



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

April 28, 2008

Room 102, Capitol Building
Helena, Montana

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.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

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

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

REP. PAT INGRAHAM

COMMITTEE MEMBERS EXCUSED

SEN. LARRY JENT
REP. VERONICA SMALL-EASTMAN

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 reconsidered their action adopting the minutes of the February 22, 2008. The motion to adopt the February 22, 2008 minutes remained but was not considered further at the meeting.

CALL TO ORDER AND ROLL CALL

00:00:01 Rep. Wilmer called the meeting to order at 8:33 a.m. The roll was taken and Sen. Jent and Rep. Small-Eastman were excused. The minutes of February 22, 2008 meeting were approved unanimously.

AGENDA

Records and Information Management

00:01:21 Secretary of State Brad Johnson talked about the Electronic Records and Information Management (ERIM) plan.

00:06:10 **Patti Borsberry, Deputy, Information Management Division**, distributed and discussed the strategic plan that is in draft form (**Exhibit 1**).

Questions

00:11:06 Sen. Squires asked what the difference was between the electronic versus the information that is stored on agency computer systems. Mr. Bohyer said that the distinction is between the hardware and the software. The ERIM plan is set up to deal with the changing nature of information that is now communicated electronically rather than on paper; i.e., emails or attachments to emails. The state has a legal responsibility to make most of those records accessible to the public.

Ms. Borsberry talked about archiving. She said that archiving has different responsibilities with the electronic records and making sure that the records remain readable and accessible. Ms. Borsberry explained the difference between backup of records and archiving. Backup is meant for recovery of services due to continuity or disaster, whereas archiving is to make records readable and accessible for the long term.

Rep. MacLaren asked if it is the Secretary of State's intent to have all the various agencies deposit records into a central database or keep them with the individual agencies. Ms. Borsberry said that, based on volume and size, agencies such as

Montana Department of Transportation can afford a system such as FileNet, which would be housed in an electronic repository, whereas a smaller agency may not manage its own server.

00:18:59 Sen. Squires asked what the Secretary of State's Office has done or will do to make same day voter registration better. Mr. Johnson said that they have been traveling around the state and talking to the county election administrators about their concerns. Sen. Squires asked Secretary of State Johnson if there were funds available to assist the Clerk and Recorders with expenses related to the election process. Mr. Johnson said that there are a series of grants available to counties that have to have additional election judges. Sen. Squires asked if the Secretary of State's Office purchased any public service announcements with regard to voter education or voter encouragement via the media. Mr. Johnson said that they are currently running radio public service announcements and encouraging people to register to vote early as opposed to waiting until election day.

Rep. Wilmer thanked Secretary of State Johnson for attending the meeting and answering questions.

Sen. Squires asked when the voter information pamphlet and absentee ballots will be provided to the voters. **Lisa Kimmet, Deputy Elections Officer**, said that the voter information pamphlet is to be provided to the voters 30 days before the general election, which is the same time that absentee ballots can be made available to absentee voters.

RETIREMENT PROPOSALS

00:26:03 **MEA/MFT, Tom Bilodeau, Research Director**

Proposal 1: Optional Retirement Program (ORP) (**Exhibit 2**) affects employees enrolled in the optional retirement plan of the Montana University System.

Mr. Bilodeau said that their ORP proposal follows and addresses the rate of contribution that the University System makes to the TIAA CREF members' accounts which was changed in the last legislative session by 1% in a bill carried by Rep. Olson. The ORP proposal is to use Rep. Olson's legislation as a model and increase employer contribution by another 1%.

Proposal 2: Professional Retirement Option (PRO) (**Exhibit 3**) is a proposal to raise educators' salaries in order to be competitive in the market for professionals in the teaching field.

Mr. Bilodeau said that the Montana's Teacher Retirement System (TRS) and basic wage levels are not competitive in terms of pay provided to the competitive labor market of teachers across the western states. The PRO proposal would increase the formula factor for Montana's TRS from 1.67% to 2% per year of service for those individuals who teach 30 years or more.

00:57:19 **Montana State Firemen's Association, Mr. Doug Neil, Political Director**

Proposal 1: Allow the enrollment of members of Firefighter's Unified Retirement System (FURS) who were eligible but were not enrolled in GABA (**Exhibit 4**).

Mr. Neil said that five members of the Firefighter's Unified Retirement System (FURS) did not enroll in GABA during the one time option to enroll. This proposal is for another one time exemption for the five members to enroll in GABA and for them to pay all back costs to the initial startup or availability of GABA to the firefighters.

Proposal 2: Add partial lump sum option payment (PLOP) to FURS (**Exhibit 5**).

Proposal 3: Allow for additional full paid firefighters and employers into FURS (**Exhibit 6**).

Mr. Neil said that with fire districts being formed, there were municipal firefighters in the state who were under two different retirement systems: FURS and PERS. In 2007, they were able to allow rural fire districts the option of coming into FURS.

Rep. Wilmer asked if the Air National Guard did not want to be included in this legislation. Mr. Neil said that in 2001, the new hires at Montana Air National Guard were allowed into FURS, which created a split system at the Air National Guard Fire Department. Subsequent sessions after that, they tried legislation that would allow the remaining members of the Montana Air National Guard Fire Department to opt into FURS.

Proposal 4: Make all retirement systems equal when defining "compensation" for purposes of

retirement (**Exhibit 7**).

Mr. Neil said that when FURS was created, the compensation definition excludes any overtime that the firefighters make. The firefighters would like to have overtime included because other systems have it.

Proposal 5: Amend 19-13-704, MCA, to increase multiplier from current 2.5% to 3% for each year of service (**Exhibit 8**).

BREAK

02:17:58 **Testimony regarding retirement systems proposals - David Ewer, Director, OBPP**

Mr. Ewer said that the administration supported legislation that would reduce the Guaranteed Annual Benefit Adjustment (GABA) from 3% to 1.5% for new employees. Embedded in that legislation is a trigger that once the unfunded liability of the PERS was termed, the additional employer contribution would come off (sunset) automatically. The bill that OBPP is proposing would remove the automatic trigger of employer contributions when the amortization period reaches 25 yer or less. Mr. Ewer also talked about the new fiscal note form.

02:42:05 **Association of Montana Retired Public Employees - Aimee Grmoljez**

Proposal 1: Return the GABA to 3% for new hires (**Exhibit 9**).

Ms. Grmoljez said that the Association would like to have an actuarial analysis done every year. The fund would be declared to be considered sound at an amortization period of 25 years or less for current employees in the system. At that point new employees would be eligible for GABA at 3% for the employees hired after July 1 of the particular year. If the amortization does not drop to 25 year or less, then the GABA remains at 1.5%.

02:53:40 **Association of Montana Troopers - Aimee Grmoljez**

Proposal 1: Allow members of Association of Montana Troopers to have dues withheld from retired AMT members' benefit checks (**Exhibit 10**).

Ms. Grmoljez said the Association will be bringing their proposal to the 2009 Session to allow the Highway Patrol Officers and the Municipal Police Officers Retirement Systems to have their dues withheld from their benefit checks similar to a payroll deduction which is currently being done now for active members.

03:02:05 **Montana Police Protective Association - Jerry Williams, Executive Director**

Proposal 1: Changing definition of compensation to include holiday pay (**Exhibit 11**).

Mr. Williams said that the MPPA is proposing to change the definition of "compensation" to include holiday, overtime, and shift differential pay, along with lump sum contributions for compensatory, sick and vacation buyouts when a MPORS member terminates his or her employment.

Proposal 2: Eliminate 9% employee contribution from employees' DROP (**Exhibit 12**).

Mr. Williams said that this proposal is regarding the DROP legislation that was put into statute a few years ago. There is a requirement in that legislation that once the member enters the DROP, the member is still required to contribute 9% of compensation into the retirement system. They are looking at eliminating the 9% contribution from the employee.

03:15:05 **Association of Public Safety Communications Officials - International, Inc. - Susan Bomstad, President of Montana Chapter APCO, and Kimberly Burdick**

Proposal 1: Include public safety dispatchers in one of the 20-year retirement systems for public safety employees (**Exhibit 13**).

Ms. Bomstad said that the 20-year retirement option would enable some dispatchers whose skills were deteriorating to be able to retire without it becoming a performance issue.

LUNCH BREAK

Reconsider the committee's motion to adopt the February 22, 2008 minutes

04:41:32 Rep. Wilmer revisited the committee's motion on adoption of the February 22, 2008 meeting minutes because the committee had not received the final draft of

those minutes. **Sen. Gebhardt moved to reconsider the committee's action on the approval of the minutes of the February 22, 2008 meeting and adopt them at the next meeting. The motion passed.** [NOTE: The motion to accept the February 22, 2008 minutes remains, to be disposed of at a future meetings]

DISCUSSION ON RETIREMENT PROPOSALS (Exhibit 14)

04:43:38 Sen. Jackson said that he wanted to get David Senn's point of view on some of the TRS' proposals before voting on the retirement proposals. Rep. Wilmer asked Mr. Bohyer what kind of fiscal information would they be able to get with those draft proposals. Mr. Bohyer said that the Budget Office prepares fiscal note information regarding the costs of draft legislation when requested to do so by the presiding officer of the Senate or House of Representatives. Otherwise, they are not obligated to provide fiscal information. It would be a request from SAVA to the Budget Office to provide a fiscal note for draft retirement legislation and the OBPP would have discretion whether to provide a fiscal note.

Committee Motions on MEA/MFT's Proposals

04:49:51 Proposal 1: ORP
Sen. Squires **moved** to authorize draft legislation for MEA/MFT Proposal No. 1: Revision of the Optional Retirement Program. **The motion passed unanimously.**

05:03:45 Proposal 2: PRO
Proposal 2 was **tabled** because Sen. Squires had questions for Mr. Senn.

Committee Motions on Montana State Firemen's Association Proposals

05:04:35 Proposal 1: allow certain members to opt into the GABA.
Sen. Squires **moved** to authorize draft legislation. **The motion passed unanimously.**

05:06:28 Proposal 4: allow PLOP for FURS
Sen. Gebhardt **moved** to authorize draft legislation. **The motion failed on a 5-1 vote with Sen. Gebhardt voting aye.**

Committee Discussion on MEA/MFT's Proposal 2: PRO

05:13:36 In response to Sen. Jackson's question regarding what fiscal impact would there be by increasing the multiplier from 1.67% to 2% and increasing the amount of

service time for full retirement benefits, Mr. Senn said that the proposal would encourage people to work another 5 years past normal retirement age to receive a higher multiplier. He said that the annual cost on this proposal would be \$13 million to \$15 million.

Sen. Squires **moved** to authorize draft legislation on MEA/MFT Proposal 2. **The motion passed 4-2 with Sen. Gebhardt and Sen. Jackson voting nay.**

Military Income Exemption LC0090

05:32:26 Mr. Bohyer said that LC0090 is by request of the State Administration and Veterans' Affairs Interim Committee and will need a sponsor. **David Niss, Legal Staff, LSD**, explained LC0090, Military Income Exemption (**Exhibit 15**).

Rep. Wilmer said that her concern is that there are other issues, including post deployment mental health assessment, risk assessment, and treatment programs, that have come before the committee and she sees those as costs. She would like to get the post deployment health risk assessment fully funded as a priority. Rep. Wilmer would recommend considering LC0090 when Sen. Jent and Rep. Small-Eastman were present. **Rep. Wilmer moved to postpone LC0090 for discussion at the next meeting.** Sen. Jackson said that he would support revisiting LC0090 at the next meeting. Mr. Bohyer said that this bill will be put on the agenda for the next meeting with specific discussion to go forward and identify a sponsor. **The motion passed unanimously.**

HJR 46 Study of Election Laws

05:54:11 LC0059 (Exhibit 16) - allows absentee voters to cast a new ballot if the candidate for whom they have voted dies prior to election day

Rep. Ingraham said that this only applies if the voter has not turned the ballot in. Rep. Wilmer said the election administrator can issue a replacement ballot if there is a printing error or omission. LC0059 makes the death of the candidate equivalent to a printing error and creates the same rule that would apply to a printing error.

Rep. Wilmer said that they need to go back to LC0059, make a change to treat ballots in which the candidate who died the same as a ballot with a printing error or omission. Rep. MacLaren **moved** to go forward with LC0059 as a committee bill. **The motion passed unanimously.**

The committee discussed the issue of what to do in the case of the death of a candidate if an absentee ballot is already cast. Ms. O'Connell presented three options in a briefing paper (**Exhibit 18**):

- Option One: allow the vote to be counted for the deceased candidate.
- Option Two: allow the vote to count for a replacement candidate.
- Option Three: put into statute the current practice of not counting the votes.

Committee members discussed how Option One would trigger existing provisions for filling vacancies if the deceased candidate received a majority of the votes.

Sen. Squires **moved** that Ms. O'Connell include Option One in LC0059. **The motion passed unanimously.**

Mail Ballot Pilot Project (**Exhibit 20**)

06:09:45 Rep. Wilmer said that Ms. O'Connell is requesting that the committee identify the counties to be included in the project. Ms. O'Connell had provided a briefing paper on the use of AutoMARK Machines (**Exhibit 19**) and a list of interested counties for the Mail Ballot Pilot Project (**Exhibit 20**).

There was a discussion on the Mail Ballot Pilot Project and having accessible voting machines at all mail ballot elections. Rep. Ingraham said that the requirement of having voting machines in all elections was put into the cleanup bill but is a substantial change and not really "clean up". Some of the counties that run smaller elections could not afford to do mail ballot elections if these machines were required for all elections. If the committee wants to do this, Rep. Ingraham recommended that the committee take it out of the cleanup bill and do a separate bill.

Sen. Gebhardt **moved** to delete all references to elections other than federal elections in requiring the use of AutoMARK machines from the cleanup bill. **The motion passed.**

The use of AutoMARK machines by counties in elections

There was a discussion about eliminating the requirement of having to use the AutoMARK machines in elections other than primary and federal elections for those counties participating in the pilot project.

Rep. Ingraham **moved** to amend LC0060 to delete the requirement for the

counties participating in the Pilot Project to use AutoMARK machines in secondary elections and put the requirement into a separate bill. The pilot project would still require the use of AutoMARK machines in federal elections. **The motion passed.**

Discussion of interested counties in Mail Ballot Project.

There was a discussion on which counties were to be included in the pilot project. The staff's poll of county election administrators showed that there were 18 counties interested in participating if the AutoMARK requirement was removed.

Rep. Wilmer said that there is a committee consensus to direct Ms. O'Connell to proceed as if all 18 counties who were interested be included and then report back to the committee if there were counties wishing to be taken out of the pool.

Rep. Ingraham **moved** that Ms. O'Connell continue drafting legislation to include all 18 counties that are willing to participate in the pilot project. **The motion passed.**

Discussion on the use of AutoMARK machines for certain elections

Rep. Ingraham discussed Section 4(5) of LC0060, which states "For any federal, state, or county election, an accessible voting machine must be made available to electors at each place of deposit." She said that she would like to amend it to say "for any federal, state, or county election held in conjunction with a federal or state election" because there might be a special election that would be conducted outside of where the AutoMARKs are normally used;. Rep. Wilmer asked Rep. Ingraham to work with Ms. O'Connell on the language.

Sen. Squires asked if removing the requirement to use of AutoMARK machines would cause any legal problems? Rep. Ingraham said that it is not that they are taking it out, it's not there now, except for federal and state elections. The pilot project is putting that requirement in and changing the context inadvertently for some elections that aren't currently required to do it that way. Rep. Ingraham said there is a difference between mail ballots and polling sites. Polling sites all have AutoMARK machines because they are usually federal and state elections.

Rep. Ingraham **moved** to amend language in Section 4(5) of LC0060 to say that for any federal, state, or county election, an accessible voting machine must be

made available to electors at each place of deposit except for elections conducted by the mail-in ballot pilot project that are not federal or state elections. **The motion passed 4-1, with Sen. Squires abstaining.**

HJR 59: Study of State Retirement Systems - Overview of Money Purchase Retirement Plans - Dave Bohyer

06:48:13 Mr. Bohyer discussed Money Purchase Retirement Plans (**Exhibit 21**).

06:53:58 Discussion

Rep. MacLaren thought that part of the committee's charge in HJR 59 was to look at alternative retirement plans, and money purchase retirement plan was one of the alternatives. There was a letter from Mr. Senn saying that the only way the state can do that is if we commission another study or a resolution for the next interim with money attached to it to pay for an actuarial analysis. Mr. Bohyer said if the committee is to get any clear, definitive fiscal information on what the actuarial impacts would be, the committee would have to have a bill to give to the Budget Office. His paper relates only to the concept and structure of what Money Purchase Plans are or can be.

07:01:58 Rep. Wilmer said that the recommendation was that we actually make a more precise study bill to present at the next session that included the funding that it would cost to do a study that included actuarial analysis to compare Money Purchase with various hybrid plans and do a more thorough study including comparing these different kinds of plans and what they cost and where the benefits are and how and risky they are. Mr. Bohyer said that he could work with Rep. MacLaren between now and June to clarify what it is that the committee might be interested in looking at the next interim and come up with a committee bill that would appropriate funds to hire an independent actuary or contract with the state's actuaries to cost some of that out and run some "what if" comparisons.

Discussion on amount of money a candidate can accept for his/her campaigns

07:09:22 Sen. Squires asked about the amount of money candidates could acquire in their campaigns. She saw Mr. Unsworth's television ad regarding the limit that would go up to \$160, etc. Sen. Squires said that she would like to change the month in which the consumer price index (CPI) is factored into the statutory contribution limits. She asked Dennis Unsworth if the CPI factoring could be completed in January when individuals are signing up for election processes. Mr. Unsworth

said that the bill that passed left no room for his office to speed up the schedule. His understanding is that the bill did not work the way Rep. Caferro thought it would, but he believes it is her intent to propose new legislation to fix that problem. As Commissioner, he would support that and take new instructions and implement them.

Sen. Squires said that she would like to discuss that with Mr. Niss and Rep. Caferro and have that proposed legislation as a committee bill.

Administrative Rule Matters - David Niss, Staff Attorney, LSD

07:16:01 Mr. Niss talked about Rep. Sands' bill which regulated constituent services accounts. The Commissioner of Political Practices published the rules proposed to implement those new statutes. Mr. Niss reviewed those rules and compared them to the requirements of both the substantive statutes enacted by Rep. Sands' bill to MAPA and commented on them (**Exhibit 22**). Mr. Niss talked about the legislative requirement for the prime sponsor of legislation to be given notice by the agency proposing the rules at the time that the agency starts to set its pen to paper.

Questions

Rep. Wilmer asked that when the primary sponsor is notified that the writing has begun, are they also notified of the reasonable necessity explanation that is offered as part of the rulemaking? Mr. Niss said no. Rep. Wilmer asked if that would improve the process? Mr. Niss that he cannot tell her because he doesn't know.

Mr. Niss said that Rep. Villa has requested legislation to take the review of Administrative Rules out of the duties of interim committees and recreate the old Administrative Code Committee.

Dennis Unsworth, Commissioner of Political Practices, said that the comment that was raised today was raised by the Code Commissioner and that, prior to publication of the rules, the CoPP staff revisited the statement of reasonable necessity. The comments that they have received so far have been along the lines of, why are these rules so strict rather than why is your statement of reasonable necessity so brief? Mr. Unsworth said that the comment period is open until the 5th of May. They have received only four comments. He also added that the bill doesn't have a practical effect until after the next election.

Discussion and motions on Retirement Proposals (Exhibit 14)

07:47:00 Montana State Firemens' Association Proposals

Sen. Squires **moved** to authorize draft legislation for Proposals 5, 6, and 7. Sen. Jackson said that he could not support Proposal 7. **The motion passed 4-2 with Sen. Gebhardt and Sen. Jackson voting nay.**

Association of Montana Retired Public Employees Proposals

Mr. Bohyer said that Proposal #9 was withdrawn. There was no motion to proceed with Proposal #8.

Montana Association of Troopers

Proposal #10, union dues being automatically deducted from their retirement benefits. There was no motion to proceed with a draft on Proposal #10.

Montana Police Protective Association

Proposal #11, changing the definition of compensation. Rep. Wilmer **moved** to authorize drafting Proposal #11. The motion **failed** 3-3 with Rep. Wilmer, Sen. Gebhardt, and Sen. Squires voting aye; Rep. Ingraham, Rep. MacLaren and Sen. Jackson voting nay.

Proposal #12, eliminating the employee contribution from members participating in the DROP program. After discussion by Sen. Gebhardt and Mr. Bohyer, there was no motion to move #12 as draft legislation.

Sen. Squires **moved** to authorize the drafting of Proposal #13. The motion **passed** 4-2 with Sen. Gebhardt and Sen. Jackson voting nay.

Public Comments

08:16:19 **Beth Brenneman, Disability Rights Montana (formerly the Montana Advocacy Program)**, thanked the committee for allowing her to submit her written comments (**Exhibit 23**). She talked about that AutoMark machines in the cleanup bill and her concern of taking the requirement of AutoMark machines out of the Mail Ballot Pilot Project and counties believing that they no longer have that requirement under federal law, which they do.

08:22:14 Rep. Wilmer said that Rep. Ingraham's proposal was to take AutoMARK

requirements out of the cleanup bill and treat it as a separate bill, which may clarify for those counties reluctant to participate in the pilot project if they were going to be treated differently than counties who didn't. Ms. Brenneman said that some of the counties aren't complying with federal law now. She said that the advocates may have to seek a court ruling about whether or not the ADA requirements applies to the cities' elections.

Sen. Squires **moved** to request legislation requiring disability accessible voting in all elections, including federal elections. The motion **failed** on a tie vote with Rep. Wilmer, Sen. Squires, and Sen. Gebhardt voting aye and Sen. Jackson, Rep. MacLaren, and Rep. Ingraham voting nay.

Adjournment

08:35:16 With no other business before the committee, Rep. Wilmer adjourned the meeting at 5:08 p.m.

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