MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th Legislature - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN LARRY JENT**, on January 20, 2005 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:
Rep. Larry Jent, Chairman (D)
Rep. Dee L. Brown, Vice Chairman (R)
Rep. Veronica Small-Eastman, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Mary Caferro (D)
Rep. Sue Dickenson (D)
Rep. Emelie Eaton (D)
Rep. Robin Hamilton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. Hal Jacobson (D)
Rep. William J. Jones (R)
Rep. Gary MacLaren (R)
Rep. Bruce Malcolm (R)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Marion Mood, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape stamp markers follow testimony.

Committee Business Summary:
Hearing & Date Posted: HB244, 1/11/2005; HB116, 1/11/2005
HB155, 1/11/2005; HB177, 1/11/2005
Executive Action: None

HEARING ON HB 244

Opening Statement by Sponsor:

REP. CAROL LAMBERT (R), HD 39, opened the hearing on **HB 244,** Designate Terry as home of Evelyn Cameron. She described how Ms. Cameron's photography and writing captured the spirit and history of frontier life in Montana with more than 1800 photographs and 35 volumes of diaries. Since Ms. Cameron spent most of her life in and around Terry, the town is home to the only permanent exhibit of her work. HB 244 directs the Department of Commerce and the Department of Transportation to identify the town of Terry as the official home of the Evelyn Cameron Gallery on official state maps and highway signs. **REP. LAMBERT** touted the bill as an economic growth bill as it would help attract tourism to the area.

Proponents' Testimony:

Arnie Olsen, Director, Montana Historical Society, provided written testimony.
EXHIBIT(sth15a01)

Opponents' Testimony: None

Informational Testimony:

John Blacker, Maintenance Division, Montana Department of Transportation (MDT), stated that MDT would put up the required signs but cautioned that despite the fact that there was no fiscal note issued, there would be an estimated cost of $1,200 for three signs.

Questions from Committee Members and Responses:

VICE CHAIR DEE BROWN, HD 3, HUNGRY HORSE, asked the sponsor if the community of Terry would be willing to pay some of the costs associated with HB 244. **REP. LAMBERT** contended that the community would step up. **VICE CHAIR BROWN** commented that the cost issue troubled her; she added that this would be a perfect use for the bed tax collected across the state and suggested that the sponsor contact the appropriate office and obtain the money for the signs. **REP. LAMBERT** expressed confidence that she could.

REP. BERNIE OLSON, HD 10, LAKESIDE, recalled a hearing regarding the Old Forts Trail where he learned that there was a fund to pay for such signs. **Mr. Blacker** confirmed that there was such a fund; it was based on historical data and the anticipated approval of such signs through the course of a biennium. He

issued one caveat, namely that there were a number of bills dealing with similar issues; if their number continued to climb, the fund would not be big enough and the Department would have to ask for an appropriation.

REP. ALAN OLSON, HD 45, ROUNDUP, wondered if the cost for the signs could be cut by a third since the road to Brockway was still mostly gravel. **Mr. Blacker** stated that the road in question was mostly paved now. He admitted, though, that a sign on that road would be less expensive than the two signs required for the interstate because there are certain standards for signs along the interstate system such as break-away posts. He estimated the savings to be about 15%.

REP. SUE DICKENSON, HD 25, GREAT FALLS, asked if it complicated matters when communities pitched in for these projects. **Mr. Blacker** advised that quite often, communities or organizations want to put up signs and such on a right-of-way. He explained that the Department would set up an A/R (Accounts Receivable), put up the signs and then present the community or organization with the bill.

REP. BRUCE MALCOLM, HD 61, EMIGRANT, asked the sponsor who owned the gallery. **REP. LAMBERT** believed that the county owned it; this was affirmed by Mr. Olsen.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 21}

REP. EMELIE EATON, HD 58, LAUREL, wanted to know who provided the exhibits to the gallery. **Mr. Olsen** replied that the community had some originals but the Historical Society provided most of the copies. He added that unless it involved the loan of an artifact, their Board had to approve whether a gallery was appropriate in terms of insurance and security. Copies are provided to museums around the state and become their responsibility. **REP. EATON** advised that her concern was with the maintenance of an exhibit. **Mr. Olsen** asked to defer the question to Darlene Porsild. **Ms. Porsild, Research Director, Montana Historical Society (MHS),** explained that some of the original artifacts in the exhibit came from the Cameron family and homestead, including some diaries and journals; some are exhibit quality prints provided by the MHS. The exhibit is administered by the Prairie County Museum, and it is the only permanent exhibit to examine Ms Cameron's life and presence in Montana.

Closing by Sponsor:

REP. LAMBERT closed.

(REP. A. OLSON leaves at 8:30 A.M.)

HEARING ON HB 116

Opening Statement by Sponsor:

REP. DEBBY BARRETT (R), HD 72, opened the hearing on **HB 116,** Require agency to report intended changes in budgets and program transfers. **REP. BARRETT** explained that agencies oftentimes provide the Legislature with brief overviews containing all of the funded programs but do not show to what degree those programs are carried out. She was adamant that the Legislature should be informed when the appropriated funds are not spent on programs as intended. As an example, she noted that the Department of Natural Resources and Conservation (DNRC) had diverted some of the funds meant for water rights adjudication to other applications. While the practice of diverting or transferring funds or people is legal, HB 116 would give those with oversight a heads-up. HB 116 requires that agencies notice interim committees and the Legislative Audit Committee regarding any significant transfers or changes.

Proponents' Testimony: None

Opponents' Testimony:

{Tape: 1; Side: B}

Amy Sassano, Governor's Budget Office, stated that current law requires the Budget Office to report any significant change in agency operating budgets to the Legislative Fiscal Division for review by the Legislative Finance Committee prior to enacting that change. Similar procedures have been in place for several years and are working well. The Budget Office is concerned with the following provisions of HB 116: first, every change in any agency operating budget and every program transfer has to be reviewed by the appropriate interim committee. Currently, the Legislative Finance Committee reviews only significant changes, namely those which are at least $25,000 or 25% of a budget category. The Budget Office tracks these changes cumulatively and tracking the volume of documents anticipated through passage of HB 116 would be difficult at best. Secondly, the bill requires that the interim committee reviews these changes prior to their implementation. She was adamant that this provision would put an undue burden on state agencies. Moreover, some situations need immediate processing and could severely impact an agency if it had to wait until the next meeting of an interim

committee. In closing, she stated that the bill added an unnecessary level of review to a system that is working very well.

Questions from Committee Members and Responses:

CHAIRMAN LARRY JENT, HD 64, BOZEMAN, asked Ms. Sassano for an explanation of why the proposed changes were unworkable. To clarify her claims, **Ms. Sassano** advised that her office handles a large volume of transfers which are, in effect, accounting changes: if an agency with an equipment budget wants to purchase an item costing $4,500 which categorizes it as an operating expense, her office processes the required document by moving $4,500 from the equipment budget to the operating budget, making it an accounting change. She claimed this does not change legislative intent. HB 116 would require that the Budget Office present these documents to the Legislative Finance Committee which would make processing the documents in a timely fashion prohibitive.

CHAIRMAN JENT referred to Page 2, Subsection (1)(b) of the bill which defines *significant* budget operating changes as being in excess of $1 million, 25% of a budget category or greater than $25,000. He contended that this was the only thing in this section that the sponsor sought to amend, and asked if she agreed with his assessment. **Ms. Sassano** pointed out that the added language on Page 1, Line 15, specified "any change."

(REP. A. OLSON returned.)

CHAIRMAN JENT referred to the wording "any change" in an agency or program scope whereas the statute specifies "any significant change." He asked the sponsor about her intent, whether she preferred to leave "significant change" as defined in the remainder of the law or include an explanation of "any change." **REP. BARRETT** replied that she was open to an amendment specifying "any significant change."

CHAIRMAN JENT referred to the Sponsor's testimony pertaining to the DNRC's falling behind in water rights adjudication to the point where it was not unusual for the applications to languish for years. He wondered whether funds had been appropriated for this specific purpose but the work was not done. **REP. BARRETT** confirmed that this was the case. She added that HB 116 does not require agencies to get permission to transfer funds or people, and there will not be any review or waiting period; it is merely a tool for interim committees to keep tabs on what the agencies are doing with regard to legislative directives. The Budget Office already forwards such a report to the Legislative Finance

Committee; the bill merely requires that a copy is sent to the interim committee with legislative oversight.

CHAIRMAN JENT inquired how notification of significant change differed from the functions performed currently by the Legislative Audit Committee. **REP. BARRETT** advised that a legislative audit is done after the fact; this bill is the committees' only recourse. She added that the notification would be especially helpful to new legislators who might assume that all programs are being carried out in accordance with legislative direction.

VICE CHAIR BROWN concurred.

REP. B. OLSON commented that his concern with the new language was allayed by the key word "... explanation ...." on Page 1, Line 18; he came to realize that all they wanted was information. **REP. BARRETT** affirmed this and added that it was information which agencies already reported, albeit not to interim committees.

Closing by Sponsor:

REP. BARRETT closed.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 14.6}

HEARING ON HB 155

Opening Statement by Sponsor:

REP. DEBBY BARRETT (R), HD 72, opened the hearing on **HB 155,** Revise laws governing disclosure of conflict to commissioner of political practices rather than the Secretary of State. She stated that having to make disclosures to one office while another office is charged with investigating them made no sense.

Proponents' Testimony:

Mark Simonich, Chief Policy Advisor to the Secretary of State, stated that there are a number of laws dealing with the conduct of public officials, defined as elected and appointed officials, department heads, board members, and all state employees. Most of these laws specify that it is the Commissioner of Political Practices who has the legal authority to investigate any potential conflicts or ethics claims. He pointed out that there is one section of the law which specifies that claims should be reported to the Secretary of State's Office but it does not give that office the authority to investigate them. HB 155 merely

streamlines and clarifies that all disclosures pertaining to conduct, conflict of interest or ethics questions of public employees are to be made to the Commissioner of Political Practices.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. DICKENSON wondered why state employees were included. **Mr. Simonich** explained that HB 155 seeks to amend Section 2-2-131 of the Montana Code Annotated (MCA) which is immediately followed by Section 2-2-136. This section deals specifically with the manner in which the Commissioner of Political Practices conducts investigations of ethics complaints, and it includes State employees.

CHAIRMAN JENT asked Gordon Higgins to follow up on this question. **Mr. Higgins, Commissioner of Political Practices,** advised that the Code of Ethics clearly establishes who has to meet these requirements and it outlines the goals and duties of his office.

REP. HAL JACOBSON, HD 82, HELENA, wondered if the reason for this proposed change was an oversight which should have been corrected earlier; **Mr. Higgins** confirmed this.

Closing by Sponsor:

REP. BARRETT closed.

{Tape: 1; Side: B; Approx. Time Counter: 22.0}

HEARING ON HB 177

Opening Statement by Sponsor:

REP. ALAN OLSON (R), HD 45, opened the hearing on **HB 177,** Revise election procedure. He stated that the changes in Section 1 of the bill had been requested by the Audit Committee and proceeded to give a brief overview of the bill.

Proponents' Testimony:

Elaine Graveley, Election Deputy, Secretary of State's Office, stated that this bill proposed to make necessary changes concerning a number of different issues. For the purpose of clarifying these changes, she walked the Committee through each section.
{Tape: 2; Side: A; Approx. Time Counter: 0 - 10.6}

Robert Throssell, Montana Association of Clerks and Recorders, provided a set of amendments proposed by the Association (Exhibit 2) and limited his explanation to the sections which would be amended. He explained that under current law, the election can be canceled by the election administrator if no one files in a local election such as for sewer or fire districts; likewise, if there is one position open and only one candidate files for that seat, he is declared the winner by acclamation. This saves small districts the expense of having to conduct an election.

The first proposed amendment gives the district the opportunity to go ahead with the election and to count any write-ins. He qualified that this would not affect school elections.

The second amendment clarifies that local elections will be cancelled unless the district requests otherwise.

The final amendment deals with Section 18 of the bill, namely the counting of Federal provisional ballots; these are special abbreviated ballots, listing only Federal candidates (president, senators and congressmen), and they are printed mainly for military personnel who may not be familiar with the local and statewide candidates. As amended, these would have to be received by 3 p.m. on the Monday following the election. **EXHIBIT(sth15a02)**

Brad Martin, Executive Director, Montana Democratic Party, clarified that he was a "qualified" proponent, stating that his party seriously objected to some portions of the bill while accepting others. He endorsed the many sections which were housekeeping measures and made election laws more efficient, consistent and understandable. He particularly endorsed the changes in Section 10, allowing more flexibility in the method in which absentee ballots may be requested. **Mr. Martin** went on to list three principal objections, stating that they were partisan. The disputed items did neither serve to clarify and improve the election process nor did they increase the electors' confidence in the process.

He objected to Section 4 because a voter who changed residence would have just thirty days to request an absentee ballot or to vote in person in his old precinct. He stated that the goal should be voter participation, not consistency.

The second and third objections refer to recount provisions in Sections 16 and 17. He stated that the Party would not support the bill unless they were either stricken or radically altered. He claimed that having a machine recount initially machine-scanned ballots would only lead to the machine making the same

mistake twice. Since recounts only happen in close elections, it was paramount that they be done right. He cited the recent election in HD 12 where the recount determined the balance of power in the House of Representatives. **Mr. Martin** was adamant that we have an absolutely defensible recount and that the voters' confidence is rebuilt; he proclaimed that any recount must be done by hand.

Beth Brenneman, Montana Advocacy Group, stated that her group supports the bill for the most part but she did want to voice a concern with Section 11 because it exacerbates a current problem: the law allows a challenge but requires the challenged voter to vote a provisional ballot. She strongly disagreed with a challenge based on a court adjudication of unsound mind and cited an incident in HD 12 where an individual with a developmental disability was challenged even though he had never been adjudicated of unsound mind. He ended up having to vote a provisional ballot and then had to prove that the adjudication never happened. She stated that her group was working with Sen. John Cobb on drafting a bill which would require that the challenger present evidence to support the challenge; she expressed hope that the bill would solve this problem.

{Tape: 2; Side: B}

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. EATON asked Mr. Throssell why language on Page 1, Line 29, was stricken; she feared this would give counties a carte blanche for tossing out ballots. **Mr. Throssell** explained that language on Page 2, Lines 3 and 4, safeguards against this by way of a retention schedule established by a local government records committee. **CHAIRMAN JENT** asked if someone from the Secretary of State's Office would want to follow up on this question. **Ms. Graveley** concurred with Mr. Throssell and added that this committee also establishes retention schedules for circuit court, treasurers, clerk and recorders, and election administrators.

CHAIRMAN JENT invited questions regarding the close of registrations covered in Section 2.

REP. MARY CAFERRO, HD 80, HELENA, wondered why the bill reduced the number of public notifications from four to three. She felt that this would diminish a voter's opportunity to participate in the election. **REP. A. OLSON** asked to defer the question to **Ms. Graveley** who explained that it standardized advertising for weekly and daily newspapers by ensuring three statewide

advertisements by each; it takes into account the different advertising deadlines which before resulted in the small weeklies advertising four times as opposed to the dailies which ran the notice three times. **REP. CAFERRO** commented that rather than going with fewer notices, the dailies could be made to print them four times as well. She felt that the bill tended to shorten other deadlines. **Ms. Graveley** stated that the daily papers could print the notices any day whereas the weeklies cannot fit them into the time frame required by law without having to advertise and pay for a fourth week.

At 9:50 A.M., **CHAIRMAN JENT** announced a recess to give committee members the opportunity to watch President Bush's inauguration. The Committee reconvened at 10:15 A.M. and the Chairman requested that questions be asked in order by bill sections.

Commencing with Section 3, **CHAIRMAN JENT** asked Ms. Graveley what was meant by "another verifiable source" on Line 25. **Ms. Graveley** replied that any claim for cancellation of a voter registration has to be in writing.

VICE CHAIR BROWN suggested to let deceased voters merely "float off" the rolls; she did not think that election officials should have to cross-reference obituaries with voter registration lists.

(REP. HENRY left at 10:20 A.M.)

REP. GORDON HENDRICK, HD 14, SUPERIOR, recalled that REP. SYLVIA BOOKOUT-REINICKE had sponsored a bill that dealt with purging the rolls because it skewed the numbers. He contended that it had created a problem with mill levies and other local elections in his district.

REP. B. OLSON seemed to recall that voter rolls are currently purged after a second missed election, and that election officials do take voters off based on obituaries in local papers. **Ms. Graveley** explained that if a voter fails to vote, he is sent two separate confirmation notices requiring responses; if he fails to respond, the voter is put on an inactive list for two more election cycles and is taken off the rolls after that if he still does not vote. This means he stays on the list for six years. **REP. OLSON** wondered if county election officials did take known deceased voters off the rolls. **Ms. Graveley** replied that deceased voters are purged from the list based on death certificates issued by the Health Department, a mortuary or the coroner.

REP. MALCOLM referred to CHAIRMAN JENT's earlier question regarding a "verifiable method" and stated that he did not really

understand what it meant. **Ms. Graveley** advised that "verifiable" meant that the claim had to be substantiated by a written document.

REP. WILLIAM JONES, HD 9, BIGFORK, asked if this could be a recorded death certificate which **Ms. Graveley** confirmed. She added that a newspaper obituary would qualify as well.

CHAIRMAN JENT observed that the Department of Health and Human Services (DPHHS) compiled death certificates and forwarded them to the Clerk and Recorders' Office as well as to the Election Bureau. **Ms. Graveley** submitted that many clerks are also local registrars and do receive the death certificates; DPHHS sends only those from another county.

REP. MALCOLM wondered if a statement could just be written on a paper napkin. **Ms. Graveley** advised the written statement had to be something official and verifiable, such as a death certificate or newspaper obituary.

REP. GARY MACLAREN, HD 89, VICTOR, asked Mr. Martin what he did not like about Section 4 of the bill. **Mr. Martin** advised he would prefer that the law not be changed so that a person who moved within 45 days of an election could vote in their old precinct. HB 177 limits the time frame to 30 days, and he felt that removing 15 days would severely inhibit a voter's ability to participate in the election.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 23.3}

VICE CHAIR BROWN wondered about the rationale behind this change. **Ms. Graveley** replied that the seven-member Election Task Force requested it, primarily to make registration consistent with other election requirements and secondly, so that people could not register in two precincts at once.

REP. JACOBSON contended that the new 30-day rule would at best minimize, but not eliminate, the dual registration problem. **Ms. Graveley** agreed.

REP. DICKENSON did not believe that a person could vote in two precincts without being detected; she thought that there was coordination between county election offices. **Ms. Graveley** stated that there was not much coordination now; it will vastly improve as soon as the statewide voter database is completed. **REP. DICKENSON** wondered if registering more than once was a frequent occurrence. **Ms. Graveley** advised that there is

communication between the election administrators but it is not as accurate and timely because of the time constraints.

CHAIRMAN JENT observed that Section 5 was mainly a housekeeping measure; the only change was the addition of the word "public" before "office."

REP. JONES asked whether a party precinct was considered a public office. **Sheri Heffelfinger, Legislative Services Division,** explained that "public office" is a defined term whereas "office" is not; the insertion of "public" limits the scope, allowing a person to file for only one public office which is defined as "a state, county, municipal, school, or other district office that is filled by the people at an election;" it does not include a party office such as a precinct office.

CHAIRMAN JENT went on to Section 6 which clarifies write-in nominations.

{Tape: 3; Side: A}

Ms. Heffelfinger explained that 13-15-206 deals with how votes are counted, with rule-making and uniformity; these issues are also contained in Section 15, Page 11, Lines 8 through 11.

CHAIRMAN JENT pointed to a substantive change on Page 5, Lines 11 through 14: it eliminates the requirement that a primary ballot listing all offices be prepared for a minority party even if only one candidate of that party filed.

REP. B. OLSON referred to Section 8, Subsection (7), and asked, if no one had filed for a seat in the State Senate or the House of Representatives, would someone who came forward after the filing deadline automatically win that seat. **Ms. Graveley** was not sure and after establishing that Section 13-10-302, MCA, refers to primary elections, **CHAIRMAN JENT** explained that Subsection (7) means that if no one has filed for an office and the write-in candidate wins, he does not have to file a declaration of intent or comply with any other requirements as specified on Page 6. **Ms. Graveley** agreed that this was true unless the Secretary of State specified within five days of the close of filing that all write-ins will be counted as per the amendment requested by the Clerk and Recorders' Office.

CHAIRMAN JENT asked Mr. Throssell to explain this further. **Mr. Throssell** advised that as the bill is written, if no one filed for a particular seat or did a declaration as a write-in candidate, the vote for a write-in candidate would be counted. He clarified that this is valid for statewide offices; the Clerk

and Recorders' Office was addressing fire districts and other local districts with their amendment.

REP. B. OLSON probed further, saying that his House District race was not a statewide but a district race. **Mr. Throssell** advised that the counties and local districts are political subdivisions and do not have the authority to determine a winner by acclamation. He repeated that the amendment in question dealt only with local districts where the election administrator can either cancel an election or declare a winner by acclamation. **REP. B. OLSON** inquired whether there could not be a write-in candidate in the general election if no one filed for a House seat in the primary and a write-in automatically won. **Mr. Throssell** explained that if no one declared their candidacy and there was only one write-in, he or she would advance to the general election. **REP. B. OLSON** wondered if this would preclude someone else from being a write-in for the general election. **Mr. Throssel** did not think that it would.

CHAIRMAN JENT asked Mr. Throssell to elaborate on how current law works and why it should be changed. **Mr. Throssell** explained that fire districts, for instance, have elected boards and sometimes no one files for an open position. Since the election procedure is set in statute, election administrators have to go through the process and hold an election; if no one files or if one seat is open and just one person files, there is not much point in having an election. The election administrator can then cancel an election, and the district board has the authority to declare that person by acclamation. This was the reason behind his amendment. He added that it was not their intent to limit a candidate's opportunities but to ask that candidates come forward and make a good faith showing by announcing that they are running for a particular office.

REP. B. OLSON remarked that he would feel more comfortable knowing for sure this could not happen in a State House or Senate race. He feared that a term-limited representative or senator from an area where there is not much competition could be re-elected as a write-in. **CHAIRMAN JENT** advised that the statute requires that a candidate has to be *qualified*, and someone who is term-limited because he has served for eight years in a sixteen-year period is no longer qualified to run for office.

REP. A. OLSON asked to speak to this issue and explained that in the amendment, "political subdivision" defines that a county, consolidated municipal county government, municipality, special district, or any other unit of government except school districts, has the authority to hold an election for officers or ballot issues. The remainder of the bill still pertains to

legislative races. To help clarify the issue, he offered to add language to Subsection (7) which would say that " ... the requirements in Subsection (1) do not apply to a write-in candidate who is qualified for and seeks election to an office in a political subdivision for which no other candidate has filed a declaration ...." and then adopt the remainder of Mr. Throssell's amendments; this would alleviate REP. B. OLSON's concerns.

REP. JONES asked whether a term-limited public official was in conflict with the constitution if he ran as a write-in candidate. **REP. A. OLSON** advised that term-limits do not pertain to elections in political subdivisions, and legislative districts are not included in the term "political subdivision."

CHAIRMAN JENT asked why Section 9, Subsection (2), was changed. **Ms. Graveley** stated this refers to 13-15-206 (5) which says a write-in vote may be counted only if the write-in candidate is identified as an individual by designation and the ballot contains the candidate's first and last names.

Ms. Heffelfinger advised that this issue is covered in 13-10-211. **Ms. Graveley** repeated that in her opinion, the write-in vote must be counted if the person's first and last names are on the ballot. When **CHAIRMAN JENT** asked again why HB 177 proposed all these changes, **Ms. Heffelfinger** explained that the new Subsection (7) was created because of the amendments to 13-10-211. She advised that if 13-10-302 was not amended and the internal reference not corrected, there would be a conflict because Subsection (7) provides for an exception for candidates in political subdivisions since they do not have to comply. This necessitates a new reference, namely that those votes had to be counted as provided in 13-15-206 (5). She admitted all this was awkwardly circular because there are various places in the statutes, telling election administrators how they should count write-in votes.

{Tape: 3; Side: B}

CHAIRMAN JENT explained that under the proposed changes, all that was needed to obtain an absentee ballot was either a written request containing one's full name and birth date or a standardized form.

REP. DICKENSON was curious as to how often the provisions outlined in Subsection (2) (a) and (b), which provide for a telephone or facsimile request in case the voter took ill, had been used in the last election. **Ms. Graveley** stated she knew that some people had to make use of this provision but she was not sure of their number. **REP. DICKENSON** suggested that this

provision should be mentioned in all upcoming election information pamphlets; she was concerned that people with health emergencies were not aware that this was available to them.

REP. EATON referred to Section 11 and suggested that Ms. Brenneman submit an amendment which would clarify the issue she had with challenges to a disabled person, rather than depend on the Senate Bill to come through. **Ms. Brenneman** replied that she would be more than happy to work with Ms. Heffelfinger in drafting such an amendment. She added that due to the multitude of election bills, it was difficult to see beforehand how it would all come together.

CHAIRMAN JENT commented that the bill amended the title of Section 13-13-301 to read "Challenges" rather than "Challenges on Election Day" and asked if "any time" could mean at a later time should it turn into a contested election. **Ms. Graveley** advised that it pertained to challenges made prior to an election. **CHAIRMAN JENT** still felt that the new provision would allow people to make a challenge at a later date. They could, for instance, make the challenge that some people on a voter list are actually deceased. **Ms. Graveley** did not feel comfortable answering a legal question and stated that she would get the information from the Office's Legal Counsel. **CHAIRMAN JENT** theorized that it was entirely possible that someone voted an absentee ballot and passed away before the election. **Ms. Graveley** agreed, saying there was a bill in the Senate State Administration Committee which dealt with this issue.

REP. EATON offered a solution by changing the language to "at any time before the election." **CHAIRMAN JENT** suggested this was an issue best left for Executive Action.

REP. DICKENSON referred to Section 11, Subsection (2)(f), saying that she has two sons who are U.S. citizens but live in Canada; she wondered what would happen if one of them was home for the election and voted, but was challenged on the grounds that he had not been home for at least 30 days. **Ms. Graveley** replied that he could not be challenged since he had been a resident for more than 30 days; she added that the law did not specify "at least 30 days prior to the election."

{Tape: 3; Side: B; Approx. Time Counter: 0 - 13.9}

Referring to Section 15, **REP. B OLSON** asked Ms. Graveley whether current law required an improperly marked ballot be exchanged for a new one. **Ms. Graveley** replied that there are examples and laws on how to count improperly marked ballots in the Administrative Rules. **REP. B. OLSON** commented that he would like to see an

amendment which would clarify this issue but offered to wait until Executive Action.

REP. ROBIN HAMILTON, HD 92, MISSOULA, asked Mr. Martin whether "not tabulated by a voting system" meant that paper ballots would not be counted by hand in a recount. **Mr. Martin** replied it was his interpretation that if counted by hand the first time, ballots would be recounted by hand; if a machine counted them the first time, a machine would also do the recount.

REP. DICKENSON referred to Section 15, Line 29, and asked if the make-up of the recount board was specified in statute or whether it was up to the local election officials. **Mr. Martin** advised that those stipulations are spelled out in statute.

VICE CHAIR BROWN commented that Ms. Heffelfinger could explain this issue in detail during Executive Action.

REP. JOAN ANDERSEN, HD 59, FROMBERG, requested that Ms. Graveley address the concerns regarding the changes in Sections 16 and 17. **Ms. Graveley** advised that 13-16-414 deals with the recount of votes using a voting machine, and it specifies that improperly marked ballots have to be set aside and counted by hand; she added that the statute never defines paper ballots. Section 16 spells out the rules for use with paper ballots counted by hand, and Section 17 contains those for using a voting machine such as Optiscan. If there are errors, votes have to be recounted by hand.

REP. B. OLSON inquired whether, prior to using paper ballots, a double-marked punch card was automatically excluded and not recounted. **Ms. Graveley** affirmed that this was true.

REP. VERONICA SMALL-EASTMAN, HD 42, LODGE GRASS, recalled Mr. Martin's concerns with Sections 16 and 17, namely that a recount of improperly marked or read votes initially tabulated by machine would be counted by machine a second time. **Mr. Martin** explained that this would be the case if current law was amended as intended in HB 177. He pointed to the recent election in HD 12, saying that it made it apparent how important it was to have the recount done by hand. **REP. SMALL-EASTMAN** ascertained that it would have been better to do the recount by hand than by machine. **Mr. Martin** advised that the County Attorney in Lake County had initially requested that the recount be done by machine; the parties involved insisted on a hand recount.

Closing by Sponsor:

REP. A. OLSON closed, stating that he would prefer that the election process and the laws governing it could be simplified but in trying to take care of everyone's concerns within the constraints of the law, and regain the people's trust, simplicity was not an option.

CHAIRMAN JENT announced that he would reschedule the hearing on HB 123 which had been on this day's agenda.

ADJOURNMENT

Adjournment: 11:40 A.M.

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REP. LARRY JENT, Chairman

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MARION MOOD, Secretary

LJ/mm

Additional Exhibits:

EXHIBIT(sth15aad0.TIF)