



State Administration and Veterans' Affairs Interim Committee

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

59th Montana Legislature

SENATE MEMBERS

JOSEPH TROPILA--Vice Chair
BILL TASH--Chair
KEITH BALES
CAROLYN SQUIRES

HOUSE MEMBERS

RALPH HEINERT
VERDELL JACKSON
RALPH LENHART
VERONICA SMALL-EASTMAN

COMMITTEE STAFF

DAVE BOHYER, Lead Staff
JOHN MACMASTER, Staff Attorney
FONG HOM, Secretary

MINUTES

Outlined minutes with audio recording. These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. For each activity listed, the minutes will indicate the amount of time (in hours, minutes, and seconds) that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording. To access the minutes, click on the date of the meeting. To hear the audio recording, click on the Real Player icon.

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November 4, 2005

Capitol Building, Room 102
Helena, Montana

COMMITTEE MEMBERS PRESENT

SEN. BILL TASH, Chair
SEN. KEITH BALES
SEN. CAROLYN SQUIRES
REP. RALPH HEINERT
REP. VERDELL JACKSON
REP. RALPH LENHART

COMMITTEE MEMBERS EXCUSED

SEN. JOSEPH TROPILA, Vice Chair

COMMITTEE MEMBERS ABSENT

REP. VERONICA SMALL-EASTMAN

STAFF PRESENT

DAVE BOHYER, Research Director
JOHN MACMASTER, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, [Attachment #1](#).

CALL TO ORDER AND ROLL CALL

00:00:27 SEN. TASH called the meeting to order at 8:33 a.m. The Committee Secretary took roll visually. The October 6, 2005 minutes with corrections were approved unanimously.

LC 2006 DRAFT LEGISLATION - Dave Bohyer, LSD

00:03:23 DAVE BOHYER discussed bill draft LC 2006 (**EXHIBIT 1**) regarding legislative scrutiny of retirement-related bills.

Discussion on a draft letter from Sen. Bill Tash (**EXHIBIT 2**) to Sen. Bob Keenan, Chairman of Legislative Council, regarding SAVA's request to appoint four additional members to SAVA.

QUESTIONS FROM THE COMMITTEE

00:20:38 SEN. BALES and DAVE BOHYER discussed the time line of the proposed bill drafts, what happens to the bills that were proposed by legislators involved in contested races, how much scrutiny do those bills get during the legislative process, how big of a proportion of bills do you deal with out of the entire number of bills reviewed before a session.

00:32:46 SEN. SQUIRES discussed several things which might help the committee. The leadership should appoint to individuals serve on this committee who have had experience in state administration. There is a need for scrutiny of bills and it would be beneficial to submit pension bills at the same time.

00:42:44 Discussion on the expansion on the size (number of members) of this committee, particularly the leadership approval of the expanded committee or membership and review some of these issues, particularly in regard to actuarially soundness and fiscal notes, how detailed do we want the fiscal notes to be, what should be shown on them.

REP. JACKSON supported a conservative approach and said two additional members is adequate.

DISCUSSION ON SUB-COMMITTEES

00:50:52 Discussion between SEN. BALES, REP. HEINERT and DAVE BOHYER about the possibility of having a subcommittee comprised of some of the members in this committee and what will the subcommittee do. DAVE BOHYER suggested that the composition of any subcommittee established to review proposed legislation is a question of whether you want to be efficient in reviewing the bills or if you want to expand legislator's understanding and appreciation for the implications of these bills.

DRAFT LEGISLATION LC 2005-2

00:57:30 DAVE BOHYER discussed the draft legislation, LC 2005-2 (**EXHIBIT 3**) and amendments (**EXHIBIT 4**) to LC 2005-2.

QUESTIONS FROM COMMITTEE

- 01:28:35 Discussion between REP. LENHART and Dave Bohyer about the 7.47% to 11.53% increase in the employer contribution rate that would affect school districts.
- 01:30:12 Discussion between SEN. BALES and Dave Bohyer about 25-year and 30-year turnaround to make retirement actuarially sound; is it a policy question as to whether or not you need to go beyond that threshold; do you reduce the employers down below the current rate?
- DAVE BOHYER explained defined benefit retirement systems and unfunded liability.
- SEN. BALES asked about optional retirement program; fringe benefits that are not taxable.

COMMENTS BY REPRESENTATIVES OF RETIREMENT SYSTEMS AND BUDGET OFFICE ON DRAFT LEGISLATION

- 02:04:29 DAVID SENN, Executive Director of TRS, commented on LC 2006 and encouraged the Committee to adopt this draft and discussed teacher contracts with benefits (**EXHIBIT 5**) that affect recruitment and retention of teachers; retirement dates of teachers and how that affects the unfunded liability of TRS.
- 02:30:03 Discussion between Sen. Squires and David Senn about the type of relationship between the Montana Teachers or MEA/MFT, whether there is dialogue prior to negotiations, and whether there is communication between Mr. Senn and MEA/MFT regarding proposed benefits.
- 02:31:56 Discussion between Sen. Squires and Tom Bilodeau, MEA/MFT, regarding the issue of part-time teachers and if teachers who were retiring earlier could be brought back into the district to help the district fund the retirement system. There were proposals made by legislators to expand the number of hours or the amount of post retirement employment, which MEA/MFT opposed.
- 02:37:50 Discussion between REP. JACKSON and DAVID SENN regarding the salary spiking issue, how prevalent that is, who is doing it, and what can the legislature do to address that issue.
- 02:46:35 SEN. SQUIRES and David Senn talked about loopholes in relationship to the funding of TRS; will putting an additional 4% of salaries into TRS be enough to stop the growth of the unfunded liability.
- 02:50:42 SEN. BALES wanted to know if health insurance should be considered a nontaxable fringe benefit and allowing teachers to participate in the state health insurance plan. Discussion about teachers not being entitled to retirement if they are making over 1/3 of their ending salary, would it not also be appropriate to say nontaxable fringe benefits could not be over 1/3 of what they were at the time employment?

02:57:00 TOM BILODEAU, MEA/MFT, said school administrators and school employees have situations where they bargain early retirement incentive provisions which include payments of health insurance. The other situation is when people return on a 1/3 basis or less and are paid accordingly.

TESTIMONY FROM KELLY JENKINS, PERS

03:02:47 KELLY JENKINS commented on LC 2005-2 and presented his suggested amendments (**EXHIBIT 6**).

03:13:05 Questions asked by SEN. BALES and discussion following about the additional employer contribution remaining in effect until the actuary valuation gets to 25 years, is it necessary to go down to 25, can we go to 30; if we get into trouble, raise the contribution again; what the Governmental Accounting Standards Board's standards is.

03:17:58 REP. LENHART would like Mr. Bohyer's reaction to changing LC 2006, deleting sections 3(b) and 3(c) and folding 3(a) into subsection 2(d). MR. BOHYER responded to the amendments that Mr. Jenkins proposed.

03:20:15 SEN. SQUIRES asked for David Ewer's comment on the TRS needing \$100M to fund the TRS. DAVID EWER talked about the three components: abuse of the system, the level of increases necessary on employers, and one-time money infusion.

03:27:13 SEN. BALES asked if there is any possibility of more than \$100M to go into TRS. DAVID EWER talked about the amount of money in the fund balance and how they would like to use that money. SEN. BALES wanted to know if it was Mr. Ewer's and the Governor's policy that if we end up with a fund balance greater than anticipated, that we would put some into the retirement funds.

PUBLIC COMMENT

03:35:30 TERRANCE SMITH, Financial Officer with Big Sky Water and Sewer District, and a member on the PER Board, submitted written testimony (**EXHIBIT 7**) with respect to the Defined Contribution plan. He emphasized that this is his own opinion and not the opinion of the Board.

03:39:30 CLAUDIA CLIFFORD, AARP Montana, submitted written testimony to the Committee containing comments on the draft legislation regarding the public employee and TRS (**EXHIBIT 8**). Supportive of LC 2005 and pleased that policymakers understand the necessity of making these retirement systems solvent. Supportive of LC 2006. Supportive of the suggestions made by Carroll South regarding fiscal notes which she did not see in the draft legislation and would like the Committee to look at fiscal notes for retirement bills.

03:45:14 CHARLETTE THOMAS, President of Montana Retired Teachers, submitted her testimony (**EXHIBIT 9**) thanking the Committee for their time and expertise and guidance through this study to provide actuarial funding for the Teachers Retirement System.

- 03:46:29 DON WALTERS, Executive Director of the Montana Retired Educators Association, submitted his testimony (**EXHIBIT 10**). The Montana Retired Educators Association favors the passage of the proposed bills at the Special Session in December.
- 03:48:10 TOM BILODEAU, MEA/MFT, representing their retired members, supports both LC 2005 and LC 2006. Requests that the implementation of the 3% increase in the employer contribution rate not be put in before July of 2006, and also phase it in over a period of time.
- 03:52:22 DAVID EWER, Director of Office of Budget and Planning, said that on behalf of Governor Schweitzer, the work done by everyone is appreciated. Discussed the progress being made on fiscal notes.
- 03:57:26 FRANK COLE, Retired Police Association, appreciated what the Committee has done. Opposed to term limits. Discussed the 75% purchasing power when tied to the CPI is less and why the benefit beginning July 2001 is different from theirs. Stated his concerns on his case.

DISCUSSION ON NEXT MEETING DATE, NOVEMBER 30

- 04:11:29 Discussion on the date of the next SAVA meeting. The scheduled November 28 meeting was changed to Wednesday, November 30, 2005, beginning 8:30 a.m.
- 04:14:24 SEN. BALES had a question about the pieces of legislation regarding the phasing in of the increases of the employer contributions and tightening up the loopholes. What direction was needed from this Committee to the staff as to what will be done and how they will be handled.

DRAFT LEGISLATION ON LC 2006

- 04:34:29 **SEN. SQUIRES moved to accept LC 2006 as written. Motion carried unanimously.**

DISCUSSION ON SEN. SQUIRES' MOTION

- REP. HEINERT said that a comment dealing with 3(b) that "the State Public Employee Retirement System to furnish any information" might be too broad. Leave out the word "any". SEN. BALES asked Mr. Bohyer to comment if they could do these studies out of administrative fees and therefore it would not be against the Constitution. MR. BOHYER said he believed that the PERD and MPERA could use retirement system funds to administer the systems up to the maximum allowed by statute. It is his understanding that that was the way it had worked up through the 1997-1998 interim.
- 04:37:14 TOM SCHNEIDER, Executive Director of Montana Public Employees Association, said that they contributed money to two different pieces of legislation: retirement and a memorial. The reason this language was put in was because of earlier discussions on GABA and the possible costs of looking at the actuarial costs and consulting costs.
- 04:38:37 Discussion with SEN. BALES regarding information that may be provided by an

actuary and the cost of that information, who would or would not pay for it.

04:41:29 REP. JACKSON asked a question to Dave Bohyer on (c), on accepting money to do something and accepting the services to providing this data. MR. BOHYER said that's a policy issue for the Legislature to consider.

04:43:56 JOHN MacMASTER said that lines 4 and 5 on page 3, which stated, "the contributions made by these private entities must be deposited in the State's special revenue fund for appropriation by the Legislature." Mr. MacMaster said that the Legislature is going to have to appropriate the money for whatever it thinks is appropriate. DAVE BOHYER talked about what the Committee's intent is if there is a special session that would include these issues as part of the call of the special session, these bills would be introduced by request of the State Administration and Veterans' Affairs Interim Committee. If there is no special session, then the bills will be introduced in a regular session by request of SAVA.

DRAFT LEGISLATION LC 2005-2

04:46:30 **SEN. BALES moved to approve LC 2005-2.**

DISCUSSION ON SEN. BALES MOTION

SEN. BALES talked about changing 25 years versus the 30-year mark that is considered to be actuarially sound and satisfies the Constitution. **SEN. BALES made a substitute motion to amend the bill from 25 years to 28 years. REP LENHART seconded.**

04:48:46 REP. JACKSON supports the 28 years but prefers 30 years. **REP. JACKSON proposed to amend the motion and if it fails, would support the 28.**

04:51:26 Discussion about the rule established by the Governmental Accounting Standards Board (GASB) that retirement systems need to be funded with no more than 30-year unfunded actuarially liability.

04:54:30 **REP. JACKSON moved to make the figure 30 years. Motion carried with one opposed.**

04:56:16 SEN. SQUIRES and Dave Bohyer discussed whether or not detention officers are included in the act providing for the actuarially funding of the Public Employees Sheriffs, Game Wardens, Peace Officers and Teacher's Retirement. Mr. Bohyer said, "yes".

04:57:54 REP. HEINERT proposed a motion to look at reducing the contribution from what the existing rate is based on the actuarial calculations.

Discussion between Rep. Jackson, Rep. Heinert and Dave Bohyer regarding the differences between the contribution of 30 years and 25 years, the percentage increases in the employer's contribution rate, what Rep. Heinert's motion would do if the unfunded liability term drops to 25 years, if the Boards actually recommend reductions in rates that are supported by the increase in funds.

- 05:02:24 **REP HEINERT revised his motion to include that this Committee look at and recommend a contribution rate reduction.**
- 05:02:57 DAVID SENN discussed what happens when you reduce the contribution rate if it hits 25 years and then bouncing that out to 30. SEN. BALES asked that the rate that they are at right now before putting the increased contribution in, actuarially, should that fund it on how many years basis, a 30-, a 25-, a 35-? DAVID SENN talked about different actuarial assumptions of increasing the rates, what that does to the unfunded liability, and the employer contribution rate.
- SEN. TASH called for vote to REP HEINERT's motion for the Committee to look at and recommend a contribution rate reduction. **Motion carried with one opposed.**
- 05:12:51 **SEN. BALES moved that the Committee direct the staff to figure out phasing in the increases over 3 years starting July 1, 2006. REP. HEINERT seconded the motion. Motion carried unanimously.**
- 05:15:42 DAVE BOHYER discussed what the Committee should do with the recommendation that Kelly Jenkins brought forth on page 5 of the bill, having 27 years or having 17.25 years longer than the scheduled period. SEN. SQUIRES wanted to know if that was the Teacher's Retirement bill? DAVE BOHYER said it was PERS, the Plan Choice Rate Provision and the duration over which the unfunded liability represented by the transferring employees needs to be paid off.
- 05:18:08 MELANIE SYMONS, Legal Counsel for Public Employees Retirement Board, talked about the way the bill is currently drafted, the 27-year period of time would keep on going every time you looked at the liability and by amending it and putting in the 17.25 years longer than the scheduled period, that language would stay in there. She talked about adding the 17.25 to the 9.75 that exists, and getting the 27 years now. Discussion of the inequity of the Defined Contribution and the Defined Benefit systems and what needs to be done to make them equal in status and in actuarial soundness.
- 05:24:44 OBPP DIRECTOR DAVID EWER tried to answer questions from his perspective about whether or not all of the issues surrounding the defined contribution plan were being addressed in the bill, that there are two concerns that he understands: one is the start up loan for the DC plan; and two, what Mr. Smith was talking about, which was the issue that if you go from a defined benefit plan to the defined contribution, a certain amount of unfunded liability went with it, whether it was actuarially sound or not.
- 05:31:40 DAVE BOHYER discussed the amendment to change it back to 17.25 years longer than the scheduled period which partly addresses Mr. Smith's concern. And it would accommodate what the entire Board believes is the right thing to do.
- 05:37:47 SEN BALES discussed the fiscal notes for the retirement systems that the Committee should be looking at. REP. JACKSON talked about what he thinks the main problems are with the fiscal notes and that is, they don't show the

impact on the retirement system.

05:40:37 **REP. JACKSON** moved to put forth a recommendation that the fiscal impact on the retirement systems be shown on the fiscal note. **MOTION failed unanimously.**

05:51:05 **SEN. BALES** moved that this Committee request that we have a proposal for a fiscal note on the retirement funds at our next meeting for our review and comment. It was **seconded**. JON MOE, LFD, discussed the sample fiscal note that was passed out by Carroll South which could be made available to the Committee.

05:53:31 JOHN MACMASTER discussed whether or not there was a motion needed. **SEN. BALES said that he would withdraw his motion.**

REP HEINERT talked about the proposed letter to Sen. Keenan regarding expanding the membership of SAVA by four members. He suggested by way of a motion to modify the paragraph relating to fiscal notes and fiscal implications that this Committee intends to provide some input with respect to looking at fiscal notes and how they impact the retirement systems.

MOTIONS ON ISSUE OF ADDITIONAL MEMBERS TO STANDING COMMITTEE

05:55:00 **REP. JACKSON** moved for two additional members. Rep. Heinert **seconded**. **Motion failed.**

06:02:18 **SEN. SQUIRES** moved that four members be added to this standing committee. **Motion failed.**

FISCAL NOTE ISSUE

06:12:51 SEN. BALES asked if all fiscal notes would be redone, including those dealing with retirement systems. Sen. Bales would like to review anything pertaining to fiscal notes that affects the retirement systems and make recommendations.

06:14:58 DAVID EWER discussed the proposed draft fiscal note that was reviewed at the October 6, 2005 meeting of SAVA. Mr. Ewer said that the Executive Branch and the agencies will work on a fiscal note draft that the Committee can review.

DISCUSSION ON LC 2005

06:17:49 SEN BALES discussed tightening up loopholes on retirement; the provision that fringe benefits not be more than a third of what they had been during the full employment time, as well as the salary not being more than 1/3; suggested that Mr. Bohyer present some proposals regarding the loophole issues at the November 30th meeting.

06:19:45 SEN SQUIRES asked if closing the loopholes at the special session is a part of funding the liability issue, or would that be better taken up in the upcoming session.

DAVID EWER said that a fiscal note is important regarding legislation for retirement systems and he offered to present a draft fiscal note in the new format to be reviewed at the next meeting.

- 06:23:35 **SEN. BALES moved to accept a recommendation suggested by PERB of 17.25 years longer than the scheduled period. Motion carried unanimously.**
- 06:25:52 **REP. HEINERT moved that the rate of not less than zero established by Board be added back in, in reference to page 12, lines 24 and 25.** Discussion followed by Dave Bohyer, John MacMaster and David Senn on the consequences of interest rate at zero or less than zero. **REP. HEINERT revised his motion to say that the retirement boards shall annually establish the rate of regular interest which must be a positive number. Motion carried unanimously.**
- 06:34:18 DAVE BOHYER discussed the appropriation section that once the \$125M is allocated among those systems, the actuary can then look at what the actual increases in the employer contributions would need to be. The Legislature may also need to appropriate money for FY 2007 and where the language in (1) comes in and if it's the Committee's understanding that he will work with the Budget Office to get numbers plugged in there.
- 06:35:12 SEN. BALES shared his thoughts on increasing employer contribution on Teachers Retirement System having impacts on property taxes; should see what happens with Quality Schools Interim Committee's funding proposal; it is the state's responsibility to look to their share instead of putting it all on the locals.
- 06:37:26 REP. JACKSON requested that Dave Bohyer look at early retirement and the impact of early retirement and look at long term. REP HEINERT would like to go on record as supporting the recommendation of Sen. Bales and the recommendation of Rep. Jackson that they are good ideas and ones that we need to pursue, in particular the recommendation that Sen. Bales proposed. DAVE BOHYER said that the Quality Schools Interim Committee will present a bill draft at their November 18th meeting and their funding will change the funding liability of TRS.

DISCUSSION ON LETTER FROM ECONOMIC AFFAIRS INTERIM COMMITTEE

- 06:41:34 DAVE BOHYER said that the statute states that this Committee has monitoring responsibilities for all entities attached to the Department of Administration. The State Fund was transferred from Department of Labor to Department of Administration. Pursuant to a letter to Sen. Tash from Rep. Keane (**EXHIBIT 11**) this Committee needs to decide whether to allow Economic Affairs Interim Committee to retain monitoring State Fund. **SEN. SQUIRES moved to transfer the monitoring responsibility of Workers Compensation to Economic Affairs Interim Committee. Motion carried unanimously.**
- 06:44:03 DAVE BOHYER distributed to members of the Committee a notebook from Frank

Cole containing the history of Mr. Coles's case.

06:44:54 DAVE BOHYER discussed an email from Carroll South that was in response to his request for information on what the Board of Investments' transactions were over the years that the financial markets were suffering (**EXHIBIT 12**).

ADJOURN

06:47:18 SEN. TASH adjourned the meeting at 3:19 p.m.

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