



State Administration and Veterans' Affairs Interim Committee

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

58th Montana Legislature

SENATE MEMBERS

JOSEPH TROPILA--Chair
KEITH BALES
KELLY GEBHARDT
MICHAEL WHEAT

HOUSE MEMBERS

LARRY JENT--Vice Chair
STANLEY FISHER
RALPH LENHART
BERNIE OLSON

COMMITTEE STAFF

JOHN MACMASTER, Staff Attorney
SANDRA SHEPHERD, Secretary
DAVE BOHYER, Research Director

MINUTES

June 14, 2004
Room 137, State Capitol
Helena MT

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

Sen. Joseph Tropila, Chair
Rep. Larry Jent, Vice Chair
Sen. Kelly Gebhardt
Sen. Michael Wheat
Rep. Stanley Fisher
Rep. Ralph Lenhart
Rep. Bernie Olson

COMMITTEE MEMBERS EXCUSED

Sen. Keith Bales

STAFF PRESENT

John Macmaster, Staff Attorney
Sandra Shepherd, Secretary (Transcribed by Lois O'Connor)
Dave Bohyer, Research Director

Visitors

Agenda, ATTACHMENT #1
Visitors' list, ATTACHMENT #2.

COMMITTEE ACTION

- Approved the minutes from the January 23, 2004, meeting
- Approved draft legislation providing for an increase in the base salary for the number of highway patrol officer position existing on March 1, 2006 by implementing a \$5 fee on motor vehicle insurance policy premiums

- Approved all agency proposed legislation under the Committee's purview for purposes of bill drafting

CALL TO ORDER AND ROLL CALL

The meeting was called to order at 8:00 a.m. by Sen. Tropila, Chair. Roll call was noted; Sen. Bales was excused. (ATTACHMENT #3)

Rep. Lenhart **moved** that the minutes from the January 23, 2004, meeting be approved. Motion passed unanimously.

COMMITTEE REVIEW OF POTENTIAL LEGISLATION

Steve Bender, Acting Director; Bob Fitzsimmons and Chris Olson, Deputy Commissioners, Banking and Financial Institutions Division; Sheryl Olson, Assistant Administrator, General Services Division; Marvin Eicholtz, Administrator, General Services Division; and Randy Morris, Administrator, State Personnel Division; Department of Administration, provided overviews of the "Department of Administrations's 2005 Legislative Proposals Approved for Drafting by the Governor's Office". (EXHIBIT #1)

Sen. Gebhardt asked what the approximate cost would be to bring programs under the Risk Management and Tort Defense Division to an actuarially sound basis. Mr. Bender said that the Department's present law budget will have \$20 million more revenue for the 2007 biennium. A new proposal will be offered to decrease the actuarial amount to a more reasonable level, and the safe level will be decided by the Governor's Office and the Appropriations' Committees. Sen. Gebhardt asked what the new state-mileage reimbursement rate would be. Mr. Bender said the Department's intent is to keep the reimbursement rate at its current level.

Rep. Fisher asked why the Legislature would want to approve licensed-lender employee checks under the Deferred Deposit Lender Act. Mr. Fitzsimmons said that in many instances, the lending-office owner is not present, and the employees are the people who are dealing with the public and making the loans. Mr. Olson added that there are a number of businesses operating in Montana and, for whatever reason, do not conduct background checks on their employees. As a result, the Division is seeing employees who have caused problems for licensees. There have also been embezzlements. It is the Division's intent to stall potential problems before they happen by asking licensees to provide the Division with the necessary employee information. Rep. Fisher was concerned that the state was interfering in an area that it ought not be interfering in.

Sen. Wheat agreed and asked if the Department was going to propose legislation to make it a requirement that in order to receive or retain the individual's license, the licensee must provide the Division with the appropriate character and fitness of their employees without breaching the state's confidentiality issues. Mr. Olson said that was a suggestion that the Department could consider.

Rep. Fisher asked what assurances the Legislature had that the Department of Fish, Wildlife, and Parks (DFWP) would transfer the cost or reduce its budget to cover the cost of grounds maintenance to the Department. Mr. Eicholtz said that all employees, assets, and the administration of the grounds maintenance program will be transferred from the DFWP to the Department through the budgetary process. Rep. Fisher said that the DFWP operates through

state special revenue funds that it collects. He asked DFWP did not have to spend the funds on ground maintenance, where will the money go and did the Department use general fund money? Mr. Eicholtz said that the Department does not use general fund but charges a rental rate (\$6 per square foot) to the various Departments just like the DFWP, so the funds would be from a proprietary account.

Sen. Gephardt asked if the proposed legislation related to the union pension contributions covers all funds not overseen by unions. Mr. Morris said that the legislation applies to other funds not overseen by unions if there is a letter of agreement, but most other funds are covered through collective bargaining agreements.

Rep. Olson asked if the non-attorney representation before hearings legislation impacted school board administration dealings with non-attorney union representation. Mr. Morris said no.

Jeff Brandt, Acting State CIO, Department of Administration, provided overviews of "Potential Legislation for Information Technology (IT)" and a brochure related to information technology. (EXHIBITS #2 and #3 respectively)

Rep. Lenhart asked about the average amount of time to conduct background checks for IT employees and could they begin work without the check. Mr. Brandt was unsure but would provide the Committee with the information at a later date.

PUBLIC COMMENT

Tom Schneider, Montana Public Employees Association (MPEA), stated the following:

- School boards are not quasi-judicial but the Board of Personnel Appeals is which is the issue.
- By law, the chairman must be an attorney, and the current chairman is refusing to allow non-attorneys because he believes that it puts his license in jeopardy.
- The National Labor Relations Board does exactly the same work, and it is not an issue with them.
- The proposed non-attorney representation before hearings legislation would make state law conform to national law.
- MPEA has been meeting with the Department since 1998 to discuss the classification appeals process, and it believes that it can come forward with a revised process.

Believing that the proposed legislation to amend the Deferred Deposit Lender Act could leave the state vulnerable to possible court actions because of the current privacy issues, Rep. Fisher requested that the Department re-review the proposed legislation and not submit any legislation that would be this controversial. Mr. Bender said that knowing as much as can be known about a potential employee or applicant may prevent a problem down the road. It should prevent the licensees from being blindsided by a problem employee.

Rep. Jent asked what types of character and fitness checks must currently be done on regular banking and credit union employees. Mr. Olson said that currently regular banking and credit union employees have a thorough background check. In addition, federal regulatory agencies maintain a register of individuals who have had orders of prohibition issued against them for conduct or criminal activity that is deemed to make them unfit to be involved in financial business.

Michael O'Connor, Executive Director, Montana Public Employees Retirement Administration (MPERA) provided a copy of MPERA's proposed general revisions legislation and an overview of three pieces of proposed legislation that were considered the MPERA Board's top priorities. (EXHIBIT #4 and #5 respectively)

Rep. Fisher said that if the Legislature funds the \$1.5 million DC startup costs out of the general fund, would that cost come from the total taxpayer dollar. Mr. O'Connor said yes.

Rep. Olson asked if the 1% increase in employer contributions would be enough to cover the shortage within the Game Wardens and Peace Officers and the Sheriffs Retirement Systems and would the same be true regarding the \$8.5 million related the PERS System. Mr. O'Connor said that the percentage depends on the 2004 evaluation, but he believed that the amount may be slightly higher (between 1% and 2%) to actuarially fund the Game Wardens and Sheriffs Systems. Regarding PERS, Mr. O'Connor said that the actuarial estimate conducted in January, 2003 was based on the market value of June 30, 2003. He believed that the percentage of investment loss was 1.6% to the PERS.

Rep. Fisher asked about the belief that the Board's proposed legislation would be controversial. Mr. O'Connor said that whenever legislation involves money or funding, they tend to be controversial. The MPERA Board is trying to ensure that the state retirement plans are actuarially sound and fit resulting in the Legislature having to make some very hard decisions to ensure that they maintain that soundness.

PUBLIC COMMENT

Mr. Schneider said that at its convention, MPEA will propose to include health insurance contributions in the compensation for computing retirement benefits for all of the retirement systems. He said that employees are reaching a point where health insurance contributions in some areas are as much as \$800 a month. At \$800 a month, employees are losing over \$400 a month in retirement benefits. At the same time health insurance plans are increasing at a rate that retirees cannot afford health insurance anymore.

Rep. Fisher asked if health insurance contributions were used for computing retirement benefits, will taxes have to be paid on it. Mr. Schneider said that since 1984, contributions to the retirement systems have not been taxable. This would continue, and there would be both state and employee contributions on the amount of the health insurance being considered for compensation. The problem to the retirement systems is that the state is granting a benefit that is not totally paid for.

David Senn, Executive Director, Teacher's Retirement System (TRS), provided a copy of TRS's funding principles and an overview of its potential legislation. (EXHIBITS #6 and #7 respectively)

Sen. Wheat said that from 1995 through 1999, the TRS's increase was substantially above the 8% rate of investment return. He asked what happened to those funds. Mr. Senn said that the actuarial gains realized in those years were used to pay down TRS's unfunded liability and to provide for the 1.5% guaranteed annual benefit adjustment (GABA) provided for by the Legislature to retirees.

General Randall Mosley, Deputy Director, Department of Military Affairs (DMA), provided a "2003 Impact Brouchure" that includes the DMA's mission statement and an overview of the DMA's potential legislation. (EXHIBITS #8 and #9 respectively)

Dan McGowan, Administrator, Disaster and Emergency Services Division, DMA, provided an overview of the DMA's all-hazard planning initiative and information related to the Montana All-Hazard Planning Council. (EXHIBITS #10 and #11 respectively)

Rep. Olson asked if any money was being received from the federal government to help support county emergency and disaster relief activities. General Mosley said that the state has received \$45 million since 1999 that has been distributed to first response agencies for equipment, planning, and training. Rep. Olson asked if the Division was currently collecting fees assessed on recreational vehicles. Mr. McGowan said that the money has been collected, however, the Department of Revenue has not transferred the money to the special revenue account to be used by county sheriffs for search and rescue missions because the mechanism for making the transfer is not in place. Rep. Olson asked if the money was being invested and collecting interest since it is not currently being used. Mr. McGowan was unsure.

Referring to the proposed legislation related to leaves of absence of public employees attending training camp or similar training programs, Sen. Tropilia asked if the DMA worked with the Montana Association of Counties (MACo) and the Montana League of Cities and Towns. General Mosley they have not had the depth of conversations that are needed with either MACo or the League, and it needs to be done.

Dave Bohyer, Director of Research, Legislative Services Division, provided an invitation to the Committee to attend the dedication of the Willis Cruise House which is the first facility for homeless veterans in Montana. (EXHIBIT #12)

Office of the Secretary of State

Pat Haffey, Acting Chief Deputy; Janice Dogget, Chief Legal Counsel; and Elaine Graveley, Election Deputy; Secretary of State's Office, provided overviews of potential legislation from the Secretary of State's Office. (EXHIBIT #13)

Sen. Gebhardt felt that language to allow write-ins to be counted if no one has filed for a particular position should be included in the proposed legislation to clarify election procedures.

Commissioner of Political Practices

Linda Vaughey, Commissioner of Political Practices (COPP) and Jim Scheier, Agency Legal Services COPP, provided overviews of the COPP's notice of adoption and amendments to the state's lobbying rules; an overview of the proposed amendments to the laws governing the COPP; and an update on the effects of legislation passed regarding civil penalties for the late filing of lobbying expenditure reports. (EXHIBITS #14, #15, and #16 respectively) Ms. Vaughey also provide a ballot issues and candidates comparison sheet. (EXHIBIT #17)

Sen. Gebhardt felt it punitive and inappropriate that the selected Commissioner may not be paid or retained to engage in lobbying for a period of two years after leaving office. He felt that the language could be changed during the legislative session.

Rep. Olson asked for clarification of the language "2-year period prior to appointment". Sen. Tropila said that the language came from the Governor's Office and was intended to give an individual a cooling-off period of time to become nonpartisan.

Montana Retired Firefighters

Harlan Orham, Legislative Delegate, Montana Retired Firefighters Association, provided written comments about proposed legislation regarding cost of living adjustments for Montana's retired firefighters. (EXHIBIT #18)

Melanie Symons, Legal Counsel, MPERA, said that MPERA did not have updated information on the current proposal, but added that when MPERA's actuary reviewed the same proposal two years ago, the cost was over \$5 million and increasing.

Veteran's License Plates

Sen. Tropila briefed the Committee on possible legislation that would permit a disabled veteran to buy disabled veterans license plates for one or more of veteran's vehicles. Presently, the law does not allow disabled veterans to buy more than one plate.

Sen. Gebhardt asked if the legislation applied to all other license plates. **Bill Furois, Legislative Chairman, Disabled American Veterans**, said that the intent of the proposed legislation is to amend language in 61-3-460, MCA from "registration fees are waived for one set of plates" to "registration fees are waived for two sets of plates". This language would cover disabled veterans, prisoners of war, 50% disabled, and Purple Heart categories.

OTHER PROPOSALS: PUBLIC COMMENT

Roger Hagan, Enlisted Association of the National Guard of Montana (EANGMT), provided an overview of proposed legislation endorsed by the EANGMT. (EXHIBIT #19)

Dan Antonetti, Veterans of Foreign Wars (VFW), provided a copy of "Key National Issues" affecting American veterans and recited the poem "Ragged Old Flag". (EXHIBITS #20 and #21 respectively)

Board of Veterans Affairs -- Montana Veterans' Affairs Division

Lt. Colonel Joe Foster, Administrator, Montana Veterans' Affairs Division, stated the following:

- The Division continues to solidify and enhance its services for Montana veterans through better operations and enhancing its personnel management system.
- Twelve of the Divisions staff has been trained by the federal Veterans' Affairs Administration for certification purposes.
- In 2003, Montana veterans received over \$59 million in federal VA benefits as compared to over \$72 million in 2004.
- Unmarried spouses of deceased veterans, disabled veterans, prisoners of war, 50% disable, and Purple Heart veterans would also be eligible for the proposed registration fee waiver legislation.

Joe Walsh, Bozeman, stated the following:

- The subject of an individual who is not required to be a veteran sit on the Board of Veterans' Affairs is an issue that will continue to arise.

- Relaying regular public services announcements and submitting information about Board meetings and activities is paramount so that there can be public involvement. This has not occurred to date.
- The development of a service directory is an issue that has been discussed through the entire process, and it is very important.
- Seeking grants and developing memorandums of understanding should be high on the Board's priority list to create lines of communication between all agencies and organizations.
- Encourage the Board to pursue grants offered through the National Science Foundation to implement information technology networking.

Lt. Colonel Foster said that there are six people who are not veterans who sit on the Board of Veterans' Affairs, although they are non-voting members. The Board also needs a more interactive website that includes adequate information about the Division and the benefits available to veterans. In addition, the Division is reviewing the purchase of information technology that would allow direct interaction with the federal VA systems.

Montana Highway Patrol

Rep. Fisher provided an overview of the report and recommendations on the Montana Highway Patrol Recruitment and Retention Subcommittee. (EXHIBIT #22) He requested that the report be adopted by the Committee. He also provided a copy of proposed legislation providing for an increase in the base salary for the number of highway patrol officer position existing on March 1, 2006. (EXHIBIT #23)

Michael Tooley, Deputy Chief, Montana Highway Patrol (MHP), provided an overview of the problem areas related to the recruitment and retention of MHP officers and potential solutions to the problems. (EXHIBIT #24)

Mike Wingard, Performance Audit Manager, Legislative Audit Division, provided an overview of a performance audit of the MHP. (EXHIBIT #25)

Rep. Fisher said that the Legislature has a strong responsibility to protect the public and visitors that it has. It is unfair to ask someone to do a job and then put them in shackles. He requested that the Committee review the proposed legislation (See Exhibit #23) for possible Committee endorsement.

Rep. Olson asked if salary issues were the reasons for the decrease in the number of qualified MHP applicants. Mr. Wingard said yes, based on interviews with MHP command personnel.

Sen. Wheat asked about the budget related to the possible funding resources raised by MHP's proposal and whether the MHP would be prepared to explain the budget to the Legislature.

Jesse Munro, Management Services Bureau Chief, MHP, said that the MHP pay increment was taken care of first. All other costs, such as information technology, were built into the projections and process and spread out over six years.

Sen. Wheat asked if the fee for each vehicle liability insurance policy written or renewed was based on the number of policies written or the number of vehicles that are insured and how would the fee be collected and what were the administrative costs. Mr. Monroe said that the

MHP knows that at least 20% of the vehicles in Montana are uninsured. The MHP took the remaining 80% to project the proposed budget.

Sen. Wheat asked if consideration was given to the 20% of uninsured vehicles at the time of registration so that they could be covered for the fee. **Larry Fasbender, Deputy Director, Department of Justice**, said that legislation related to uninsured motorists has come before the Legislature a number of times and finding a piece of legislation that everyone can agree upon has been a difficult task. The Department anticipates further legislation in the 2005 Session regarding uninsured motorists. However, it is unaware of what the proposed legislation may contain or how it is going to work. Mr. Fasbender added that the Department is currently working with the insurance industry on the proper and best way to collect the fee and implement the proposed legislation because the insurance industry, with good reason, does not want to become tax collectors for the state. He hoped the details of the proposed legislation would be complete in July. However, the Department and insurance industry may be working on it up until the proposed legislation is introduced.

Roger McGlenn, Executive Director, Independent Insurance Agents Association of Montana, stated the following:

- The Association supports the intent of the proposed legislation, however, it sees the legislation as discriminatory taxation because there are a significant number of uninsured vehicles who would not pay the fee.
- Insurance policies are generally six months for personal-auto policies and annual for commercial. Vehicles insured on a 6-month basis could, in effect, be susceptible to the \$5 fee twice under the current version of the proposed legislation.
- The Association feels that the fee should be imposed at the time of vehicle registration to be equal and nondiscriminatory.
- Significant administrative cost increases would be seen for insurance companies to collect, account for, and report the fees to the Department of Administration which would be passed on to the consumer.
- There is no requirement in the legislation for insurance "agents" to account for and report the fee. Therefore, fees would be collected by the insurance "companies" at the time the premiums were paid.
- Finally, the Association has no long-term faith in earmarked funds.
- Although the Association wants to be a stakeholder in the solution, the proposed legislation, as written, is not fair or equitable.

Rep. Olson asked if the Association would be in favor of a substantial fine imposed upon uninsured vehicles who are apprehended to be applied to the MHP funding issues. Mr. McGlenn said that over the years, fines have increased numerous times for driving without proof of insurance or insurance. In addition to that fine, there is the ability to fine individuals for unsworn falsifications when they register their vehicles as insured. Often time, when the fine is not in conjunction with a moving violation, stiff and heavy fines have put the judicial system in the difficult position on accessing the maximum fines or having the courts responsible for indemnification. Rep. Olson suggested that the Department incorporate into the proposed legislation that the judicial system should also be collecting money for the MHP.

Mr. Fasbender said that fees are currently being applied to cases that come before the courts, for everything besides speeding, to fund the Montana Law Enforcement Academy; and there

has been difficulty with the surcharges being assessed to fund the Academy. The Legislature would have to decide whether to impose further fines on the full gamut of warrants that may be issued.

Sen. Gebhardt said that a funding source is not included in the proposed legislation. He asked if the legislation is effective on passage and approval, is that when the fee would begin to be collected? **John McMaster, Staff Attorney, Legislative Services Division**, said that after the effective date of the legislation, in this case passage and approval, the \$5 fee would begin to be collected. However, the fund will lack money until insurance companies make their first of two annual payments. Sufficient funds to implement the legislation would be realized after February 1, 2006.

Sen. Wheat asked where administrative startup costs for MHP fund would come from before the money could be used for its intended purpose. Mr. Fasbender said that there would be no administrative costs involved, only, that the fund would be set up and the fees would be deposited into it. In addition, there may be no reason for the funds to go to the Department of Administration. It may be better if the funds were sent directly to the Department of Justice.

ADDITIONAL PUBLIC COMMENT

Mr. Schneider, MPEA, went on record in support of the proposed legislation and that it does encompass collective bargaining issues.

Rep. Fisher said that according to book sent to all legislators, Montana was 35th in its taxes on beer. He introduced legislation in the 2001 Legislature to increase the tax on beer and wine. He said that Montana drinks 968,000 barrels of beer a year and increasing. Had this bill passed, the state would have collected \$33 million dollars. He felt that the easiest, quickest, and fairest way to fund the proposed legislation was to raise the existing beer tax by one or two cents and the existing wine tax 20 cents a liter and dedicate it to the MHP to support the proposed legislation rather than trying to figure out how to collect money through insurance companies.

William Muhs, Mothers Against Drunk Driving, MADD, Bozeman, stated the following:

- MADD supports a prevention component to health care reform and a substantial increase in the taxation on alcoholic beverages as a means of covering the cost to society caused by misuse of alcohol and as a means of supporting prevention programs, including counter measures to alcohol-impaired driving.
- Montana's beer tax is currently one-third of where it should be if the state adjusted for inflation for the last 30 years, amounting to an increase of 2.6 cents per can of beer.
- Montana's beer tax is well below one-half of the nation average and will be passed on to consumers as the beer industry price increases.
- According to research, beer is the drink of choice of drunk drivers (81%) while at the same time, the disparity between revenue collected from beer taxes and the massive economic harm caused by its consumption continues to grow.
- Funding a steady source of revenue to bring the MHP up to required standards is an idea whose time has come.
- MADD strongly supports the alternative of increasing the beer excise tax to fund the MHP at a level that is necessary to make Montana highways a safer place.

Kristi Blazer, Montana Beer and Wine Wholesalers Association, said that her clients sell beer and wine to retailers not to consumers. They would collect the proposed tax and would become tax collectors if the Legislature chose an increase in the beer and wine taxes as a method to fund the MHP. Although the Association believes the MHP needs additional funding and supports that concept, it believes that increasing the beer and wine taxes is bad tax policy, a selective tax, and a regressive tax.

COMMITTEE BUSINESS

Rep. Fisher **moved** that the Committee approve the proposed legislation providing for an increase in the base salary for the number of highway patrol officer position existing on March 1, 2006 by not only the \$5 fee on motor vehicle insurance policy premiums but an increase in the excise tax on beer and wine.

Following a brief discussion, Rep. Fisher **amended** his motion to exclude the increase on the excise taxes on beer and wine.

Committee members were discouraged about the fact that the MHP had to wait so long before any relief from the fund was noticed and that a priority should be to work with the Appropriations Committees to see if anything could be done before the 2006 date.

Rep. Fisher's amended motion passed unanimously and Rep. Jent will sponsor the legislation on behalf of the Committee.

Rep. Olson **moved** the approval of all agency's proposed legislation for purposes of bill drafting. Motion passed unanimously.

There being no further business, the meeting adjourned at 4:10 p.m.

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