



State Administration and Veterans' Affairs Interim Committee

60th Montana Legislature

SENATE MEMBERS
KELLY GEBHARDT
VERDELL JACKSON
LARRY JENT
CAROLYN SQUIRES

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

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

MINUTES

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.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

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June 21, 2007

Room 102, State Capitol
Helena, Montana

COMMITTEE MEMBERS PRESENT

SEN. KELLY GEBHARDT
SEN. VERDELL JACKSON
SEN. CAROLYN SQUIRES

REP. PAT INGRAHAM
REP. GARY MACLAREN
REP. VERONICA SMALL-EASTMAN
REP. FRANKE WILMER

COMMITTEE MEMBERS ABSENT

SEN. LARRY JENT

STAFF PRESENT

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

Visitors List and Agenda

Visitors' list, Attachment #1
Agenda, Attachment #2

COMMITTEE ACTION

- The committee approved the minutes of the November 28, 2006 meeting.
- The committee accepted Mr. Niss' proposal on the Administrative Rule Review.
- The committee adopted both proposed study plans for HJR 59 and HJR 46.
- By general consensus, the committee adopted the proposed Work Plan and Meeting Schedule.
- The committee requested that staff draft and send a letter to stakeholders requesting that any legislation related to retirement be submitted to the committee by April 10, 2008, and to post that letter to the committee's website.
- The committee elected Rep. Wilmer as Chair and Rep. Maclaren as Vice-Chair.

TAPE 1A

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Squires, senior senator of the committee, called the meeting to order at 8:30 a.m. Roll was taken visually by the secretary (**ATTACHMENT #3**) and all members were present except for Sen. Jent who was excused.

Sen. Gebhardt **moved** to approve the minutes of November 28, 2006 meeting. Motion **passed** unanimously.

Sen. Squires gave a few opening remarks and then asked the members and staff of the Committee to give a brief introduction of themselves, which they did.

REVIEW OF SAVA'S STATUTORY DUTIES AND RESPONSIBILITIES - Dave Bohyer, LSD

00:10:08 Mr. Bohyer explained the duties and responsibilities of the State Administration and Veterans' Affairs Interim Committee (**EXHIBIT 1**). Mr. Bohyer said that the Committee has been assigned two interim studies: the study of election laws in HJ 46, and the study of retirement systems in HJ 59.

Mr. Bohyer directed the Committee to the previously-distributed document "Rules and Guidelines for Interim Committees" and said that members of the Committee may want to look at that on their own.

QUESTIONS

SEN. SQUIRES wanted to know if it was appropriate for the Committee to send a letter to the stakeholders asking for their proposed legislation dealing with retirement early enough so that the Committee can have adequate time to review and provide feedback.

Mr. Bohyer said that it is fine to notify the stakeholders of the date that the proposals needed to be before the Committee for their review.

OVERVIEW OF AGENCIES

00:21:03 COMMISSIONER OF POLITICAL PRACTICES - Mary Baker, Program Supervisor

Ms. Baker distributed and discussed an overview of the Office of the Commissioner of Political Practices (**EXHIBIT 2**).

QUESTIONS

REP. INGRAHAM asked if the investigator hired by the Commissioner is a full-time or part-time position or is it contract service? Ms. Baker said that it will be a full-time employee who will be traveling around the state doing investigations for the whole agency.

SEN. SQUIRES asked if the bill on the constituency account was effective upon passage and approval and, regardless, when does that mean that moneys have to be used. Ms. Baker said that the law is vague on that issue but the attorneys and the Commissioner are working on it. She said that once a rule is made, the Commissioner will prepare an advisory opinion to be passed on to the legislators.

REP. MACLAREN asked what had happened to the original 180-day requirement. Ms. Baker said that in the final draft of the bill that section had been stricken.

00:32:08 DEPARTMENT OF MILIARY AFFAIRS - Maj. Gen. Randy Mosley, Director
Maj. Gen. Mosley distributed and discussed the following information on the Department of Military Affairs (**EXHIBIT 3**); the Montana Division of Disaster and Emergency Service or DES (**EXHIBIT 4**); and the Department's Impact Brochure (**EXHIBIT 5**).

TAPE 1B

01:00:08 BOARD OF VETERANS' AFFAIRS AND MONTANA VETERANS' AFFAIRS DIVISION (MVAD) - Lt. Col. Joe Foster, Administrator

Lt. Col. Joe Foster distributed and discussed the MVAD Biennial Report (**EXHIBIT 6**) which provides an overview of the organizational structure of the Board of Veterans' Affairs. He said that he was voted chairman of a task force that will be dealing with services for those veterans who are experiencing disability claims, PTSD, and traumatic brain injuries and that the final report is close to being finalized.

QUESTIONS

REP. WILMER asked Lt. Col. Foster what the status of Sen. Tester's bill that would increase compensation for veterans traveling to and from health care facilities. Lt. Col. Foster said that that is still in the process on the federal level.

SEN. SQUIRES wanted to know if the federal Department of Veterans' Affairs in Missoula would be moving to the west end of town. Lt. Col. Foster said that the Veterans' Service Office will be moved once the Western Montana State Veterans' Cemetery is built. He said that the administrative building for that includes the Veterans' Service Office.

REP. MACLAREN asked how much of the \$4M the state receives in federal money for veteran funeral expenses goes to burial services and how that is distributed. Lt. Col. Foster said that that is money provided for the actual burial benefit. Depending upon the veteran's military service, the combat veteran receives some burial benefit that noncombat veterans don't.

REP. MACLAREN said that in Lt. Col. Foster's staffing schedule, 3 FTEs is listed for the Veterans Cemetery Program. He would like to know what their duties and responsibilities are. Lt. Col. Foster said that they have 2 full-time staff for the Montana State Veterans Cemetery located at Fort Harrison and one in the Eastern Montana State Veterans Cemetery at Miles City. He said that the duties are sexton services, that being the coordination and working with the mortuary, the families for the interment of the veteran, and also the operation and maintenance of the cemetery grounds.

REP. MACLAREN asked Lt. Col. Foster if he had any statistics on the utilization of the Veteran Services Offices and how many veterans they deal with. Lt. Col. Foster said that he has those statistics and can provide them to the Committee.

SEN. SQUIRES took a moment to acknowledge several people in the audience long associated with veterans' affairs: Dan Attonetti, Jim Jacobsen, Jim Kembel.

01:18:25 PUBLIC EMPLOYEES' RETIREMENT ADMINISTRATION/BOARD - Roxanne Minnehan, Executive Director
Ms. Minnehan distributed and discussed the following to members of the Committee: Montana Public Employees' Newsletter (**EXHIBIT 7**); Ms. Minnehan's written testimony regarding PERS (**EXHIBIT 8**); PER Plans Summary Tables (**EXHIBIT 9**); and the PERB's Comprehensive Annual Financial Report (**EXHIBIT 10**).

01:26:33 TEACHERS' RETIREMENT SYSTEM - David Senn, Executive Director
Mr. Senn distributed and discussed the Montana Teachers' Retirement System's Funding Principle (**EXHIBIT 11**).

TAPE 2A

01:33:08 DEPARTMENT OF ADMINISTRATION - Janet Kelly, Director
Ms. Kelly distributed to the Committee the Department of Administration's Organizational Chart (**EXHIBIT 12**) which shows all services that are provided by the Department, as well as a brochure (**EXHIBIT 13**) that gives an overview of the Department. Ms. Kelly introduced some key members of her staff: Sheryl Olson, Deputy Director; Randy Morris, Administrator of the Personnel Division; Jeff Brandt, Deputy Chief Information Officer.

RANDY MORRIS, Administrator of the State Personnel Division, provided an update of two initiatives: implementation of HB 13 and Workforce Planning.

JEFF BRANDT, Deputy CIO, Department of Administration, distributed and discussed a document entitled "Information Technology Services Division (ITSD) (**EXHIBIT 14**).

QUESTIONS

REP. MACLAREN asked Mr. Brandt where the new local data center will be located. Mr. Brandt said that the final decision on a site has not been made because of their concerns about some of the physical design features dealing with access to the building.

REP. INGRAHAM asked if the two election sites for the state data are separate from Mr. Brandt's system, or is it all incorporated into the two different sites. Mr. Brandt said that they run that system out of the Mitchell Building data center. If there is a failure at the primary site, that secondary site has to be able to pick up that application. What ITSD will be doing is configuring those sites with identical equipment and software so that systems, like the Voter Registration System, can immediately take over at the alternate site if necessary.

REP. WILMER said that she and her constituents would like to know if that would increase the redundancy capability in the University System is fiberoptic system. Mr. Brandt said that this appropriation will make availability a 10G communications line available to the University System.

01:59:23 SEN. SQUIRES said that the Secretary of State and the Board of Investments will give a presentation on their agency at the September meeting.

02:12:39 MAPA - David Niss, Staff Attorney

Mr. Niss discussed MAPA and two documents: Administrative Rule Review **(EXHIBIT 15)** and a list of introduced bills **(EXHIBIT 16)**. He said that one of the strongest powers that an interim committee has is the power of persuasion and when that fails, it is the powers and duties provided to the committee in MAPA that come into play and chief among those is the ability to object to a proposed rule adoption or amendment and to require up to a 5-month delay in adoption. He said that the committee has more power when the rule is in a proposed format, when it is still pending adoption, but after it is adopted, the committee has fewer options available to it.

TAPE 2B

QUESTIONS

REP. MACLAREN asked Mr. Niss if he will apprise the committee when these rules come down with or without objection. Mr. Niss said that he would propose that the staff look at the proposal first and that the committee only get an email or mailing from the committee counsel if committee attorney identifies but cannot resolve a problem with the agency involved. Mr. Niss will then come to the committee and show them the proposed rule, review it, and show them the law under which the rule has been authorized by the Legislature. Then the committee would decide what to do with that objection.

REP. MACLAREN said that his concern is whether the rule meets the legislative intent and who makes that determination. He asked if the committee will see all rules to make some assessment as to whether or not it meets legislative intent. Mr. Niss said that legislative intent is expressed first and foremost in the statute and that some forms of legislative intent are not admissible in a court of law.

REP. INGRAHAM asked Mr. Niss if legislative intent, to the sponsor's knowledge was different from what the rule proposed, a reason that a legislator can contact an interim committee chairman to have the clock stop so that the rule can be revisited according to MAPA. Mr. Niss said that that provision in 2-4-305(a) does not require action by a committee based upon any reason therefore you can object on any grounds that you want.

MR. NISS explained the effect of SB 71 and that there has been good compliance with the requirements of SB 71. SB 71 requires that the method and day of notification to the prime sponsor of the bill being implemented be stated in the proposal notice, and if it is not, the proposal notice is void. That was the change brought about by Sen. Gebhardt's bill.

QUESTIONS

SEN. GEBHARDT inquired of Mr. Niss: if there is an administrative rule that is in place and a legislator wanted to get it changed, is there any way to change it other than the legislative process. Instead of carrying a bill through the system, could a legislator go to the department and say the rule does not work for this reason, and if the department concerned, could it amend that rule without going through the legislative process? Mr. Niss said that any legislator can propose a bill to change an administrative rule or delete it. There are three methods for a legislator to pursue an administrative rule change without legislation: 1) the power of persuasion, acting individually before the legislature brings it to the attention of the committee; 2) deal with the agency through the committee and ask the agency to attend and listen to what the legislator was attempting to do and to explain the intent agency staff believes they were trying to implement in those rules; and 3) formally petition the agency to adopt, amend, or repeal an administrative rule of that agency.

PUBLIC COMMENT ON THE ADMINISTRATIVE RULES PROCESS

No public comment.

02:54:56 REP. MACLAREN **moved** to accept Mr. Niss' proposal on the Rule Review. The motion **passed** unanimously.

PROPOSED WORK SCHEDULE AND STUDY PLANS

02:55:45 PUBLIC COMMENT ON STUDY PLAN HJR 46
BOB VOGEL, Montana School Boards Association, said that he did not want school elections to be forgotten as the committee goes through the review of elections during the interim, and in particular, mail ballots should be allowed to be done but not mandated.

CHERYL WOOD, Associate Director of Montana Association of Counties, offered the Association's assistance and support to the Committee as far as research and participation.

02:59:06 PUBLIC COMMENT ON STUDY PLAN HJR 59
CHERYL WOOD, Associate Director of Montana Association of Counties, said

that this study is important to the Associations and offered her assistance and support to the Committee.

BOB VOGEL, Montana School Boards Association, thanked the committee for revitalizing TRS and PERS and bringing them into actuarial soundness. He said that recruitment and retention continue to be major interests of school districts across the state. He gave the committee two items for their consideration: 1) look at a 30-year retirement system; and 2) look at HB 178 from the 2003 session, the ability of a school district to hire a retired individual if that position cannot be filled by anyone else.

QUESTIONS

SEN. SQUIRES asked David Senn if the loophole (of rehiring retired TRS members) was closed. Mr. Senn said that they had closed that loophole. What Mr. Vogel is referring to is trying to find a way to use the retirement system to help supplement income so that small districts can hire the retirees back.

03:06:00 PROPOSED HJR 46 STUDY PLAN - Sue O'Connell, Research Analyst, LSD
Ms. O'Connell discussed the study proposed in HJR 49 (**EXHIBIT 17**).

QUESTIONS

REP. WILMER asked Ms. O'Connell if she would speak to those who have different opinions, one at a time, and would that panel which Ms. O'Connell spoke of allow them to engage directly? Ms. O'Connell said that she is hoping to get the various people together, that they have been in email contact and are looking at dates in August and September where they can sit down as a group and talk about the various issues and ways to best work them out before she brings the issues to the committee.

SEN. SQUIRES said that she would like Ms. O'Connell to start from ground zero, have a meeting with those people, and then tell the committee what is working and what is not working. Sen. Squires said that she would like to start over and listen to what the big complaints were.

TAPE 3A

REP. INGRAHAM said that she liked the idea of starting fresh mainly because the goal was to go through the election laws to clean up contradictions and duplications.

03:18:00 SAVA Meeting Schedule and Work Plan - Dave Bohyer, LSD
Mr. Bohyer directed the Committee to the document "Proposed Meeting Schedule and Work Plan"(**EXHIBIT 18**).

House Joint Resolution No. 59 - Study of Public Employee Retirement Systems

Mr. Bohyer discussed HJR 59 (**EXHIBIT 19**), the Principles and Guidelines for Public Employee Retirement Systems (**EXHIBIT 20**); and the Summary of Proposed Study Outline for HJR 59 (**EXHIBIT 21**). He said that his proposal is the bulk of the work would be done between now and January, with the committee deciding to take action or not at the February meeting, and then

getting everything out of the way with regard to HJR 59 by the April meeting.

QUESTIONS

SEN. SQUIRES asked if the committee will get input on each study at each meeting. Mr. Bohyer said that the committee will get a status report at each meeting.

SEN. SQUIRES asked Ms. O'Connell to email all scheduled meetings for her study to each member of the committee.

03:31:52 REP. WILMER **moved** to adopt the proposed study plan for HJR 59. The motion **passed** unanimously.

03:34:03 SEN. SQUIRES **moved** to adopt the study plan for HJR 46. The motion **passed** unanimously.

03:35:13 MR. BOHYER discussed the Proposed Study Plan and Meeting Schedule.

QUESTIONS

REP. WILMER asked if the statement that Mr. Bohyer made, "review all agency proposed legislation" meant that there won't be any after September 1 or June 30? Mr. Bohyer said that the Legislative Council and the Executive Branch, over the years, have worked out an accommodation that benefits both where the legislature interim committees have been willing to authorize the drafting of agency legislation several months prior to the session so that it can be done prior to when legislators want their own bills drafted.

MR. BOHYER asked the committee if they have approved the Meeting Schedule as a tentative meeting schedule. There was general consensus that the committee **adopt** the proposed Work Plan and Meeting Schedule.

MR. BOHYER asked for the committee's sanction that he notify the stakeholders on retirement-related legislation, that the committee wants their proposals earlier than when they were received last interim. He said that he proposes the date around April 10 so they can get them in, repackage them, and send them out to committee members so the stakeholders will have some time to look at them. He said to the extent he has time, he can review them and write summaries on the proposals. With the committee's approval, he will draft that letter and send it out to the stakeholders and also post it to the website, along with the form that is used for proposed legislation.

SEN. SQUIRES **moved** that Mr. Bohyer draft and send a letter to stakeholders that any legislation related to retirement be submitted to the committee with a deadline date around April 10. The letter should also be posted to the committee's website. The motion **passed** unanimously.

NON-IDENTIFYING ISSUES

REP. SMALL-EASTMAN discussed an issue of concern to her constituents, specifically when they registered to vote, they had to present their social security

number. It was her understanding that when you go to vote, you can use any type of ID but you had to have a state ID in order to register to vote. As she recalled, in Rep. Campbell's bill, they could use their tribal ID to vote. She said she would like some clarification. Mr. Bohyer said that he would research the matter and report at the next meeting.

03:48:41 PUBLIC COMMENT UNDER THE PURVIEW OF SAVA
RICHARD SALYER, 100% disabled post-traumatic stress disorder veteran, distributed and discussed a copy of his testimony to the committee (**EXHIBIT 22**).

TAPE 3B

04:02:04 QUESTIONS
SEN. SQUIRES asked Mr. Salyer what program he is talking about. Mr. Salyer said that the Vets2Vets program and what has been done locally with the veterans that are working with it

04:05:16 PUBLIC COMMENT
TRACY VALESQUEZ, Executive Director of the Montana Mental Health Association, said that she commends those people for what they have done so far on the Task Force and she would be interested in seeing what their recommendations are. She said that she hopes that as issues emerge during this interim that the committee look seriously at what legislative initiatives might make sense in Montana. She said that the Montana Mental Health Association supports the committee in whatever they do and are willing to help in whatever way they can.

KEN ROSENBAUM, Helena, said that he suffers from PTSD and has three sons who served in Iraq and also have issues with PTSD. He said that it is good to hear Joe Foster saying that they are looking at traumatic brain injuries. He said that one of the challenges that veterans and families of veterans have in working with the VA is that they have to be enrolled. Mr. Rosenbaum said that the Department of Military Affairs Director Mosley is unresponsive in this area.

04:17:34 MEMBER ISSUES
REP. INGRAHAM asked if there was any discussion about making the two titles for elections, Title 20 for schools and Title 13 for counties and cities, more compatible and put all elections under one hat. Ms. O'Connell said that she was planning on looking at Title 20 as well as Title 13 and that would be part of the work group discussions.

MR. BOHYER said that Sen. Jent wanted the Committee to know that he is pursuing with the Commissioner of Political Practices the issue of enhancing the Commissioner's power and authority and ability to take more timely action on alleged election violations. He said that Sen. Jent would like to bring that issue to the Committee in the future.

04:20:39 ADDITIONAL INSTRUCTIONS TO STAFF
There were none at this meeting.

04:21:08 ELECTION OF OFFICERS
SEN. SQUIRES nominated Rep. Wilmer as chair and Rep. MacLaren as vice-chair. REP. INGRAHAM **moved** to elect Rep. Wilmer as Chair and Rep. MacLaren as Vice-Chair on a unanimous ballot. The motion **passed** unanimously.

04:24:45 ADJOURNMENT
SEN. SQUIRES adjourned the meeting at 12:55 p.m. The next meeting will be September 7, 2007.

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