



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

September 15, 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.

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COMMITTEE MEMBERS PRESENT

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

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

REP. PAT INGRAHAM
REP. VERONICA SMALL-EASTMAN

STAFF PRESENT

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

Visitors

Visitors' list, Attachment #1.

COMMITTEE ACTION

CALL TO ORDER AND ROLL CALL

00:00:01 Rep. Wilmer called the meeting to order at 8:35 a.m. The secretary took roll. It was noted that Sen. Jent arrived at 8:40 a.m., and Rep. Small-Eastman arrived at 9:05 a.m. The minutes of the April 28, 2008 meeting were approved.

AGENDA

00:02:49 **Department of Administration - Janet Kelly, Director**

Ms. Kelly said that the Department of Administration would like to reconsider Proposal 15 (from the June 30, 2008, SAVVA meeting) upon request of Sen. Gebhardt.

Sheryl Olson, Deputy Director, Department of Administration, gave a presentation on the intent of Department of Administration Legislative Proposal 15. She distributed the Department's draft proposal (**Exhibit 1**) to the committee.

Office of the Secretary of State - Ralph Peck, Jean Branscum, and Kathleen Ely

00:06:29 Ms. Branscum gave a presentation on the administrative rulemaking process, the Administrative Rule electronic adoption process, and the reason why the Secretary of State's Office withdrew Proposal #4 (June 30, 2008).

00:12:32 Ms. Branscum and Ms. Ely gave a demonstration of the Secretary of State's website showing how agencies and the public can access the Administrative Rules online.

Public Comment

Cheryl Wood, Associate Director of the Montana Association of Counties, said that they support Department of Administration Proposal #15 as drafted.

MOTION

00:41:14 Rep. Ingraham **moved** that staff draft Department of Administration's Proposal #15 for purposes of preintroduction. The motion **passed** unanimously.

RETIREMENT PROPOSALS

00:42:34 **Judges' Retirement System - Honorable Ed McLean, Judge, 4th Judicial District**

Judge McLean discussed the Judges' Retirement System's (JRS) proposal to retain the multiplier at 3 1/3% of the member's current salary for each of the first 15 years of service. Sen. Carol Williams will sponsor the bill.

There was a discussion on whether the PERB will look at the JRS to see if it is actuarially in a surplus situation of over 120%. Roxanne Minnehan said that the fund has been in that situation since fiscal year 2000.

01:10:46 **LC0150: Clarifying the requirements for notification of the primary sponsor in the administrative rulemaking process - Sue O'Connell, Research Analyst, LSD**

Ms. O'Connell, Lead Research Analyst for Children and Families Interim Committee (CFHHS), discussed LC0105 (**Exhibit 2**). She said that the CFHHS voted to have LC0150 referred to the State Administrative and Veterans' Affairs Interim Committee because it was felt that the SAVVA committee had more experience in dealing with Administrative Rules.

01:24:31 **Department of Administration Proposals - Janet Kelly, Director**

Ms. Kelly said that the Department brings before the committee three new proposals in the area of banking and financial institutions.

Annie Goodwin, Commissioner of Banking and Financial Institutions, discussed her first proposal (**Exhibit 3**), to implement P.L. 110-289, the S.A.F.E. Act, which is federal legislation requiring states to establish a licensing system under the National Mortgage Licensing System and Registry. Ms. Goodwin asks for the support for this proposal from the SAVVA committee.

Anne Goodwin discussed her second proposal (**Exhibit 4**), to increase consumer protection provisions under the Deferred Deposit Loan Act.

Annie Goodwin discussed her third proposal (**Exhibit 5**) to revise the Title Lending Act to give the Commissioner the ability to enforce federal law.

No Public Comment

BREAK

EXECUTIVE ACTION

02:15:59 **Judges' Retirement Bill**

Rep. Wilmer said that the committee does not need to do anything unless someone wants to act on the bill. The action has already been taken in the sense that Sen. Williams has requested the bill draft and will go forward with that.

02:16:48 **LC0150**

Sen. Squires **moved** to go forward with LC0150 for purposes of adding the State Administration and Veterans' Affairs Interim Committee as a "requestor" to the CFHHS' bill. The motion **passed** with Sen. Jent voting nay.

Department of Administration

02:31:04 Sen. Squires **moved** that staff be authorized to draft all three proposals from Annie Goodwin, Department of Administration, Commissioner of Banking and Financial Institutions. The motion **passed** unanimously.

COMMISSIONER OF POLITICAL PRACTICES REPORT ON BUDGETED INVESTIGATOR

02:32:52 **Dennis Unsworth, Commissioner**, gave a status report on the Office of Commissioner of Political Practices' investigator. He introduced Mary Baker who is handling the complaints.

Mary Baker gave an overview of what the CoPP staff has done in investigating complaints.

POLICY AND PROCESS REGARDING LEGISLATION AFFECTING STATE EMPLOYEE RETIREMENT SYSTEMS - Dave Bohyer, Research Director, LSD

03:03:39 Mr. Bohyer discussed the information he received from other states on their policies regarding public employment systems (**Exhibit 6**). He asked the committee for input on what they wanted to do as they go into the 2009 Legislative Session.

Rep. Wilmer talked about topics which she thought that the committee should address:

- 1) Make the Principles and Guidelines more brief.
- 2) Recommend that the 2009-2010 SAVA adopt the Principles and Guidelines in the first few weeks of the interim.
- 3) Recommend that SAVA have its own legislative actuary.
- 4) The SAVA should establish the timeline for the submission of retirement proposals early in the 2009-10 interim, and discuss and plan what to do with the workflow calendar.

03:11:27

Discussion

Sen. Jackson thought that the next interim committee should look at the Principles and Guidelines early on and either add or take out some of the items instead of leaving it up to staff to do that. There was a discussion on the reports that needed to be attached to each retirement-related legislation proposal showing whether there was a recommendation from the SAVA committee as to whether or not the bill should be adopted. Mr. Bohyer said that the SAVA committee has historically authorized the drafting and preintroduction of 15 or 20 retirement bills each interim, with no indication whether or not they are good or bad bills, without recommending a do pass or a do not pass, or whether the SAVA let the proposal go forward with no recommendation. Mr. Bohyer said that if the committee wants to say that the authorization to draft legislation is a recommendation from the committee, he can put that in the report, but he would like to have clarification on the record that that is what the committee wants. Drafting a report that says that authorizing the bill to be drafted is support from the committee for the bill would be inaccurate unless the committee, in advance, tells him that is what they want him to put in it.

03:24:58

Rep. Wilmer said that there are actually 5 criteria that should be in the report. She wants to honor the three people who came in to give the committee their thoughts. She said that the committee could conclude with a list of recommendations that go to the regular session State Administration standing committees.

COMMENTS REGARDING PRINCIPLES AND GUIDELINES

03:25:26

David Senn, TRS, said that many other states have a statewide policy that states what the policy is regarding retirement legislation changes, enhancements, and funding. The principles that this committee adopted outlined

this concept. This committee could draft a statewide policy around those, put that in the form of a resolution or bill, and the Legislature could adopt that. Mr. Senn talked about a summary of the fiscal implications of a proposal which is something that an actuary has to do. He said that he would not recommend that the Legislature hire a pension actuary. He would recommend that you trust but verify the conclusions made by the actuary that the systems hire.

03:27:53 **Roxanne Minnehan, PERS**, said that the committee has a dilemma with the timing of the legislature, the committee's schedule, the stakeholders bringing proposals, the stakeholders' conventions timing, and the actuaries getting information on the proposals.

03:30:01 **Tom Schneider, Montana Public Employees Association**, said that this committee has the same problems that CPERS had. The SAVA committee could submit the legislation in the first session, study it with the State Administration Committee in the interim, and come back in the second session, either passing or killing legislation based on solid information. He said that while the old committee, CPERS, was a retirement committee, SAVA has more obligations. He thought that SAVA could have separate meetings on retirement apart from the other obligations it has, set up a full day for retirement issues, and then another day for other obligations.

SPONSOR ASSIGNMENT

03:40:55 **LC 0018: purpose statement for MAPA**
It was approved that Sen. Jent will sponsor this bill.

LC 0201: revise MAPA regarding amendment of rationale
It was approved that Sen. Squires will sponsor this bill.

LC 0150: Clarify sponsor notification for administrative rules
It was approved that Sen. Jackson will sponsor this bill.

LC 0090: exempt military pensions from state income tax
It was approved that Rep. MacLaren will sponsor this bill.

Sponsor Assignment of HJR 46 Study: Election Laws

03:44:41 **LC 0035: revise and clarify state election laws**

It was approved that Rep. MacLaren will sponsor this bill.

LC 0036: youth election judges

It was approved that Sen. Jent will sponsor this bill.

LC 0059: revise absentee ballot laws and changes caused by death of candidate

It was approved that Sen. Squires will sponsor this bill.

LC 0060: mail ballot pilot project

It was approved that Sen. Jackson will sponsor this bill. **Jean Marie Souvigny, Montana Conservation Voters Education Fund**, said that she could help identify where information required by the draft would come from. She distributed and discussed the information that she collected on this issue (**Exhibit 7**).

LC 0106: allow election administrators to determine use of autoMARK voting machines

Mr. Bohyer said that at the June meeting, Sen. Squires asked the SOS's Office to report back to this committee on the Secretary of State's staff's meeting with MACo regarding Help America Vote Act (HAVA). The committee had asked the SOS's Office to give a report on that meeting.

Ralph Peck, Secretary of State, said that they worked with MACo and the Clerk and Recorders, and that the Office of Secretary of State will continue to do that to move this matter forward. The same parties will be meeting next week at the MACo Convention to move legislation forward to provide for a funding of elections at county levels.

Sen. Jackson moved that Sen. Gebhardt be approved as sponsor of the bill. The motion **carried**.

LUNCH

Public Comment

04:48:36

Leo Berry, Association of Retired Public Employees, said that he has been participating in policy discussions on retirement bills since 1985. He said that the SAVA Committee should be a committee dedicated solely to retirement issues and consider hiring an actuary.

David Senn, Executive Director, Teachers' Retirement System, thought that the Principles adopted by SAVA are a good, solid foundation for the committee to use as a ruler to measure every legislative proposal that comes forward. He thinks that the committee needs to focus on getting the full legislature to adopt theP through either a resolution or a bill that would set the Principles as a state policy. He also recommended that an actuary be hired by the committee to verify the actuarial work that has been done in the past by the TRS and PERS actuaries.

05:05:40 **Steve Sim, Great Falls**, said that the veterans service organizations in Montana strongly support LC0090. He distributed a copy "Personal Income Tax Exemption for Uniformed Services Retirement Pay" (**Exhibit 8**) for the committee.

HJR 46 FINAL REPORT - Sue O'Connell, Staff Researcher, LSD

Ms. O'Connell discussed what is included in the final report on the HJR 46 study of election laws.

ADMINISTRATIVE RULE REVIEW - David Niss, Legal Staff, LSD

05:19:27 Bill Sponsor Notice Requirements

Paragraph 11 of MAR Notice 2-4-403 says the bill sponsor notice requirements of 2-4-302, MCA, do apply and has been fulfilled. The primary sponsors were notified by United States Postal Service mail on November 9, 2007.

Reasonable Necessity

Mr. Niss said that section 2-4-305, MCA, states that merely asserting a general need for a rule is not an adequate statement of reasonable necessity. He would recommend that the committee request that he write a letter noting the committee's general concern about the fact that many of the statements of rationale simply explains what the rule does and that under the statute, it is not a sufficient statement of reasonable necessity. He said that he will cite a number of examples with specific language in his letter.

Sen. Squires **moved** that Mr. Niss write a letter to PERB pursuant to those particular set of rules and to write a letter to the Professional Development Division of the Department of Administration to enhance training on a statement of reasonable necessity when conducting rules training classes. The motion **passed**.

Constituency Account Rules

The Commissioner of Political Practices which proposed the constituency account rules has now adopted them.

Amendment proposed by the Public Employees Retirement Board.

Mr. Niss briefed the committee on a proposal dealing with a retirement issue concerning retirement system members who are subsequently elected to the Legislature. This proposal concerns those members of the PERS who became inactive or retired and then filed suit against the Board claiming that they were wrongfully, involuntarily terminated, settled on favorable terms, and then wished to purchase further time in one of the retirement systems. Mr. Niss looked at the statutes and read the rule and said that that is a correct judgment on the part of the PERB, that you can't purchase time unless you are employed.

Public Comment on any issue under purview of committee

None.

STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE'S RECOMMENDATIONS

- 05:43:22 Sen. Jackson wanted to discuss the four principles and guidelines that Mr. Senn spoke on, fiscal notes, and making a decision on hiring an actuary and the committee members discussed those issues. The timeline for consideration of retirement proposals and the timeline for drafting retirement bills was also discussed. Mr. Bohyer said that his take on what the committee is saying is that it wants actuarial assistance in analyzing bills, both during the interim and during the session.
- 06:15:18 Rep. MacLaren asked if there is a final report for the HJR 59 study of the retirement systems. Mr. Bohyer said that his intention is to draft the handbook that is required by the resolution and if the committee would like, he could try to summarize everything that was covered on retirement systems this interim. He could do that in the form of a final report. Rep. MacLaren said that putting together a handbook for people going forward is all that is needed. Sen. Gebhardt suggested a cover letter with the book that will be the final report.

ADJOURNMENT

06:19:28 Rep. Wilmer adjourned the meeting at 2:54 p.m.

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