



State Administration and Veterans' Affairs Interim Committee

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57th Montana Legislature

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RESEARCH ANALYST
DAVID NISS, STAFF ATTORNEY
LOIS O'CONNOR, SECRETARY

November 14, 2001

MINUTES

Room 102, Capitol
Helena, Montana

COMMITTEE MEMBERS PRESENT

Rep. Walters
Rep. Jent
Sen. Toole
Sen. Bohlinger

STAFF PRESENT

Sheri Heffelfinger, Research Analyst
David Niss, Legal Analyst
Miko Owa, Secretary

AGENDA & VISITORS' LIST

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

CALL TO ORDER AND ROLL CALL

Rep. Walters called the meeting to order at 9:07 a.m. Roll call was noted and all members were present (ATTACHMENT #3).

ADOPTION OF MINUTES

Sen. Toole moved to adopt the minutes of the September 5, 2001, meeting (ATTACHMENT #4). The motion passed unanimously.

STAFF REVIEW

Sheri Heffelfinger, Research Analyst, Legislative Research Division, reviewed the agenda and a compilation of Montana Voting Technologies (EXHIBIT #1).

David Niss, Legal Analyst, Legislative Research Division, presented a memorandum (EXHIBIT #2) that reviewed current statutes and their implications governing voting equipment, counts, recounts, and determination of voter intent. In his review, Mr. Niss referenced *Selected*

MCA Sections Governing Voting Equipment, Counts, Recounts, and Determination of Voter Intent (EXHIBIT #3) prepared by Ms. Heffelfinger. In particular Mr. Niss reviewed the opinion in Bush v. Gore discussed in the memo presented September 5, 2001. Topics reviewed were:

- standards for counting a vote to determine voter intent
- persons conducting the recounts and their training to apply the standard
- recount timing that precludes inclusion of all vote totals
- allowance of objections by persons observing ballot count/recount

Mr. Niss concluded that two requirements of the Bush v. Gore opinion are that of equal standards for votes using the same voting technology and the need for training of election judges to ensure equal application of those standards.

OFFICE OF THE SECRETARY OF STATE

Janice Doggett, Chief Legal Counsel, Office of the Secretary of State, updated the Subcommittee on the activities of the Secretary of State's Office with respect to elections including a two-day election workshop, Clerk and Records Convention, and the production of an Election Judges Handbook. In addressing the issues around the Bush v. Gore case, Ms. Doggett stated that there are two important points: (1) the federal government is loath to involve themselves in state government affairs, especially in the case of elections if the states have done an adequate job, and (2) the U.S. Supreme court gave the information needed to do an equal protection analysis of our own. Ms. Doggett then provided a letter to the Subcommittee discussing the money saved from one county moving to the optical scan from the punchcard system (EXHIBIT #4).

Ms. Doggett reviewed a report from the University California, Berkeley entitled Counting All the Votes: The Performance of Voting Technology in the United States (EXHIBIT #5). From this report, Ms. Doggett stated that paper ballots do not work in large counties, lever machines do not work well in big elections, and punchcard voting systems proved more error-prone for everyone. The recommendation from the Secretary of State's Office is to adopt a standard of rules for each technology and have those adopted legislatively or through the Secretary of State's Office. In addition, Ms. Doggett asked that the Subcommittee look at differentials in systems that may cause us to determine that one system has more value to the voters of Montana.

Sen. Toole asked Ms. Doggett whether the Berkeley study stated that paper ballots do not work in large counties. Ms. Doggett responded affirmatively. Sen. Toole then asked what classified as a small county. Ms. Doggett responded that any county currently using paper ballots in Montana would be considered a small county. Sen. Toole then asked about paper ballots being used in large counties for school elections. Ms. Doggett responded that voter turnout is the determination of a small county, not actual county population. Sen. Toole then asked if voter turnout was set aside, when we are talking about 15% in Yellowstone County, is that rising to the level that the report did when it identified a problem with paper ballots. **Duane Winslow, Election Administrator, Yellowstone County**, responded that large school districts contract with the county and smaller districts use paper ballots. Sen. Toole then asked if the Subcommittee should be concerned with the broad use of paper ballots in school elections. Ms. Doggett responded no, because in those cases where they have found that paper ballots do not meet the needs, they have gone to other types of systems. Sen. Toole then asked if the study looked at both efficiency and accuracy. Ms. Doggett responded yes.

Sen. Bohlinger asked if the Berkeley study indicated what the maximum number of votes was that could be manually counted in an efficient way. Ms. Doggett responded that the study did not. Sen. Bohlinger then asked if counties had established this amount based on their experience. **Sandi Boardman, Blaine County**, responded that her experience was that approximately 400 voters could be handled effectively.

Bob Brown, Secretary of State, commented on the use of paper ballots in Canada and its continued prevalence there.

COUNTING AND RECOUNTING VOTES (highlights from testimony)

Ms. Heffelfinger reviewed an issues and options list derived from the previous discussion and the broad directions that the Subcommittee may take (EXHIBIT #6). Ms. Heffelfinger identified three options that the Subcommittee may take:

- Statutorily set uniform technology or statutorily set uniform standards by which counties determine what technologies they use
- Statutorily set standards for each technology, whatever the county decides to use
- Direct the Secretary of State's Office to adopt uniform rules for each technology that is used and provide guidelines

Following, Ms. Heffelfinger stated that each panel was to address how voter intent was established and that each panel represents a different type of voting system. In addition, she asked that panel members state what their desired outcome would be for the study.

Optical Scan Ballots

Panel Members:

- Mike Murray, County Commissioner, Canvassing Board Member, Lewis and Clark County
- Paulette DeHart, County Election Administrator, Lewis and Clark County
- Jim Reno, County Commissioner, Canvassing Board Member, Yellowstone County
- Duane Winslow, County Election Administrator, Yellowstone County
- Commissioner Peggy Beltrone, Canvassing Board Member, Cascade County
- Rita Hudak, County Election Administrator, Cascade County
- Vickie Zeier, Missoula County and School District Election Administrator
- Nancy Hanford, Precinct Election Judge, Chouteau County
- Janice Doggett, Chief Legal Counsel, Secretary of State's Office

Ms. Heffelfinger asked the panel what kinds of mistakes voters make on the ballot and how often the mistakes occur?

Mr. Winslow responded that the three most prevalent issues are the under-votes, over-votes, and blank ballots.

Mr. Murray added that there is a procedure in place for voters to request a new ballot if they have spoiled the one they were given. He continued to comment that some people are too embarrassed to ask for a new ballot.

Ms. Heffelfinger asked if it is easier to define what a vote is rather than what a vote is not.

Ms. DeHart responded that she has difficulty training election judges because there is a gray area in determining voter intent. Ms. DeHart then provided sample ballots to the Subcommittee (EXHIBIT #7). She stated that if the Subcommittee decides to establish rules/guidelines in determining voter intent, then there should not be a gray area.

Ms. Heffelfinger asked what type of training or orientation election judges receive regarding mistakes voters make on ballots.

Ms. DeHart responded that there is a training on election day prior to the first votes coming in.

Ms. Heffelfinger then asked how the county commissioners define those procedures and what is the process between the county commissioners and the clerk and recorder in defining whether a tick mark is going to count as a vote.

Ms. DeHart responded that the county commissioners are involved in the canvassing of votes after the election. In the canvassing of votes, you are not looking at the individual ballot. The commissioners are also involved in recounts. If there is not a recount, then the commissioners are not involved.

Mr. Murray stated that one problem the Subcommittee should consider is increased monetary compensation to election judges.

Ms. Heffelfinger asked if paper ballots were similar to optical scan ballots in terms of the mistakes that voters make.

Ms. Hanford responded that it was difficult for her to make that comparison because she has never voted on an optical scan machine. She said that a large number of people make mistakes because they simply do not read the instructions on the ballot.

Sen. Toole asked about the recruitment issue. The panel responded that the issues hindering recruitment are taking time off, the day is too long, and the pay is too low. Ms. DeHart stated that in her county, they are discussing incentive options from yearly pins to recognition dinners.

Sen. Bohlinger asked if there was difficulty recruiting in Yellowstone County. Mr. Winslow responded yes. Sen. Bohlinger then asked if the problem could be solved if people were paid more than minimum wage. Mr. Winslow responded that it would help, but that it is only a component of the problem. Ms. DeHart responded that she would like to see civic organizations adopt a polling place. Sen. Bohlinger then asked if efforts had been made to recruit service groups. Mr. Winslow responded that the attempt has been made with very little success.

Sen. Toole then asked if there was a provision to allow a person time off to assist with elections, what would be the number of days per year. Ms. Zeier responded approximately 3 days per year not including special elections. Sen. Toole asked Ms. DeHart if there were a greater number of volunteers when there is a state holiday for presidential elections. Ms. DeHart responded that the problem was still the same. Mr. Winslow responded that the difficulty decreases in his county.

Sen. Bohlinger asked about recruiting election judges from student groups and civics classes. Ms. DeHart responded that she has pursued that idea with no success. Ms. Hanford also responded that the best judges are those that have served for over 2 years, therefore; bringing in new judges makes the job of a chief judge much more difficult.

Ms. Heffelfinger asked about recruitment and training issues in reference to the optical scan ballots specifically and when the computer counts the ballot and when the election judges participate. Ms. Zeier responded that in her county the election judge hands out the ballot and provides general oral instruction but does not determine voter intent. The counting center is where the ballots are scanned through the machine and any ballot that has a misread is sent to the resolution board to determine voter intent. Ms. DeHart responded that her county provides training prior to the election and her election judges determine what resolution board to send the ballot to. Ms. DeHart stressed that all election judges working in a counting center are sworn in by oath. In addition she stated that no single judge is allowed to handle the ballot alone, they are always in pairs. Mr. Winslow stated that if you are looking at voter intent, the difference between paper and optical scan is that optical scan is a central count, where you have more control and fewer people. With a manual count, you have judges at each polling place determining voter intent.

Sen. Bohlinger asked what has been done to educate the electorate about the procedure required for getting a new ballot. Ms. DeHart stated that there are instructions in every voting booth.

Ms. Heffelfinger asked if all optical scan equipment was calibrated in the same way. Ms. Zeier stated that the ballots for the optical scan machines are relatively the same and that the processing board from each scanner can be placed in another machine in another county and the ballots can then be processed. Ms. DeHart stated that her county did not have a board, but a program that she could take to another county to scan her ballots.

Ms. Heffelfinger asked the panel if they had the same machine, would it count the votes the same way in each county. Ms. Zeier responded affirmatively. Ms. Heffelfinger then asked if the votes would be counted differently if there was a different model. Mr. Winslow responded that if the same mistake is made on each ballot, then the machine will treat the mistake the same.

Ms. Heffelfinger asked if each county has the same way of counting mistakes on ballots. Ms. DeHart responded that ballots with mistakes go to a resolution board to determine voter intent and then the ballot is scanned again.

Ms. Heffelfinger asked if all counties used resolution boards. The panel responded affirmatively.

Rep. Walters asked what the minimum type of mark was that the resolution board looked at. Mr. Winslow responded that machines are calibrated to look at the smallest dot. If the ballot is kicked out, then the ballot goes to the resolution board for determination.

Commissioner Reno stated that the readability is very high on the instruction ballots and that may be something the Subcommittee wants to look at.

Ms. Heffelfinger asked what actions should be taken by the Secretary of State or by the Legislature to standardize between different types of systems. Ms. Zeier responded that she

would like to see additional guidance for the resolution board with respect to voter intent.

Sen. Toole asked if the ballot was given to the clerk and recorder to determine voter intent if the resolution board could not decide. Ms. Zeier responded that the clerk and recorder can make the final decision, but the reality is that if the resolution board cannot decide, the vote is not counted for either candidate. Mr. Winslow added that there is really nothing in law that speaks to the issue other than the resolution board is to determine voter intent. Mr. Winslow then provided an example of common mistakes made (EXHIBIT #8). Mr. Murray stated that you cannot draft legislation or rules that will apply to every situation and that you will always have a group of citizens determining voter intent.

Ms. Heffelfinger asked if from county to county, ballots will be handled differently in determining voter intent. Mr. Murray responded that he did not believe that to be the case because they are all trying to determine voter intent. Mr. Murray continued that he does not see this a problem that needs fixing.

Ms. Heffelfinger asked if it would be sufficient to draft legislation stating there needs to be uniformity within a county to determine voter intent. Mr. Murray responded that the uniformity comes from everyone being given a ballot and instructions and those who don't follow the instructions are sent to the resolution board where they are treated equally by that board.

Sen. Toole stated that if the Subcommittee wants to strive for uniformity in every county, then this is an impossible task because each board is subjective. What the Subcommittee can hope to do is create a consistent process for what ends up at the resolution board and how the resolution board is selected.

Rep. Jent disagreed with Sen. Toole, and stated that the legislature could adopt some bright line rules in determining voter intent. He continued to state that he didn't know how detailed the Subcommittee wants to get.

Sen. Toole stated that if we can establish some bright line rules then that is fine, but you will never be able to eliminate the judgment of individual resolution boards.

Sen. Bohlinger stated that a critical issue is that the instructions to the electorate should be in elementary language. Perhaps the voter instructions should be more carefully worded and the Subcommittee should explore this question.

Rep. Walters asked how many ballots are rejected by the optical scan machine. Ms. DeHart responded that approximately 2.8% were rejected in her county. Mr. Winslow responded that for smaller city elections, his county was under 1%. Rep. Walters then asked if there is such a small number rejected and the machine is completely impartial, then the vote should simply not count. Mr. Murray stated that in his county, the machine can arbitrarily kick ballots out if the voter does not completely connect the line or if there is a crease in the ballot.

Ms. Heffelfinger asked what actions could be taken to standardize the determination of voter intent. Ms. DeHart responded that the concern is eliminated from county to county with optical scan because they have central counts.

Ms. Heffelfinger asked about standardizing voter intent from county to county utilizing the same

systems. Mr. Winslow stated that to put it in statutory language would be impossible, but utilizing the Secretary of State's Office offers flexibility.

Ms. Heffelfinger asked what statutory language would give the Secretary of State's Office sufficient guidance. Ms. Doggett responded that there is a place in the statute that gives the Secretary of State statutory authority to draft rules that address systems, 13-17-107-(2), but there isn't anything that gives the Secretary of State statutory authority to determine voter intent. It may be necessary to have some clear statutory directive that allows the Secretary of State to determine voter intent.

Rep. Jent stated that the advantage he sees in directing the Secretary of State to adopt uniform rules of technology is that if a different technology appears during the interim, then the Secretary of State will be able to review that technology and establish rules. Ms. Doggett concurred.

Sen. Toole stated that he felt that part of Rep. Jent's idea included the establishment of a list or "bright lines" by the Secretary of State's office to determine voter intent. Rep. Jent concurred and continued to state that he likes the idea of delegating to the Secretary of State the technical details of what is or isn't a vote.

Rep. Jent then asked the panel what they thought of that idea. Mr. Winslow commented that that would be the most flexible option. Ms. DeHart asked how specific Rep. Jent wanted to get. Ms. Doggett responded that the goal is to get as close to possible in determining voter intent so that individuals are not disenfranchised, but also setting a consistent standard.

Sen. Toole stated that the conundrum is that even though uniform rules are adopted, the application of those rules may not be the same. On reading the Supreme Court opinion, he believed Rep. Jent to be correct and that the Subcommittee can't leave it solely to citizen determination.

Rep. Jent responded that if we can have bright line rules for things we can predict and then have a recount board for things we cannot, then that is a statute that we can pass.

Ms. Heffelfinger asked the panel for their final thoughts.

Ms. Beltrone stated that she thought the bright line standard was fine, but that it should include training for election judges and the canvassing board.

Ms. Hudak believes we should have bright line rules in writing so there is uniformity.

Mr. Murray responded that he is concerned with the level of detail that the Subcommittee will decide as they will have greater difficulty counting the votes and will be unable to provide instant answers to the public. In addition, he advised the Subcommittee to keep in mind the wages that are paid.

Ms. DeHart responded that it is important to remember that people who work in the polling places and counting centers have common sense and are working under oath.

Ms. Zeier responded that she would like to see rules, but not in statute. She would also like the issue of election judge recruitment addressed.

Mr. Winslow agreed with the rulemaking issue and continued to state that we need to do a better job in educating the voters and simplifying the language on the ballots.

Mr. Reno responded that you either need to have a human element or not.

Sen. Bohlinger presented to the Subcommittee an article in the Billings Gazette which stated that Common Cause graded the Montana voting system with a "D". He continued to ask if the issues presented in the article could be addressed at a future meeting.

Secretary Brown stated he was familiar with the article and that Montana currently has an ineffective centralized database, which will be updated by the first of the year. He continued to state that Common Cause has never contacted his office. In addition, with respect to provisional voting, we do not have a system in place to allow this, but we could.

Sen. Toole stated he would be interested in inviting Common Cause in to speak to the Subcommittee. Ms. Heffelfinger responded that she would invite Common Cause to speak.

Sen. Toole moved for the minutes of September 5, 2001, to be adopted. Rep. Walters seconded the motion. The motion passed unanimously.

Punchcard Ballots

Panel Members:

- Dianne Murer, County Election Supervisor, Flathead County
- Sue Haverfield, County Election Administrator, Flathead County
- Judy Gillespie, County Election Administrator, Broadwater County
- Elaine Graveley, Office of the Secretary of State, Former County Election Administrator, Broadwater County
- Daisy Shoemaker, Election Judge, Flathead County
- Pat Tinseth, Election Judge, Flathead County
- Kathy Fleharty, Clerk and Recorder/Election Administrator, Fergus County
- Janice Doggett, Chief Legal Counsel, Secretary of State's Office

Ms. Heffelfinger asked about the kinds of mistakes voters make on a punchcard ballot.

Ms. Haverfield provided a document to the Subcommittee entitled *Votomatic Punchcard - Voter Intent Criteria* (EXHIBIT #9).

Ms. Graveley responded that over-votes are a problem because the voter does not read the instructions properly. In addition, when people make mistakes, they are hesitant to ask for a new ballot.

Ms. Heffelfinger asked what type of votes do not get counted in the machine. Ms. Graveley responded over-votes. The only time a machine should stop is if there is a defective card. Everything else should be on the printout. Ms. Heffelfinger asked if they would have to recount every ballot. Ms. Graveley responded that on a recount they would. Ms. Murer added that the machine would stop if there was an actual defective ballot and then that ballot would need to be looked at by the resolution board.

Ms. Heffelfinger asked what type of decisions get made and by whom to make a new, clean ballot to run through the machine. Ms. Murer responded that if the voter punches the number rather than the dot, then a new card would be made. Ms. Murer responded that it is usually very easy to determine voter intent.

Sen. Toole asked if every card was rerun in the system. Ms. Graveley stated that their system was different and that it just discards the damaged card and you do not have to rerun every card. Ms. Murer responded that the system can be programmed in many ways and that she feels much more comfortable rerunning the total number of ballots. Ms. Haverfield added that the system can process 600 cards per minute, so the actual time it takes to rerun all ballots is marginal.

Ms. Heffelfinger asked about the programming of the machines. She specifically asked if Ms. Murer was speaking of different machines or different programming of the same machine. Ms. Haverfield responded different machines.

Ms. Fleharty provided a brief synopsis of the process from the time a candidate registers to the time the election is over.

Ms. Heffelfinger asked if using the same machine, is the standard the same. Ms. Murer responded that it is very much the same.

Ms. Heffelfinger asked how it is determined if a replacement card is given or not. Ms. Graveley responded that they all use central counts, so the system would be the same throughout the county. Ms. Haverfield then reviewed the document provided to the Subcommittee regarding problems with ballots.

Ms. Heffelfinger asked when is it determined that a ballot goes to a resolution board. Ms. Fleharty responded that the ballot goes to an inspection board prior to the ballot going through the machine. Ms. Graveley continued to respond that in her county, hanging chads are knocked off by running your hand across the front and back of the ballot.

Ms. Heffelfinger asked how many people perform this process and how many ballots must be inspected. Ms. Graveley responded that every ballot must be inspected. Ms. Fleharty responded that they have nine people in Fergus County performing this process. Ms. Haverfield responded that it is dependent upon the size of the election but it could range from 12-20 people.

Ms. Heffelfinger asked if the inspection process was the same in each county and what ensures that. Ms. Haverfield stated essentially the process was the same. Ms. Fleharty added that the CES training manual helps ensure this as well.

Sen. Toole asked if election judges run their fingers down each side. Ms. Murer responded that they are instructed to look at the back of the card because that is where the chad will be. Sen. Toole then stated that county to county a different thing is happening.

Ms. Heffelfinger asked what happens to the ballot if the chad does not fall out. Ms. Murer responded that the machine would likely blow the chad out. She did go on to clarify that the machine would not blow out anything that had not already been punched.

Ms. Heffelfinger asked what happens if she comes across a questionable ballot. Ms. Graveley stated that you would duplicate the ballot. Ms. Graveley continued to provide an example of a ballot that would need to be duplicated.

Ms. Heffelfinger asked if the ballot is duplicated, would the vote be counted the same way in either persons machine. The panel responded affirmatively.

Ms. Heffelfinger asked who is the inspection board. Ms. Graveley responded the election judges. Ms. Fleharty responded that they provide training the night before at the county level. Ms. Heffelfinger asked the panel how they would standardize training from county to county. Ms. Haverfield responded that most employees are clerk and county recorder employees. Ms. Fleharty stated that as far as standardizing, each county does some form of manual review of the ballot (e.g. running hand down the back of ballot) and the training provided by the CES manual.

Sen. Toole asked about processing duplications by hand. Ms. Murer provided a demonstration of how a ballot would be duplicated.

Ms. Heffelfinger asked the panel why should they not switch to optical scan. Ms. Graveley, stated that she thinks we are confusing the voters and do need to start doing something different. She also provided two letters to the Committee from counties that have switched to optical scan and the benefits of the system (EXHIBIT #10). Ms. Graveley added that the process of running the hand over the ballot is subjective as it is dependent upon the vigorousness of the person doing this job.

Ms. Gillespie concurred with Ms. Graveley and stated that her biggest concern was consistency and standardization.

Ms. Murer stated that she felt voters were able to utilize the system and that each system has flaws.

Ms. Shoemaker stated that she is very comfortable with the punchcard system and that she has not had many problems with the system.

Ms. Tinseth concurred with Ms. Shoemaker.

Ms. Haverfield stated that cost is an issue because the optical scan ballot is more expensive. She stated that voters in Flathead County do not want to change. In addition they have an investment in the booths, Votomatic machines, boxes, and a computer-aided tally system.

Ms. Fleharty stated that the punchcard system is cost-effective in Fergus County. The one thing that concerns her is the media publicity in Florida. However, voters in Fergus County are smart and can utilize the system.

Ms. Doggett stated that there are only 6 counties that are punchcard, with 4 counties willing to switch to optiscan.

Sen. Bohlinger commented on a Wall Street Journal article on election changes (EXHIBIT #11)

Paper Ballots

Panel Members:

- Sandi Howell, School Districts, Fergus County
- Sandi Boardman, Election Administrator, Blaine County
- Mary Brindley, Petroleum County
- Nancy Hanford, Election Judge, Chouteau County
- Jo Ann Johnson, Election Administrator, Chouteau County
- Commissioner Ken Evans, Canvassing Board, Chouteau County
- Michelle McQueary, School District #1, Powell County
- Louise Thomas, Election Administrator, Powell County
- Janice Doggett, Chief Legal Counsel, Secretary of State's Office

Ms. Heffelfinger first asked the panel how precincts would be able to comply with regulations for voter determination. Ms. Johnson responded that standard voter education would be helpful. Mr. Evans added simplified language was needed so as not to confuse the voter.

Ms. Heffelfinger asked how training was standardized. Ms. Boardman responded that training was coordinated through the Secretary of State's Office. She added that she would like the Secretary of State's Office to provide more guidelines.

Sen. Toole asked about school elections and the training they receive. Some members of the panel responded that they send school judges to the same training and try to utilize the same judges for both elections. Other members of the panel were unaware of the training received by school election administrators.

Ms. Heffelfinger asked the panel how much discretion they have in determining voter intent if given guidelines. Ms. Johnson responded that as long as you can tell that the voter intended to mark the box then you count the vote.

Ms. Heffelfinger asked when there is a questionable vote, what happens to the ballots. Ms. Hanford respond that in Chouteau County, the election judges determine voter intent. She stated that the difference between optical scan and paper ballots rests in the ability of the election judge to determine voter intent. If a small mark is made on a paper ballot and all other votes are marked with an "x", then the election judge knows that the voter did not intend to make that mark. If a small mark was made on an optical scan ballot, then that vote would count.

Ms. Heffelfinger asked if every precinct gets the same instruction as the election administrator. Ms. Johnson responded yes. Ms. Heffelfinger continued to ask if the ballots were counted locally and then the totals were called into a central location. Ms. Johnson responded yes. Ms. Heffelfinger asked if that was the same in all counties. The panel responded affirmatively.

Ms. Heffelfinger asked who administers the recount if necessary. Ms. Boardman responded that the canvassing board administers the recounts. Ms. Heffelfinger continued to ask if the canvassing board counts in the same manner as the precincts. Ms. Johnson responded yes.

Ms. Heffelfinger asked how sufficient treatment is guaranteed for paper ballots. Ms. Boardman responded that every ballot is looked at, which is very time consuming but allows for voter intent to be more easily determined.

Ms. Heffelfinger asked what suggestions the panel would make to ensure a sufficient guarantee of equal treatment. Ms. Johnson responded an increased amount of judges.

Ms. Heffelfinger asked about the type of training judges currently receive. Ms. Doggett responded that the Secretary of State's Office provides a 2-day training session each year and clerks also attend the annual Clerk and Recorders Convention.

Ms. Heffelfinger asked if the training was mandatory. Ms. Doggett responded that it is mandatory for the Secretary of State to provide the training, but it is not mandatory for election administrators to attend. However, she continued, they do receive a certificate of completion. Mr. Niss added that the certificate expires, which is how the training becomes mandatory. Ms. Graveley then added that they do keep track of who is and who is not certified.

Sen. Toole asked if central counting was a requirement, how would that affect election administrators. Mr. Evans responded that it would not be as efficient while Ms. Boardman responded that she would not have had judicial problems if she had had an optical scan system and a central count. Ms. Thomas added that cost would be an issue for smaller counties.

Ms. Heffelfinger asked if precincts were using multiple systems. Ms. McQueary responded that they use lever machines and paper. Ms. Murer responded that when a county election is administered, they utilize the punchcard system. When a school election is administered, they utilize both the punchcard and paper systems.

Sen. Toole asked Ms. Murer if she administered school elections. Ms. Murer responded that paper ballots are administered by the school clerk and punchcard elections are administered by the county election administrator.

Rep. Walters asked if standards are in place for the printing of ballots. Ms. Doggett responded that guidelines are distributed from the Secretary of State's Office. The rules spell out how the ballot should look. Rep. Walters continued to ask if there were problems with confusion. Ms. Haverfield responded that the only confusion comes from the candidates. She continued to state that the system is well-defined and simple.

Ms. Heffelfinger asked the panel what can be done to improve the practice of applying standards uniformly.

Ms. Howell responded that mail ballots are a very cost-effective way for some rural schools and small towns to carry out elections.

Ms. Boardman responded that some rule-making guidelines from the Secretary of State are necessary so ballots will be counted in the same way.

Ms. Brindley responded that some guidelines from the Secretary of State's Office to provide standardization across the state.

Ms. Hanford said guidelines from the Secretary of State. She stated that even though we think we handle elections the same, we don't and this is not simply in relation to voter determination, but what we tell voters as well.

Ms. Johnson concurred with Ms. Hanford.

Mr. Evans responded that better, unified directions from the Secretary of State's Office would help.

Ms. McQueary said more unification, but she did not know how the Subcommittee could ever take out the human element.

Ms. Thomas said more workshops were necessary and guidelines need to be presented.

Sen. Toole asked if the Secretary of State's Office certified all election administrators. Ms. Doggett responded negatively as she provides training for mostly county election administrators. Ms. Johnson added that counties deal with Title 13 while schools deal with Title 20. Ms. Doggett added that Title 20 is limited in the guidance that it gives schools, but it defaults to Title 13.

Lever Machine

Panel Members:

- Michelle McQueary, School District #1, Powell County
- Louise Thomas, Election Administrator, Powell County
- Janice Doggett, Chief Legal Counsel, Secretary of State's Office

Ms. Heffelfinger asked how lever systems work and how they are different from paper. Ms. Thomas responded that there are really no errors with the lever machine system. Votes are locked in and you are not able to over-vote.

Ms. Heffelfinger asked why lever machines are not ideal for larger counties. Ms. Thomas responded that as machines get older they are harder to repair. You also need to have backup machines if a machine breaks. If a county has more precincts, you would not be able to afford the number of backup machines necessary as well as the storage.

Ms. Heffelfinger asked if the machines will be eliminated as they break. Ms. Thomas responded that the county currently has a number of spares.

Sen. Bohlinger asked why the lever machines were eliminated from some counties. Commissioner Reno responded that maintenance, size, and storage were key factors.

Ms. Heffelfinger asked the Subcommittee if they would like to address school districts. She continued to ask the panel and the audience for any thoughts on having the Secretary of State's rules apply to school districts.

Ms. Thomas responded that school elections should be moved to the same time as other elections.

Ms. Boardman commented that the school district and precinct lines do not match in her county.

Ms. Hanford responded that without regulation of school districts, anonymity is not necessarily maintained.

Ms. Heffelfinger asked Ms. Zeier to come forward and share her experiences as a school board election administrator. Ms. Zeier stated that the system in Missoula County offers a greater sense of consistency with every person going to the same polling place, school and precinct lines matching up fairly well, and consistency in election judges. In the last two sessions, there has been a push to run school and county elections at the same time. In Missoula that would be fine, but there are other counties where that would not work as well, and until we can get school lines to correspond with precinct lines, then that will continue to be a challenge. Ms. Zeier continued to state that she does think it is in the best interest of the voter to have one person in charge of all elections.

FINAL/PUBLIC COMMENT

Mr. Reno stated that the Subcommittee needs to leave flexibility for unknown technologies to emerge.

Ms. Hanford stated that if you want to set standards from the Secretary of State's Office, the Secretary of State's Office needs to be able to back those standards up.

Ms. Doggett added that the Secretary of State's Office does not operate under a general fund budget and therefore funding issues need to be addressed as well.

Ms. Johnson commented on the preference of centralized training as election administrators would then be hearing the same information.

Janet Parkins, Stillwater County, encouraged the Subcommittee to utilize the youth of Montana and train them to be better voters.

ISSUES AND OPTIONS

Ms. Heffelfinger reviewed the issues and options as outlined in Exhibit #6 with the Subcommittee.

Policy Issue: Equal Treatment
Standard/Objective: Sufficient Guarantee
Options:
1. Uniform technology
2. Statutory standard for each technology used
3. Direct Secretary of State to adopt uniform rules for each technology

Policy Issue: Practice - applying statutes or rules
Standard/Objective: Equal Treatment
Options:
1. Statutes regarding uniform practice by counting boards/judges
2. Direct Secretary of State to adopt uniform rules

Policy Issue: Schools

Standard/Objective: Sufficient Guarantee of Equal Treatment

Options:

1. Further discussion
2. Direct Secretary of State to adopt uniform rules and/or provide training for school districts

- Examine training or not
- Look at recount timing or not
- Look at objection procedure or not

EXECUTIVE SESSION ON ISSUES AND OPTIONS

Rep. Jent stated that the Subcommittee should statutorily dictate the technology to be used in Montana with the following being acceptable: optical scan, paper ballot, or other technology approved by the Secretary of State. He continued to state that if we want to eliminate the possibility of a dangling chad, then we need to do it statutorily. Unfortunately, that would then be an unfunded mandate and we have to provide the funding.

Rep. Walters sees having uniform technology as being very desirable, but considering the diverse population of the state and some other issues, he would be more in favor of option two (statutory standard for each technology). In addition, Rep. Walters stated that he would like to provide a portion of the funding, not 100%, to encourage people to move to different technologies. He continued to state that he doubts we will ever get rid of paper ballots. He is not in favor of a mandate stating that a county must get rid of a technology.

Sen. Bohlinger concurred with Rep. Walters in that he would like to move toward a uniform technology, but understanding the demographics of our state, some technologies that may be desirable may not be practical or affordable. He continued to state that from the panel discussions, there seems to be the desire to have the Secretary of State promulgate rules because they have greater flexibility.

Sen. Toole concurred with Sen. Bohlinger adding that the concern with statutorily addressing technological issues is that it is hard to keep statutes current.

Rep. Walters stated that the Subcommittee is charged with addressing current problems and would like to address those statutorily and then have the Secretary of State involved.

Sen. Bohlinger added that counties are reluctant to move to other technologies because of the expense involved and it should be incumbent upon the State of Montana to provide an incentive for the counties to adopt this technology.

Rep. Walters stated the large counties may want to go from paper ballots to optical scan and that funding should be available to them as well.

Sen. Bohlinger asked about federal legislation that would provide funds for states. Ms. Doggett responded that there may be some matching funds that counties could access directly.

Sen. Toole said he would like to direct the Secretary of State to promulgate rules because he has concerns about setting statutory standards requiring technology that would be difficult to

change. He continued to state that he would like to contact the Secretary of State's Office and have a discussion of their willingness to take this on.

Rep. Jent moved to direct the staff to draft a statute that would set forth which current technologies are acceptable and which are not with the specific exclusion of punchcard ballots. Sen. Bohlinger seconded the motion.

Rep. Walters, stated that he would not support Rep. Jent's motion because he would like to see some financial incentives to facilitate change, not a statutory requirement.

Sen. Toole stated that he is not comfortable in stating what technology is legal for fear of stifling a county that may want to move forward to a more advanced technology we are not yet aware of. If the motion is that punchcards are not legal then he is in favor of the motion, but if it is in creating a definition of what is legal, then he has a problem with that.

Rep. Jent modified his motion to be to direct staff to draft a bill banning the use of punchcard technology, that would include funding for the counties, and provide an implementation date by which counties must move from punchcards to a different voting technology. Rep. Jent asked Ms. Doggett if federal bills were going to match local government funds, state funds, or both. Ms. Doggett responded that it could be either the local level or state level at this moment. Rep. Jent said that for the record he did not want to do anything with paper ballots as he feels uniform rules can be developed and it would not be fair to make some of our rural counties purchase new equipment.

Rep. Walters asked Rep. Jent if the punchcard option was eliminated by 2004, would the state pickup the entire cost of that. Rep. Jent responded affirmatively because of the unfunded mandate statute.

Sen. Toole restated that what we are directing is for staff to create a bill draft and that the Subcommittee was not actually voting on a plan. This would allow time for the Subcommittee to review the unfunded mandate statute. He continued to state that his only additional recommendation would be that the date be changed from 2004, but acknowledged that could be a discussion after the draft was prepared.

Rep. Walters called for a vote. The motion passed 3 to 1 with Rep. Walters voting no.

Sen. Toole said he would like the Subcommittee to review school elections, in particular the training of election officials. He continued to state that the Subcommittee should be every bit as concerned about the administration of democracy in local schools and at some point, MASBO should be brought in to talk about that. Sen. Toole said he believes the Subcommittee should look at requiring training on how to administer elections.

Sen. Bohlinger, concurs with Sen. Toole. In addition, Sen. Bohlinger would like to address holding school board elections at the same time as general elections.

Rep. Walters asked Ms. Heffelfinger if this topic could be added to the next agenda.

Ms. Heffelfinger restated her understanding of what the Subcommittee wanted on the agenda: information and testimony that identifies what training is available for school elections and how

uniform that training is. In addition, people who are pro and con to consolidating school and general elections could be brought in, but that could be a whole new study.

Rep. Jent moved to not look at recount timing, as it is not a problem under our statutory scheme. Rep. Jent asked for input from Mr. Niss. Mr. Niss responded that the only alternative argument or question is whether a state the size of Montana would be affected in the same way during a presidential election. He said that principally what made that a problem in Florida was not only that the votes were in very urbanized areas, but there were so many punchcards used by so many people. Sen. Bohlinger seconded the motion. The motion passed unanimously with Rep. Jent voting by proxy for Sen. Toole (EXHIBIT #12).

Rep. Jent moved to not look at the objection procedure as it is a due process issue. He said the one person that has standing in Montana is the candidate. Sen. Bohlinger seconded the motion. The motion passed unanimously with Rep. Jent voting by proxy for Sen. Toole.

Rep. Jent moved that the staff furnish the Subcommittee with several options under practice delegating the details to the Secretary of State. He continued to state that he would like to see what the current standards are before changing them. Sen. Bohlinger seconded the motion. The motion passed unanimously with Rep. Jent voting by proxy for Sen. Toole.

OTHER BUSINESS

Ms. Heffelfinger reviewed the *Rules, Procedures, and Guidelines for Interim Committees* (EXHIBIT #13).

ADJOURNMENT

The meeting adjourned at 4:15. The next meeting is scheduled for January 24, 2002.

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