 of the Report and Recommendations to Improve America's Election System by the National Commission on Elections Standards and Reform (EXHIBIT #6, SAIC Main File, HJR 8 Resource Notebook, Legislative Services Division). She reviewed the error rate as listed by the CalTech study and EDS. She continued on to page 11 where the error rates of voting systems in Florida and Michigan were reviewed.

### Overview of Federal and State Legislation

Ms. Heffelfinger reviewed the Election Reform Proposals Introduced in the 107th Congress (EXHIBIT #7, SAIC Main File, HJR 8 Resource Notebook, Legislative Services Division). The

bills introduced are both Federal Commission/Grant and Federal Commission/No Grant. There is only one Sense of the Senate resolution which advocates that the states should adopt uniform voting procedures. There are also bills which advocate uniform poll closing times, prohibiting the states from invalidating military ballots, repeal of motor voter laws, federal holiday for election, and electoral college changes.

Ms. Heffelfinger examined the state election reform activity as listed in the 2001 Overview of Election Reform in the States (EXHIBIT #8, SAIC Main File, HJR 8 Resource Notebook, Legislative Services Division) :

- ? Florida passed a law which bans the punch card and lever machines. They funded that recommendation with \$24 million dollars.
- ? Georgia has passed a bill that requires the adoption of uniform election equipment throughout the state by 2004. They have a pilot project to test the electronic touch screen.
- ? Idaho passed legislation that the states' voting systems need to meet Federal Election Commission standards and undergo independent testing by the National Association of State Election Directors.
- ? Indiana established a voting system improvement fund to reimburse counties for the costs of purchasing or leasing new voting systems. It also establishes a voting system education fund, so counties can teach voters how to use the new voting machines.
- ? Maryland requires the State Board of Elections to select and certify a new voting system to be used in all counties.
- ? Texas has several bills that would require various things from a Secretary of State study to phasing out the punch card machines.
- ? Utah allows counties to develop and implement their own standards.
- ? There are various other bills in 12 other states to update their voting standards.

Also contained in this document are certain standards for counting, recounting and registration. There are also several states like Montana that have established study commissions.

### **REVIEW OF VOTING SYSTEMS IN MONTANA AND RECOMMENDATIONS BY THE SECRETARY OF STATE**

**Bob Brown, Secretary of State**, stated the importance of HJR 8. He said that as people have confidence in the fairness and efficiency of the electoral process, they will have greater confidence in the rest of the government. Sec. Brown then reviewed the 3 systems of voting in Montana - optical scan, paper ballots, and punch card. Sec. Brown then distributed the Montana Voting Technologies list (EXHIBIT #9, SAIC Main File, HJR 8 Resource Notebook, Legislative Services Division) which provided the same information. Sec. Brown then introduced **Elaine Gravely, Chief Elections Deputy, Office of the Secretary of State**, to demonstrate the punch card voting system. In her experience, Ms. Gravely has never had problems with the punch card system. She has even had the opportunity to facilitate a recount and the numbers came back exactly the same.

Sec. Brown then returned to add that Montana has not experienced the large number of ballot issues which would then make it necessary to "butterfly" the punch card system. However, he feels it may be necessary in the future. He also pointed out that Montanans are not required to provide a reason to receive an absentee ballot. Now, almost 20% of Montanans vote via

absentee ballots. With this increase, the voting system becomes slightly more complex as you must mail a stylus and piece of styrofoam along with the ballot. Sec. Brown noted that the problem with the punch cards is that it represents a small minority of the voters in Montana and it is inherently a more complicated system than the human action involved by placing a mark in an oval or placing an "x" in the square of a paper ballot.

Sec. Brown requested that Montana follow the example of 31 other states who are looking to adopt legislation to create uniform voting systems. He also quoted an article which stated that providing voters with inferior equipment is in possible violation of their equal protection rights. Therefore, the state is opening itself up to legal liability as well. With three separate systems of voting, there is an invitation for a lawsuit via Brown v. Board of Education where the separate but equal standard can no longer apply. Sec. Brown then went on to address how the state can pay for creating a uniform system (EXHIBIT #10, SAIC Main File, HJR 8 Resource Notebook, Legislative Services Division). In four states, the cost for creating uniformity has been held by the state. However, he also mentioned that there are bills before Congress now which would allow for matching funds to the states for improving and updating voting systems. There is also the option for the county to borrow money that is not available through a federal grant. Sec. Brown then went on to discuss the Dodd bill which can create a philosophical argument as to whether it is appropriate for federal mandates to take over previously held state functions.

In conclusion, Sec. Brown feels we should adopt a watchful pose to see what the federal legislation is going to be.

Sen. Bohlinger asked that assuming some federal grants program is passed, is it up to the legislature of Montana to adopt a resolution stating that we will participate in a grants program. Sec. Brown replied that the legislature would not have to accept or appropriate the money as he understands it. If the state was going to pay for the upgrades, then it would take an appropriation by the Montana legislature to accomplish this. Sen. Bohlinger then asked what happens to those counties who chose not to participate. Sec. Brown responded that he would prefer that the counties not participating would realize the nature of the situation and take steps to convert to an optical scan system. However, he does recognize that it is possible to mandate that there will no longer be punch card voting systems.

Sen. Toole asked if there are mandates for the election process, then how does that affect schools. Sec. Brown thought the mandates would apply to any election including schools. Sen. Toole then asked if the school elections were included in the handouts provided by Sec. Brown. Sec. Brown clarified his previous answer by stating that Montana school elections are not overseen by his office and therefore he was not the best person to answer that question.

**Robert Throssell, Montana Association of Clerks and Recorders**, stated that the schools run their own elections, but can contract with the election administrator to run the election for them. They also have their own choice in the type of voting method they use. **Janice Doggett, Office of the Secretary of State**, referred to Title 20 in the election section which also refers back to Title 13 where there is a provisional law which states the Secretary of State must approve voting machines for all elections. With the reversion to Title 13, even though Title 20 states that the elections are separate, they are still guided by the same principals of Title 13. Sen. Toole then asked if the Secretary of State's office could provide the same information in relationship to voting methods for schools. Sec. Brown did not feel his office would have that information. However, Ms. Doggett suggested that the Montana Association of School Business Officials may have the information requested.

Rep. Jent asked if our operative task is to determine voter intent, can reasonable minds differ on how to determine voter intent, for example with the punch card system. Sec. Brown responded that to comply with the law, you cannot leave the determination of voter intent in the hands of the local elections administrator. Rep. Jent then responded that the options then would be to eliminate punch card technology that can be interpreted differently or issue statutes out of the Secretary of State's office to tell people how to count votes. Sec. Brown continued to say that by eliminating the punch card ballot and only utilizing the optical scan or paper ballot, we can be fairly prescriptive in our rules thereby leaving almost nothing up to judgement. Ideally, Sec. Brown continued, we should have uniformity throughout the state in an effort to protect everyone's rights and simplify the process as much as possible. Rep. Jent then asked if it would be more difficult for reasonable minds to differ determining voter intent for paper ballots and optical scan. Sec. Brown agreed that it would be more difficult. Rep. Jent commented that if we left the paper ballots alone, then the cost for updating the Montana voting system would be halved based upon EXHIBIT #10.

### **OVERVIEW OF VOTING SYSTEMS AND ISSUES AS PRESENTED BY COUNTY ELECTION ADMINISTRATORS**

**Robert Throssell, Montana Clerks and Recorders Association**, introduced several clerks and recorders. Mr. Throssell then stated that there are no problems with the election systems in Montana because the political parties watch elections, but most importantly, the people of Montana expect that elections will be run fairly. Though there are strengths and weaknesses to every system, what it really comes down to is those people administering the elections. Mr. Throssell then stated that the purchase cost of new voting equipment is not the only thing to consider. Once they are purchased, there is ongoing maintenance and cost for setting up the system. In addition, optical scan systems are not cost effective for administering smaller elections.

**Sue Haverfield, Clerk and Recorder/Surveyor, Flathead County**, provided a history of voting systems in Flathead county and a detailed demonstration of the punch card system for both absentee and poll voting. Ms. Haverfield stated that the success of the voting system in Flathead county is largely due to voter education and acceptance, demonstrations at the polls, refreshment training, and training of election judges to enable them to provide the proper assistance and preparation. All preparations for Flathead county elections are done in house, except for the printing of the actual ballot which is contracted out. Ms. Haverfield provided a packet of information to the members of the committee (EXHIBIT #11).

Sen. Bohlinger stated that the system seemed very complex and requires a lot of precision and hand operation. How does it compare in cost to printing and manufacturing a paper ballot? Ms. Haverfield stated that she did not know the comparison cost, but felt the system was no more complex than the optical scan or paper ballot. Ms. Haverfield further stated that they have had very few problems in Flathead county with the punch card system and spoiled ballots. There is also a board in Flathead county which is used to determine voter intent. Sen. Bohlinger then asked if a federally subsidized program was available to establish a national standard for casting ballots, would the people of Flathead county be willing to accept the federal offer and move forward with a new system? Ms. Haverfield expressed that she did not believe there would be a desire in Flathead county to do so. She said she has yet to see a voting system that impresses her more than punch cards.

**Duane Winslow, Election Administrator, Yellowstone County**, reviewed the optical scan



voting system. Mr. Winslow provided the Subcommittee with ballot examples (EXHIBIT #12) followed by a detailed description of the ballot protection systems in place. Mr. Winslow stated that the major cause of error in optical scan ballots is the over vote or the under vote. The machine will discard such votes and the vote will be sent to a resolution board to determine voter intent. Mr. Winslow felt advantages to the optical scan system are as follows:

- ? User friendly
- ? Ballot provides a better picture of voter intent
- ? Ability to correct a ballot while maintaining an original record
- ? Conducive to absentee ballots
- ? Works well for mail ballot elections
- ? Very accurate

Mr. Winslow felt the disadvantage to be:

- ? Fairly costly system (approx. \$0.30 per ballot)

**Bonnie Ramey, Clerk and Recorder and Election Administrator, Jefferson county,** spoke about how a small county was able to purchase an optical scan ballot system. In Jefferson county, new business increased their taxable evaluation by over 50% which provided the funds needed to purchase a new election system. Previously, Jefferson county had been a punch card county, but the man hours as well as the cost in maintaining the system were over what Jefferson county could afford. The system was then sold to Lewis & Clark county and Silverbow county. The deciding factors in purchasing the optical scan system was that the system provided a paper ballot the voters could see. Another factor was that surrounding counties had optical scan systems so in case of an emergency, they would be able to use equipment in a surrounding county. Ms. Ramey did state that Jefferson county could not afford to use the system in every election, therefore they use mail ballots instead.

**Sandi Boardman, Clerk and Recorder and Election Administrator, Blaine county,** reviewed the use of paper ballots (EXHIBIT #13). Ms. Boardman stated that the paper ballots work very well for her small county. Money is also a deciding factor as to why the county chooses to stay with paper ballots.

Sen. Toole asked if the county has to do separate print runs due to the rotation of the candidates. Ms. Boardman responded affirmatively. She also stated that initiative ballots were printed on yellow paper.

Sen. Bohlinger asked how the election judges tallied the votes. Ms. Boardman responded that a tally book is used which contains each person's name or initiative and tick marks are used to tally the vote. Rep. Walters then asked if one person was tallying the votes in front of witnesses. Ms. Boardman responded that two people tally and one person reads from the ballot. Rep. Walters then asked if the two people were from different parties. Ms. Boardman responded that neither party submits a list of recommended election judges. She also stated that the two people must come up with the same figure when counting votes.

**Linda Johnson, President, League of Women Voters of Montana,** provided a history of the League of Women Voters and their goals. The League of Women Voters has completed a survey that collects objective data about voting election systems in our state. Results are now being tallied. Results of the survey are less uniform than anticipated leading to the belief that

there is a great deal of confusion with respect to the voting process. The League also held a symposium titled "Focus on the Voter" in regard to election administration matters. Ms. Johnson stated that she would provide a copy of the voting systems portion of the symposium to Ms. Heffelfinger. The League advocates the following in regard to voting systems:

- ? Accuracy
- ? Easy to understand and operate
- ? Appropriate for those with disabilities as well as those who are disabled
- ? Systems that alert people to the potential for over votes or under votes

The League is urging the federal government to study best practices with regard to voting equipment. The League does not support mandates that tell state governments and counties the type of voting system they should use. However, the League believes that it is an appropriate role for the federal government to conduct the research and provide the information. The League is neither for nor against any particular voting system.

Sen. Toole asked if the survey administered by the League of Women Voters surveyed systems used in the schools as well. Ms. Johnson responded the League did not.

### **PUBLIC COMMENT**

Sen. Toole recalled Robert Throssell. Sen. Toole then asked if school elections are the only other kinds of elections where there is general residency voting. He also inquired as to how many counties have a contractual agreement with schools and the county election administration. Mr. Throssell replied that you simply need to be a resident of the school district. He also responded that he feels schools are too informal in their voting practices. The school districts can contract with the county administrator. Mr. Throssell was unaware of how many counties contract, but stated he could provide that information at a later date.

Sen. Bohlinger recalled Secretary of State Brown. Sen. Bohlinger then asked what efforts are being made to expand the voting process through the internet. Sec. Brown responded that the internet voting was in the experimental stage, but felt that in a few years it would become more commonplace. Currently, there has been a primary election in Arizona which used internet voting. Though the process was not trouble-free, there were fewer problems than anticipated. Also, some overseas military personnel have been allowed to vote via the internet. One of the key reasons for not using internet voting is that the anonymity of the voter cannot be maintained. Sen. Bohlinger then asked if the greatest problem with voting on the internet is the anonymity. Sec. Brown responded that we don't want people to vote more than once, but the anonymity is an important factor as well. Sen. Bohlinger then asked how they overcame this problem in Arizona. Sec. Brown responded that he did not know if they were able to overcome this problem.

### **STAFF REVIEW OF STUDY QUESTIONS AND RESEARCH TASKS**

Ms. Heffelfinger then reviewed the study questions and research tasks (EXHIBIT #14, SAIC Main File, HJR 8 Resource Notebook, Legislative Services Division). Ms. Heffelfinger wanted to make an addition to the first study question based upon Sen. Toole's questions regarding the voting systems used by the school districts. Ms. Heffelfinger asked the Subcommittee if she should proceed in examining this question. Sen. Toole responded that he would be very interested to see what type of voting was taking place as school districts affect all counties. Ms. Heffelfinger

responded that she would add that request to the study questions.

Ms. Heffelfinger then asked the study question "Have any problems been encountered with these systems and what are they?". She commented that the Subcommittee had received a very general overview of the voting systems, but one of the key questions for future meetings is what type of mistakes do voters make in utilizing each system. Mr. Niss commented that some standards for determining voter intent is not only needed from county to county, but from technology to technology regardless of where the technology is used. Mr. Niss provided questions to Ms. Heffelfinger that will be incorporated into the study questions.

Ms. Heffelfinger inquired of the Subcommittee if they were fully aware that no new research will be created through this Subcommittee and that any information they receive is somewhat limited by the scope of what others have done. In saying this, she is asking if the Subcommittee will have enough information to proceed and make informed recommendations at the end of the process. The Subcommittee responded affirmatively. Ms. Heffelfinger responded that she would then provide an issues brief for the Subcommittee.

Rep. Jent asked of Ms. Heffelfinger and Duane Winslow how conflict resolution occurs in Montana with optical scan ballots. Mr. Winslow responded that they rely on a resolution board, but there are no specific standards set from county to county. Mr. Niss also responded that there may be similar standards between counties, but those standards are unwritten. Mr. Jent then commented that if there is a technology for which the standard is difficult to apply without great risk of disparate treatment of certain voters, then he feels they should discontinue that particular technology. Rep. Jent then asked of Mr. Winslow what types of errors he encounters with the optical scan ballots. Mr. Winslow responded that voters sometimes circle the name or the oval rather than fill in the oval or the voter may fill in multiple ovals and then place an "x" through one. Rep. Jent then commented that there needs to be a limit to the number and or types of mistakes that a voter can make on a ballot and still be counted. Rep. Jent is unsure what those limits should be, but would like to review that option. Mr. Winslow concurred that it is within the scope of the Subcommittee to make those types of recommendations. Rep. Jent then asked what Mr. Winslow does when a voter circles a candidate. Mr. Winslow responded that if that was the only name circled, then the resolution board would count it as a vote. Rep. Jent then asked how often this happens in an election. Mr. Winslow responded a small percentage, roughly 2%, make errors and of those approximately 0.5% cannot be resolved. Rep. Jent then asked what the total average percentage of under votes are. Mr. Winslow did not know, but would provide Rep. Jent with accurate answers to all of his percentage questions. Mr. Jent then asked about over votes as they would be more problematic. Mr. Winslow responded that the system does accept under votes if the remainder of the ballot is filled out correctly, so the only ballots sent to the resolution board are with respect to over votes or no votes.

Ms. Heffelfinger then continued to state that she would continue to gather and analyze information. She will also coordinate testimony with Montana clerks and recorders to help determine where Montana stands with respect to other studies that have already been done. The next meetings theme is problem analysis, where there will be more in-depth discussion of the problems people are having with voting systems.

With respect to study question #3, Ms. Heffelfinger stated the broad interpretation of the resolution is that all technologies need to be explored. She then asked if the Subcommittee wanted to proceed in that direction or specifically focus on technologies that they would be interested in. Sen. Toole responded that he would be very interested in reviewing the internet

voting system as well as the mail in ballot system in Oregon.

Ms. Heffelfinger asked visitors if there was any particular Montana study or survey that they are aware of which could help the Subcommittee. The visitor's section responded negatively. Ms. Heffelfinger then asked of Mr. Throssell if the Clerks and Recorders were going to be conducting any surveys. Mr. Throssell responded negatively, however they will be meeting with the Secretary of State to discuss the issues presented in this Subcommittee meeting and will report back any new information. Ms. Heffelfinger then concluded that she would not be initiating any new surveys, but would appreciate any information that the Clerks and Recorders Office could provide.

#### **REVIEW OF AGENDA, INSTRUCTIONS TO STAFF, ADJOURNMENT**

Ms. Heffelfinger asked if the meeting dates and themes were acceptable to the Subcommittee (EXHIBIT #15, SAIC Main File, HJR 8 Resource Notebook, Legislative Services Division). Sen. Bohlinger asked that the October 26 meeting be moved. The Subcommittee agreed to move the meeting to November 14. Sen. Toole asked if the December 7 meeting could be changed. The Subcommittee agreed to move the meeting to December 5. Sen. Bohlinger asked if the February 21-22 meeting could be changed. The Subcommittee agreed to move the meeting to February 28 -March 1.

Sen. Toole then stated that he would like to hear from a representative from MASBO and would like to receive a comparison of the turnout for the last general election and school election. Ms. Heffelfinger stated she would research that.

The meeting was adjourned at 4:10 p.m.