



State Administration and Veterans' Affairs Interim Committee

60th Montana Legislature

SENATE MEMBERS
KELLY GEBHARDT
VERDELL JACKSON
LARRY JENT
CAROLYN SQUIRES

HOUSE MEMBERS
FRANKE WILMER--Chair
GARY MACLAREN--Vice Chair
PAT INGRAHAM
VERONICA SMALL-EASTMAN

COMMITTEE STAFF
DAVE BOHYER, Lead Staff
DAVID NISS, Staff Attorney
FONG HOM, Secretary

MINUTES

January 7, 2008

Room 102, Capitol Building
Helena, Montana

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

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate 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.

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COMMITTEE MEMBERS PRESENT

REP. FRANKE WILMER, Chair
REP. GARY MACLAREN, Vice Chair

SEN. KELLY GEBHARDT
SEN. VERDELL JACKSON
REP. PAT INGRAHAM

COMMITTEE MEMBERS EXCUSED

SEN. LARRY JENT
SEN. CAROLYN SQUIRES
REP. VERONICA SMALL-EASTMAN

STAFF PRESENT

DAVE BOHYER, Research Director
SUE O'CONNELL, Research Analyst
DAVID NISS, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, Attachment 1

COMMITTEE ACTION

- The Committee approved LC 9060 as a committee bill.
- The staff will present the next draft of LC 9050 at the February 22nd meeting.
- The Committee approved LC 0018 as a committee bill.
- The Principles and Guidelines were tentatively adopted.

CALL TO ORDER AND ROLL CALL

00:00:06 Rep. Wilmer called the meeting to order at 8:32 a.m. Senator Squires, Senator Jent, and Rep. Small-Eastman were excused. The Committee approved the minutes of the October 19 and 20, 2007 meetings.

AGENDA

HJR 46: Study of Election Laws - Sue O'Connell, Research Analyst, LSD

00:02:02 Ms. O'Connell discussed the document "Survey of County Election Administrators: Funding and Resource Issues" (**EXHIBIT 1**). Ms. O'Connell discussed proposed bill drafts: LC 9050 and LC 9060.

00:05:40 **LC9050 (EXHIBIT 2)** is a result of the efforts of the working group that went through each section of Title 13, General Election Laws; and each section of Title 20, Chapter 20, School Election Laws. Ms. O'Connell said that LC9050 amends 51 sections of election law and proposes two new sections to reflect changes that have occurred over the years, primarily with the advent of permanent absentee voting and provisional voting.

00:30:29 **LC 9060 (EXHIBIT 3)** is a draft bill allowing certain minors to serve as election judges. The draft shows how ideas could be pursued if they did not belong in the cleanup bill (LC 9050).

Questions

00:31:08 Rep. Ingraham asked why the 10-day notification period for school election judges was eliminated. Ms. O'Connell said that the 10-day period was difficult for the schools to meet in terms of getting election judges and the change will give schools more flexibility and more time to get election judges.

00:32:18 Rep. Wilmer asked Ms. O'Connell if she could summarize why the working group picked the option of choice for resolving the issue of voting for candidates who replace a deceased candidate or a candidate who had withdrawn from the race. Ms. O'Connell said that there weren't a lot of options discussed because the only option that the county clerks and recorders felt they had was to not count the vote at all because it was for the wrong person. The feeling was that if somebody voted for a Democrat or a Republican candidate, that was an indication of at least of their interests and the ideas of that person and those ideas might be carried on by the subsequently named candidate.

Public Comment

00:34:29 **Bob Vogel, Montana School Boards Association**, said that Section 50 of LC9050 should be aligned with Title 13 to make the sections the same. Finding election judges is an issue for school districts as well as for the county election

officials. Currently in Title 13, the wage serves as a floor under the compensation for election judges, while in Title 20, it serves as a cap. The School Boards Association would like to reverse that and make it consistent. In the tie vote section, the language in Section 53 of LC9050 is already taken care of in Title 13, but it is unclear where to look.

00:37:34 **Jaime MacNaughton, board member of Montana Common Cause**, discussed her concerns over the right of a citizen to vote and the possibility that requiring postage for a mail ballot could be a "poll tax.". She distributed a copy of the envelope in which she received her ballot (**EXHIBIT 4**) in the Helena election and the ballot that she had to return. Her concern is the costs that voters must incur in casting their ballots by mail in elections. In summation, she read a quote from President Lyndon Johnson when he introduced the voting rights act. He said, "we cannot and must not refuse to protect the right of every American to vote in every election that he may desire to participate in."

00:40:37 Rep. Wilmer asked Ms. MacNoughton if there's been any challenge to other mail-in ballot elections in other states. Ms. MacNoughton said that she has not had the opportunity to examine that question, but she knows that it is an issue that has been raised as people have started to move towards voting by mail.

Committee Discussion on LC 9060

00:41:28 Rep. Ingraham wanted to consider youth voting contained in LC9060 as outside the scope of the cleanup bill and that it should require its own bill.

Sen. Gebhardt moved that LC 9060 go forward as a Committee bill.

There was discussion on the duties of an election judge, election judges training youth election judges, and what the pay is for election judges.

The motion **passed** with Rep. MacLaren voting no; Rep. Small-Eastman, Sen. Jent and Sen. Squires voting aye by proxy.

Committee Discussion on LC9050

00:52:04 **Rep. Ingraham moved that LC 9050 go forward as a Committee bill.**

There was discussion on the following items in LC9050:

Voting Machine Security

Rep. Ingraham had concerns regarding Section 29(g), changing the word "maybe" to "is" for requirement of machines.

Ms. O'Connell said that the change is requested by the League of Women Voters and she thought that this would apply to machines going forward. The League suggested the statute should have that definite security feature, because the issue is not current machines, but it could affect future machines.

Party Declaration by Election Judges

Rep. Ingraham commented that the proposed requirement in section 39,

paragraph 6, election officials at places of deposit must represent different political parties in partisan elections, may not work since election judges don't have the authority to require declaration of parties.

Ms. O'Connell said that she received a few suggested changes from the Secretary of State's Office based on conversations that they had with some clerks and recorders. The Secretary of State's Office suggested a modification in the language in 13-4-102 that would be sufficient and would address that concern.

Tie vote

Mr. Vogel said that the language says that it is up to the trustee to choose the method by which they break a tie vote.

Ms. O'Connell said that the working group didn't want to specify a method, so the language was left the way it is. She said the Committee could go with the Title 13 language or they could add language that said something along the lines that "they shall appoint, using a method decided by the trustees" so that it shows there is some leeway for how they do it.

David Niss, Legal Staff, said that the language would not prohibit either the drawing of straws or a flipping of the coin as long as the trustees then took a formal action in the form of a motion and vote to appoint and if the trustees want to consider themselves bound by that lot, they could do so.

Broadcast and notification

Rep. MacLaren had a concern on broadcasting required notices as opposed to publishing in a newspaper of general circulation. He wanted to know how long that broadcast provision has been in section 8 of the bill. Ms. O'Connell said it has been in there since the 1990s and doesn't eliminate the broadcasting, it just moves that portion to a different part of the sentence for the wording choice because of adding the late registration option. The main change is that they must publish notice of the late registration option as well. The other requirements, in terms of publication or broadcast, are not changed by the amendments.

Rep. MacLaren asked if they can use broadcast instead of publishing in a paper of general circulation? Ms. O'Connell said that in this particular section of law, they had that option, either/or.

Mr. Bohyer said that the change is the availability of the late registration option provided for in 13-2-304. The rest of it is just a grammatical change to allow for the broadcast or the publication to still take place, it is not substantive. The substantive part is that notice must be provided of the availability of late registration option. Rep. MacLaren said that since they are doing a cleanup bill, the committee should look at that.

Sen. Jackson asked Mr. Niss what the word "publish" means in legal terms and what comes under the word "publish" when it is in law. Mr. Niss said if the word

"publish" appears in statute, you would have to follow the rules of statutory construction in construing that word as you would any other word in a sentence in the statutes. If it is unclear, then you can resort to other methods of construction outside the statute.

Absentee or mail ballot

Rep. Ingraham said that she believes that the section in the absentee ballot or mail ballot cast for a deceased candidate is not a cleanup issue, but should be a separate bill draft request.

Require written plan that addresses instructions

Rep. Ingraham said that the proposed change does not need to be a separate bill because it is not a bad practice.

Election Administrator should cancel the registration of an elector

Rep. MacLaren said that on page 18, it says, "if the elector: a) fails to respond to certain confirmation; b) is placed on inactive list; and c) then fails to vote in two consecutive federal elections", does that mean that they would not vote three elections or two elections? Ms. O'Connell said that it is three and this cleanup was suggested because that is the current practice.

Rep. Wilmer said that there is a motion that staff proceed with the next draft of LC9050 to be presented at the February 22 meeting. The motion passed with Sen. Jent, Rep. Small-Eastman, and Sen. Squires voting aye by proxy.

Polling Places/Places of Deposit, Mail Ballot Pilot Project

01:26:02 Ms. O'Connell discussed the Mail Ballot Pilot Project: Polling Places/Places of Deposit (**EXHIBIT 5**).

Survey of County Election Administrators, Mail Ballot Pilot Project

01:30:11 Ms. O'Connell talked about the Survey of County Election Administrators (**EXHIBIT 6**) on questions involving the mail ballot pilot project.

Options and Implications, Mail Ballot Pilot Project

01:31:25 Ms. O'Connell discussed the Options and Implications (**EXHIBIT 7**) which will provide guidance to staff and others on how the Committee would like the pilot project legislation structured.

Questions

01:37:32 Rep. MacLaren said that there is data that should be collected as part of the pilot project. He asked if collecting data from the 2008 elections for comparison means that the same data collection would be required for mail in ballots in elections in the future? Ms. O'Connell said that she is not certain that all the data to be collected is available, but counties can get it if they know that they are supposed to. At this point, the suggestion among some work group members was that if this were a requirement, a jurisdiction, probably a county, could only participate in a pilot project if you collected data in 2008. The language would have to provide some clear indication to the counties of what that data would be.

Public Comment

- 01:39:48 **Jean Marie Souvigney, Montana Conservation Voters Education Fund**, said that the Montana Conservation Voters Education Fund does not have a position on whether Montana should go to all mail ballots or not. Their concern is that if the state is going to go in that direction, it makes sense to have a pilot project rather than simply to do it wholesale, not recognizing what the implications may be and then potentially have to reverse direction. The Montana Conservation Voters Education Fund will have a summary at the next meeting about some of the things they found in the 2007 election that they would like to see addressed if the Committee decides to go to either a pilot program or any mail ballot program.
- 01:42:11 **Janice Hoppes, Clerk and Recorder, Pondera County**, said that depending on what the committee wanted collected during the pilot project election, that information would be best compared to the 2006 election because both are federal senatorial races. The 2008 election will be the presidential election and turnout is different. She said that they always keep track of how many absentee ballots were sent out, how many were returned. She would urge those doing the pilot to have just mail ballot elections in their county.
- 01:45:09 **Duane Winslow, Election Administrator, Yellowstone County**, said that he had a couple of observations: the drop site situation when talking about seven or eight drop off sites in a county if they have seven or eight polling places; and leaving polling places open on election day for people to go and vote at the polling places. He said do the pilot project thoroughly and get the answers.

Discussion on the Mail Ballot Pilot Project

- 02:04:01 Rep. Wilmer said that Ms. O'Connell's work on the election laws merits some discussion. She said that Ms. O'Connell had requested that the committee decide which sections to take out and which sections could she begin work on.
- Rep. Ingraham said that one of the things that the committee needs to address would be Section 5. She said that when she made the motion (at the November 30 meeting) for the mail ballot pilot project, she meant for mail ballot elections. She doesn't believe it would be in the best interest of any mail ballot election to have polling places open at the same time, and she thinks it is an issue that needs to be resolved before the committee can address the rest of the sections. Leaving polls open defeats the whole purpose of the project, takes away from a true mail ballot and there's no sense in wasting our time if this committee is not going to support a true mail ballot pilot election. She said having polling places open is not a mail ballot election.
- Rep. Wilmer directed Ms. O'Connell to not work on Section 5 at this time.
- Rep. Wilmer, referring to Section 3, said that she agrees that the relative comparisons of 2006 and 2010. Turnout in non-presidential years is about 35% or less and presidential elections is about 50%. She asked if that would mean that the committee should move forward the whole study to another off-year, 2010, as the first year?

Sen. Gebhardt said that he would like to ask the counties who are willing to participate in this about the costs of postage, costs of conducting this election versus doing it at the normal polling places and return postage for the ballot so we can look at that issue at the next meeting. Rep. Ingraham said that if you are looking at return postage and drop off boxes and election judges and timeframes, to look at what the percentages are for drop off sites for other states for comparison, how many drop off boxes per elector.

Update on Short Term Investment Pool (STIP), Board of Investments, Carroll South, Executive Director

02:14:23 Mr. South discussed the Short Term Investment Pool (STIP) maintained by the Board of Investments (**EXHIBIT 8**). Mr. South concluded that there has been no impact either on the STIP portfolio or the ability of participants to make deposits or cash out.

Questions

02:31:10 Sen. Jackson wanted to know what is needed in terms of legislation. Mr. South said that the Board of Investments needs some discretion under certain circumstances to control not only deposits but withdrawals. The Board of Investments has a fiduciary responsibility to do that because the law requires BOI to act in the best interest of the beneficiaries. In this case, 75% of the beneficiaries are state agencies and in order to protect them, the Board needs to make sure that there is some discretion to control the run on the bank.

02:34:03 Rep. Ingraham asked if this type of withdrawals has this happened before. Mr. South said that they have had no record of any run on the bank prior to this time. What precipitated the run on the bank was a Bloomberg news article that included the State of Montana Short Term Investment Pool with other government pools that had certain investments that were in trouble.

Draft legislation (LC 18) - David Niss, Legal Staff, LSD

02:36:10 Mr. Niss said that at the November meeting he talked about a case, Montana Society of Anesthesiologists vs. Montana Board of Nursing, and described what the opinion of the Montana Supreme Court had on the requirement that is part of the overall rulemaking requirements of the Montana Administrative Procedure Act. He said that the requirement that the Supreme Court Opinion affected the requirement that the agency explain in the notice of proposed rulemaking what the necessity is for the rule proposed to be adopted by the agency (**EXHIBIT 9**).

Questions

02:44:12 Sen. Gebhardt asked if LC 18 goes forward, does the "whereas" language get printed in the code if the bill passes? Mr. Niss said that the "whereas" language is above the enacting clause, so it does not become statute or law.

Sen. Jackson moved LC0018 as committee bill. The motion passed unanimously with Sen. Jent, Sen. Squires, and Rep. Small-Eastman voting aye by proxy.

Post Deployment Health Reassessment (PDHRA) Campaign Plan: Deployment Cycle Support

02:53:02

Rep. Wilmer talked about concerns and possible action/recommendations on Post Deployment Health Reassessment (PDHRA) **(EXHIBIT 10)**.

1. Stigma. Congress allocated \$37.7 million toward putting psychiatrists and psychologists or social workers into primary clinics and a hundred veterans' centers.
2. Training Family Members. The bolded second point came from the recommendation of the state task force that 74% of active duty personnel cope with stress by talking to a family member. Is this something the Committee could discuss, perhaps proposing legislation to train family members to recognize symptoms and then what to do when the family thinks they see symptoms of stress, of either PTSD or traumatic brain injury.
3. Recommendation on annual health needs assessment. Has federal funding been appropriated for the assessments?
4. Crisis Hotline for redeployed veterans. This is based on two of the recommendations. One is to have a suicide hotline or a crisis hotline. More state veterans organizations could be involved in this process. Could state veterans' organizations staff these on a volunteer basis?
5. Recommendation. Federal funding has been provided and is it being channeled into Montana to ensure that every military treatment facility has a director of psychological health. Have we benefitted from that?

Rep. Wilmer talked about the second set of talking points which have to do with things that take place at the federal level rather than the state level. There were concerns or recommendations raised in the two reports. One had to do with the Tricare reimbursements, that the rates for mental health treatment are not comparable to other insurance providers. Increasing the rates would have to be a federal action and not a state action.

03:00:38

Major General Randy Mosley, Adjutant General of the Montana National Guard and Director of the Department of Military Affairs, said that in addressing these concerns, they have engaged with many entities to try and ensure that they are able to fulfill every requirement of not only the PDHRA Task Force but also their Campaign Plan. He reminded the Committee that the Task Force came about as a result of deployments that not only affect soldiers and airmen but their family members as well.

03:04:14

Col. Jeff Ireland, Director of Manpower and Personnel, Montana National Guard, distributed the Montana National Guard's Progress Report on PDHRA Campaign Plan **(EXHIBIT 11)**. He discussed the accomplishments to date:

- modified the discharge policy
- developed a Crisis Response Team
- modified Post Deployment Health Reassessment Process
- mandated enrollment of all returning veterans into the VA program
- enhanced training of awareness and education on PTSD, mTBI, signs and

- symptoms
- reaffirmed drill attendance policy
- full-time PDHRA manager
- websites redesigned
- implemented Periodic Health Assessment
- redesigned individual mobilizer process
- Congressional Delegation has worked with Montana and partnered with the Office of the Secretary of Defense in extending to Montana an additional cycle for the PDHRA
- received assistance from the National Guard Bureau in extending funding to allow Montana to put family members on orders when necessary to bring them in for the training after redeployment
- expanded Family Resource Centers by two
- increased communications with families
- Joe Foster has been working with Montana Mental Health Association for public service announcements focusing on mental health
- worked closely with National Guard Bureau on three new positions to augment Family Program staff
- National Guard Bureau has extended an opportunity to Montana to participate in a pilot project that will take a mental health professional and locate him or her at Montana National Guard headquarters to help with implementation of the PDHRA Campaign Program
- 2008 National Defense Authorization Act

Col. Ireland said that the next outreach will be to the community, and to be successful, the community needs to be intergrated with the mental health professionals, the religious community, and the veteran services organizations so that they can work together as a team.

Questions

03:11:53

Sen. Gebhardt said that in rural, eastern Montana there are telemedicine rooms set up in the local hospitals. He asked if Col. Ireland could incorporate that into their program. He also asked Col. Ireland when the military does the training for the family members, when the people are deployed, before they are deployed, or after they come home? Col. Ireland said that training for the family members occurs at various times. Obviously when the Guard has a deployment, they try to beef up that training because the interest becomes greater.

03:13:39

Joe Foster, Administrator, Montana Veterans Affairs Division, said that first of all, he would recommend that the committee invite Mr. Underkofler, Director, Ft. Harrison, VA Hospital, to give a briefing as to what the entire system is composed of, including what the increase in their financial resource has been. Secondly, where the Campaign Plan talked about the Crisis Hotline, in working with the Montana Health Association, they are initiating, effective January 9 through March 19, a public service announcement focusing on family members who want more information about PTSD or TBI or for families that have an emergent situation. There are two telephone numbers: VA's suicide hotline and a number to Fort Harrison.

Questions

Rep. Wilmer asked if a veteran or family member talks to a nurse when they call the hotline number to Ft. Harrison? Mr. Foster said that when they call the suicide hotline rather than the Ft. Harrison number, that call actually goes out of state. When they call the Fort Harrison number, they ask for the Crisis Nurse and that call goes up to the Psychiatric Department where they immediately get a mental health professional. If it is after duty hours, it goes to a nurse on call.

Rep. Wilmer asked what the logistics would be to involve veterans' organizations in manning the hotline. Mr. Foster said that the system is set up with a mental health professional who is prepared to ask the right questions in order to give proper information as to where resources are located statewide. He said that he would be reluctant to have volunteers man that type of a line because of the criticality of the call, and despite how much training the lay person may receive, they are probably not going to ask the right questions or may not know who needs to receive that vital phone call.

03:20:36 Rep. MacLaren asked Gen. Mosley if the trained professionals under contract are civilians or military. Gen. Mosley said that it is a combination. They have their own medical professionals on their Immediate Crisis Response Team. They have full time chaplains trained in suicide counseling.

REIMBURSEMENT RATES FOR LODGING AND MEALS - Sen. Jackson

03:22:36 Sen. Jackson discussed the concerns he has regarding the amount of reimbursement that members on an interim committee receives for meals and lodging. He would like to go to the per diem rate (that legislators receive while in session). **Rep. Himmelberger** recommended bringing this before the Legislative Council at their next meeting, January 29. **Dave Bohyer, Research Director, LSD**, said that the Legislative Council has begun to take a look at this issue in the context of legislators. Mr. Bohyer talked about the MCA sections that the reimbursement rates appear in, that the rates apply not just to legislators but to all state employees and elected officials. Mr. Bohyer said that he could research the history of the development of the reimbursement rates and would ask the Department of Administration to come and give an indication of the Administration's position in a larger context of reimbursements for all state employees.

03:37:49 **Rhonda Wiggers, County Treasurers Association**, said that the Montana Association of Counties requested a bill regarding reimbursement rates last session because their employees had to pay travel expenses out of their own pocket for the amount that the reimbursement rate did not cover. Ms. Wiggers said that MACo is planning on bringing this bill back and would appreciate it if the Committee does decide to do the reimbursement rate differently, to also include county and state employees as well.

LUNCH

HJR 59 Study of Public Employee Retirement Systems - Dave Bohyer, LSD

04:34:49 Mr. Bohyer talked about the Principles and Guidelines (**EXHIBIT 12**). He said

that there are four principles that the committee adopted last interim. Mr. Bohyer briefly reviewed each of the guidelines that implements the four broad principles. He said that each of the principles, with the exception of Number IV, has its basis in either statute or the Constitution.

Questions

05:10:11

Sen. Gebhardt asked what portion in Guideline U does the local government assume responsibility for? Mr. Bohyer said that the specific section is 19-13-210(3)(a) which says that any rural fire district with full paid firefighters covered by PERS may elect to be covered under the retirement systems as provided in 19-13-211. Mr. Bohyer said that the guideline could be changed by striking that dependent clause that says, "provided the local government pays the costs". By striking the language, the Legislature could ensure that the state would pay the employer contribution toward retirement.

Sen. Gebhardt said that everybody would want to participate in the FURS program because it is 20 years retirement instead of 30 years retirement. Mr. Bohyer said that all firefighters with the exception of volunteer firefighters can be in FURS. It is dependent upon the local government whether or not they want to put their firefighters in. If they are federally paid firefighters of the National Guard, then they have to be in.

Sen. Gebhardt said that the costs to the local governments is twice as much to be in FURS but the benefits are better and that is why the local governments are required to pay 14.5%. Mr. Bohyer asked Sen. Gebhardt who he wanted to pay the employer's share. Sen. Gebhardt said that the state should pick up the 32%, and the local government should pick up the 14.5%, not the 7.5%. Mr. Bohyer asked Sen. Gebhardt if he would prefer that Guideline U say, "provided the contributions are paid for the same way as contributions are paid for other members of the system." Sen. Gebhardt said that is right.

05:11:00

Rep. Ingraham said that the GABA for PERS was reduced from 3% down to 1.5%. She was wondering if, under Principle IV, that should be addressed in some way to clarify whether it was equitable or not. Mr. Bohyer said that it would be up to this Committee in the interim and, when the Legislature is in session, it would be up to the State Administration Committees as to whether or not the 3% GABA for some PERS versus the 1.5% for other PERS members was an equitable allocation of benefits among the beneficiaries.

05:14:38

Sen. Jackson asked Mr. Bohyer if it was his impression that Guideline F, the fiscal note, has already been done. Mr. Bohyer said that the budget director established a different form of fiscal notes that addressed the retirement systems. There is nothing statutory that requires them to do that. The statute states that if a bill affects spending and doesn't include an appropriation, then a fiscal note is required. The statute doesn't say in what form the fiscal note has to be.

05:19:03

Mr. Bohyer said that if the committee wants to have any of the guidelines changed, then they should change them tentatively at this meeting. He said that

there should be some guidance to the stakeholders as to the ground rules for retirement proposals (which are requested by early April).

05:20:21 Sen. Jackson said that some of the things that he would like to discuss are: benefits paid that were being converted to cash to increase the amount of salary for the last year; Guideline W, early retirement; and Guideline X, returning to work.

05:23:55 Rep. Wilmer said that she did not understand Guideline L, requiring annual actuarial reports. Mr. Bohyer said that when the SAVA adopted these guidelines in June of 2006, the PERS was required to report biennially, not annually. Since then, the statute has been changed and PERA is required to report annually. Both the TRS and the Board of Investments are required to report annually and they do report annually. The one that is on a biennial schedule, PERA, was changed by the Legislature in 2007.

Public Comment

05:27:20 **Dennis Himmelberger, representing House District 47**, said that he has some concerns about adopting the Principles and Guidelines. He said that the pension situation is important and a good discussion on that subject could take up a lot of time of the full committee. He suggested forming subcommittees that might deal with some these areas that are addressed in HJR 59 that carry over specifically to SAVA's Principles and Guidelines.

05:30:08 **David Senn, Executive Director, Teachers Retirement System**, responded to Sen. Jackson's comment. He said that in the last session, the Legislature went a long way towards making some positive changes and helping TRS patrol some of those things. TRS is working with the School Boards Association, school administrators, MEA/MFT, talking about legislation that might be requested regarding TRS provisions and he is optimistic that they will come forward with a bill that will address those concerns.

05:31:06 **Kim Flatow, MPERA**, said that in relation to the question about the rural fire districts, if a Rural Fire District elects to join the Firefighters Unified, the members pay a little over 9%, the individual employer pays 14.36% and the state contributes 32% from wherever the pool of money comes from. The one difference is that current members of FURS normally do not pay into Social Security, so that is an offset they would have to look at.

Committee Discussion on the Principles and Guidelines

05:32:08 Rep. Wilmer asked whether or not there needs to be a subcommittee on the Principles and Guidelines. She sees it as two separate issues: one is the Principles and Guidelines and the other is a host of issues raised by the study. Mr. Bohyer said that the Principles and Guidelines are a statutory requirement of this committee. The reason that he suggested that the committee adopts them sooner rather than later is so that when the committee gets proposals from the stakeholder groups, it can balance what the stakeholders are asking for against the Principles and Guidelines that have been set up. Because the Committee will be reviewing those proposals from the stakeholders, first in April and then

again in June, the Committee will eventually take action to recommend or authorize the drafting of certain proposals. He said that he would like to think that the committee would not authorize drafting of legislation that didn't comport with the Principles and Guidelines.

Rep. Wilmer suggested the committee members review the Principles and Guidelines again, be prepared to make proposals or to pass the Principles and Guidelines at the February 22 meeting. Mr. Bohyer said the Committee could adopt the Principles and Guidelines tentatively to at least give the stakeholders an idea of what the ground rules will be.

05:38:57 Rep. MacLaren **moved** to tentatively adopt the Principles and Guidelines as presented so that people who want to make proposals can get started and reserve the right to amend if necessary before the next session. The motion **passed** with the Sen. Jent, Sen. Squires, and Rep. Small-Eastman voting aye by proxy. Sen. Jackson voted nay.

HJR 59: Development of Legislator's Guide - Dave Bohyer, LSD

05:40:59 Mr. Bohyer discussed HJR 59, which commissioned the State Administration and Veterans' Affairs Interim Committee to produce for the next Legislature a Legislator's Guide that includes seven directives (**EXHIBIT 13**):

- a brief history of Montana's retirement plans
- a concise summary of the rationale for current retirement plan features of Montana public employee retirement systems
- an overview of and background on policy principles established by SAVA
- a review of current trends and best practices in public retirement plan design and funding
- a comparison of Montana's public employee retirement systems with current trends and best practices and identification of viable alternatives to current structure and funding
- a general analysis of the fiscal implications of potential plan design changes on employee and employer contributions, retirement savings, investment responsibilities and funding obligations
- include findings and recommendations on whether Montana's public employee retirement plans should be updated or changed, and if so, how.

SAVA Decision Tool for HJR 59 - Dave Bohyer

05:48:23 Mr. Bohyer discussed questions contained in the Decision Tool document (**EXHIBIT 13**):

- Question 1: What additional information does the Committee wish to have about the history of Montana's public employee retirement plans.

Rep. Ingraham said that Mr. Bohyer said that local governments had an option to join PERS rather than being mandated that they had to. She said that she would like to see some reference in the draft that it was not mandated. Mr. Bohyer asked if she would like to find out when local governments were allowed to join the PERS, and what the rationale was for allowing them to join PERS. Sen. Gebhardt said that the other part of that is how they do it today, if they choose their local governments, districts and so forth, that aren't in the system right now,

it can choose to get in and they do it by resolution of the governing board.

- Question 2: What additional information does the committee wish to have about vesting, early retirement, disability, postretirement benefit adjustments, post retirement earning limits, service purchase and rollover provisions, benefit formulas, or other factors affecting public employee retirement plans.

Rep. Wilmer said that there are 22 states that have had similar experiences to Montana in having to pass legislation and meet what appeared to be a crisis at the time of actuarial soundness. She asked Mr. Bohyer if the comparative data is going to be a part of questions 5 and 6? Mr. Bohyer said that he could provide some information on what other states have done. NCSL has compiled that kind of a list and he could provide that to the Committee.

Proposal for exemption of military retirement income from Montana state income tax - Rep. Pat Ingraham

05:55:33 Rep. Ingraham discussed a letter (**EXHIBIT 14**) sent by the commander of the American Legion Disabled American Veterans and Veterans of Foreign Wars, regarding a bill that she introduced in the house during the last session, HB 824. HB 824 called for exempting an amount of military pension from state retirement income and survivor benefits from state income tax. She discussed the letter written by Jeff Martin (**EXHIBIT 15**) regarding that issue and the reason why she introduced HB 824.

Public Comment

06:05:28 **Rick Burrows, Bitterroot Valley**, discussed the reason for the exemption. He said that the \$3,600 exclusion is dated and that the flat exemption is the way to go.

06:06:54 **Colonel Jim Jacobsen, Legislative Chair of the Montana American Legion**, said that the \$3,600 is only for those whose adjusted gross income is less than \$30,000. On behalf of the Montana American Legion, he told the committee that the Montana Constitution, Article II, section 35, the Legislature's authority for any legislation dealing with veterans because it allows the Legislature to give special consideration for those valuable members of our society. He encouraged the Committee to study this issue further.

HISTORY OF \$3,600 EXEMPTION OF MILITARY RETIREMENT INCOME - Jeff Martin, Research Analyst, Legislative Services Division

06:15:30 Mr. Martin gave a brief history of the exemption of military retirement income. He said that in 1989, there was a federal retiree in Michigan who challenged Michigan's taxation of federal retirement income while state public employee retirement income was totally exempt from taxation, and the same situation generally applied here in Montana. The U.S. Supreme Court ruled that taxation of federal retirement income, which would also include military retirement income, violated the intergovernmental tax immunity provision and states had to treat federal retirement income the same way they treated state retirement income. In Montana, the retirement income if state employees was fully exempt and rather than apply that full exemption to all retirement income (because the

costs of that would have been fairly substantial and during that 1989 to 1993 period, and the state was going through fairly severe financial revenue shortfalls) the decision was made to exempt \$3,600 of retirement income for all retirees, state, federal and private. There is the \$30,000 threshold amount, so for each \$2 above \$30,000 of taxable income, the retirement exemption is phased out \$. Pension income includes military retirement income.

- 06:19:49 **Roger Hagen, Enlisted Association of the National Guard of Montana**, said that the exemption in HB 824 is very valuable. The Association was in support of Rep. Ingraham's bill when it was introduced. The first issue that they want to revisit is the language of HB 824 to make sure that the reference to Title 10, U.S. Code for the term "retired member of the Uniform Services" will in fact encompass retired National Guard members in Montana as well. The second issue will be the calculation of the fiscal note.
- 06:24:02 **Dan Stewart, Legislative Chair for Enlisted Association for National Guard of Montana**, discussed the contents of the letter to the Committee from the Enlisted Association of the National Guard of Montana (**EXHIBIT 16**).
- 06:37:51 **David McLean, Anaconda**, said that they are ready to give whatever assistance the Committee needs from them to draft a bill regarding the issue that Rep. Ingraham brought forth.
- 06:41:30 **Dan Antonetti, Legislative Chairman for Veterans of Foreign Wars of the United States**, said that on behalf of the Department Commander of the VFW, and each and every one of their members, they commended Rep. Ingraham for carrying HB 824 last session and want to thank the committee for the work they have done on behalf of the veterans. He said that the VFW supports the Committee in the work that they have done.
- 06:42:31 **Ike Slaughter, Retired Army Colonel, President of the Special Forces Association Chapter of Montana**, feels that this retirement issue is very important and needs to be discussed. It is important not only for the veterans but also important for the state. Consider possibly that with a tax on this retirement that the state might actually be making pennies when they could be making dollars by bringing in the good, quality, retired people that are there.
- 06:45:05 **Elmer Palmer** discussed reasons why he chose to live in Montana after retirement.

LEASING OF STATE BUILDING ISSUE - David Ewer, Director, OBPP

- 06:48:27 Mr. Ewer talked about the buildings that the state owns and leases. He wanted some guidance on a lease project that the state is involved in. The issue before them concerns the article in the *Independent Record*, and some legislators are calling into question various components of the project; i.e., the costs and the process. He said that the Administration needs to get some input from the Legislature, and the logical committee to address this is the SAVA Committee. He said that this [the office building proposed for the Helena Nob Hill site] building is one that they put out for an RFP, the Administration had no direction

as to where the building or space would be sited. It is scheduled to be sited at a place called Nob Hill.

Questions

06:59:17

Rep. Wilmer asked if 600,000 sq. ft. is the total amount of space currently leased? **Sheryl Olson, Deputy Director, Department of Administration**, said that that is the amount that is leased just in the Helena area. Rep. Wilmer asked what makes this particular effort different from any past effort which resulted in the lease? Ms. Olson said that this one garnered controversy because of the size of it. They asked for an RFP response for about 100,000 sq. ft. and that is the reason for the controversy, plus the location of it.

Rep. MacLaren asked how big the old building was that they are moving out of. Ms. Olson said that the Department of Corrections is currently in 27,000 sq. ft. and they will be moving into 33,000 sq. ft. The Department of Public Health and Human Services currently leases 35,000 sq. ft., and they are moving into 65,000 sq. ft.; and the Board of Crime Control currently occupies 7,500 sq. ft., and they will be moved into 7,600 sq. ft.

Rep. Ingraham asked if there was a way to get figures that are comparable for having a building that we own now, what the footage is, how much it costs to maintain vs. what the lease costs in the long run. **David Ewer, Director, OBPP**, said that he can get information on what it costs for state-owned building versus leased building. Rep. Ingraham said that she would like some information just for general comparison.

07:23:41

Sen. Gebhardt asked if Mr. Ewer could put together a cost basis for a building over the life of it and the cost basis for the lease.

Other Public Comment

None at this time.

07:25:42

Sen. Jackson wanted to know where the issue of reimbursement was at. Rep. Wilmer said that it is with the Legislative Council for now. Sen. Gebhardt said that he will bring that up with the Legislative Council and report back to the Committee in February.

07:26:51

Cheryl Wood, Associate Director, Montana Association of Counties, said that there was a bill that they helped Sen. Lewis with in a previous session, SB 113, regarding the adjustment of per diem rates. She said that counties typically base their per diem rates on the state per diem rate. MACo has an interest in making sure that if an employee travels for business, that they are adequately reimbursed. The rates right now are unrealistic.

ADJOURNMENT

07:28:20

Rep. Wilmer adjourned the meeting at 4:05 p.m. The next meeting is February 22, 2008.

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