

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN JOHN COBB**, on February 7, 2003 at 3:00 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. John Cobb, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Kelly Gebhardt (R)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Pat Murdo, Legislative Branch
Mona Spaulding, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 114, 2/4/2003; HB 115, 2/4/2003;
HB 143, 2/4/2003; HB 87, 2/4/2003;
HB 213 2/4/2003
Executive Action: HB 114; HB 115; HB 143

HEARING ON HB 114

Sponsor: REPRESENTATIVE LARRY JENT, HD 29, Bozeman

Proponents: Betty Babcock, Montana Capitol Restoration Foundation (MCRF); Kris Goss, Governor's Office; Doug Monger, Parks Division, Fish, Wildlife and Parks (FWP); Arnie Olsen, Montana Historical Society (MHS);

Opponents: None.

Opening Statement by Sponsor: **Arnie Olsen, Director, Montana Historical Society, and chairman, Capitol Complex Advisory Council** presented HB 114 for **REPRESENTATIVE LARRY JENT**. He said the Capitol Complex Advisory Council was formed in 1997 at the request of the Department of Administration (DOA) to ensure that requests for placement of busts, statues, plaques, art and memorials in the capitol complex be subject to thorough and unbiased scrutiny. Four of the Council members are legislators. Currently **SENATOR KEN TOOLE**, and **SENATOR DUANE GRIMES** represent the Senate, and **REPRESENTATIVE LARRY JENT** and **REPRESENTATIVE DAVID WANZENRIED** represent the House. Other members, from the executive branch, include representation from the DOA; Fish, Wildlife and Parks; the Historical Society; and the Arts Council. The Governor also appoints a public representative; currently that person is Sarah Etchart. By statute, the role of the Council is to advise the legislature. The legislature makes final decisions regarding artwork in the capitol and the capitol complex. The Council prepares and adopts an art and memorial plan, which is the operating rule. That plan is complete and has been adopted.

HB 114 resulted from three meetings occurring in 2002. The word "permanent" has been changed to "long term," which is defined as up to fifty years. **Mr. Olsen** said every placement could not be permanent, or there would be no room for anything new. After fifty years, placement will be reviewed and a determination made for continuation. Law now provides for naming of state buildings, but not naming of rooms and spaces. HB 114 accommodates naming rooms and spaces.

HB 114 clarifies that the Historical Society is responsible to preserve publicly held art, including that held outside the capitol complex and other state buildings. Building memorials may not currently be placed in honor of individuals prior to five years following their death. HB 114 increases that to ten years. A ten year test of time is common in other states. The DOA is allowed to approve temporary art displays, which is defined as up to a year.

Housekeeping changes are made in Section 5.

Section 6 is new law listing arts and memorials that have been approved by the Legislature. Two resolutions have already approved the list, but **Greg Petesch, Chief Legal Council, Legislative Services Division**, wanted the list included in HB 114. **Mr. Olsen** said three new items are included: 1) the Blessings of Liberty Exhibit, which is outside the Secretary of State's Office (SOS); 2) a new exhibit adding biographical descriptions of Governors to portraits outside the Governor's Reception room; 3) a new exhibit placing two benches and plaques

on the south side of the capitol commemorating major contributors to the capitol restoration. **EXHIBIT(sts27a01)**

Proponents' Testimony: Former first lady **Betty L. Babcock** said she was not a member of the Capitol Advisory Council, but has attended meetings in her capacity as President of the Montana Capitol Restoration Foundation. She said the Council is doing a fantastic job, and expressed the hope that whatever is displayed in the capitol in the future would continue to have historic significance and be in keeping with the decor of the building. HB 114 provides a manageable do-list for the Council to follow. **Mrs. Babcock** submitted testimony. **EXHIBIT(sts27a02)**

Kris Goss, representing the **Governor's Office**, said the Governor and her office stand in complete support of HB 114, specifically the provisions that regard **Governor Donald G. Nutter** and the biographical descriptions of the Governors outside the Governor's Reception Room. He said many visitors, and some staff, ask to know more about the Governors.

Doug Monger, representing the **Parks Division of Fish, Wildlife and Parks**, said as keeper of the capitol complex grounds, he was proud to stand in support of HB 114, especially the part establishing the Art Memorial Complex. **EXHIBIT(sts27a03)**

Opponents' Testimony: None.

Questions from Committee Members and Responses: **SEN. MICHAEL WHEAT** said a bill had passed the Senate having to do with a bronze relief in the Senate chambers. It isn't mentioned in HB 114. **Mr. Olsen** said coordinating language had been recommended by the legislative attorneys that will add the bronze relief to HB 114 if both bills are passed. The Capitol Complex Advisory Council has unanimously endorsed the bronze.

SEN. CAROLYN SQUIRES asked if the five-year criteria was part of the reason the request for the **Rep. Francis Bardonoue** memorial was not accepted. **Mr. Olson** said yes. **REP. DAVID WANZENREID's** proposal for the **Bardonoue Memorial** came before the Council and was denied because it violated rules that had just been set in place. He said everyone reveres **Rep. Bardonoue**.

SEN. SQUIRES asked about the plaque honoring women who served in the legislature. It is no longer displayed, and isn't included in the list in HB 114. **Mr. Olsen** said the list was not comprehensive. He hopes by next legislative session to have an all-inclusive list. He said the Montana Historical Society keeps artworks in storage when they are not on display.

Closing by Sponsor: **CHAIRMAN JOHN COBB** closed the hearing in **REP. JENT's** absence.

EXECUTIVE ACTION HB 114

Motion/Vote: SEN. SPRAGUE moved that HB 114 DO PASS. Motion carried unanimously. SENATOR KEN TOOLE, SD 27, will carry HB 114 to the floor.

HEARING ON HB 115

Sponsor: REPRESENTATIVE SYLVIA BOOKOUT-REINICKE, HD 71, Alberton

Proponents: Maggie Bullock, Administrator, Health Policy and Services Division, Department of Public Health and Human Services (DPHHS); Tom Ellerhoff, Montana Department of Environmental Quality (MT-DEQ)

Opponents: None.

Opening Statement by Sponsor: REPRESENTATIVE SYLVIA BOOKOUT-REINICKE said HB 115 expands the State Emergency Response Commission (SERC). SERC members are experts from their fields, and serve without compensation because they care about Montana.

Proponents' Testimony: Tom Ellerhoff, representing the Montana Department of Environmental Quality (MT-DEQ), said he is an administrative officer with MT-DEQ and co-chair of the SERC with Jim Greene. He said Mr. Greene drafted HB 115, but was unable to attend the hearing. He submitted Mr. Greene's testimony.

EXHIBIT (sts27a04) Mr. Ellerhoff said HB 115 increased the number of gubernatorial appointees to the SERC. SERC exists as a requirement of the Federal Emergency Planning Community Right to Know Act, and is a diverse group that initially focused on hazardous material. SERC expanded as its scope broadened to include all hazards, and the need arose to increase membership. Mr. Ellerhoff said 9-11 changed many things, including community response to hazards. If SERC focused on all hazards, the need was eliminated for other all-hazards committees. Many people serving on the SERC also serve on other emergency response committees and commissions. One all-hazards commission better uses collective resources, including those for the state DES and Local Emergency Planning Committees (LEPC). From a personal perspective, Mr. Ellerhoff said he prefers to serve on one committee instead of many. HB 115 has no increased cost and no mandates to local government.

Maggie Bullock, Administrator, Health Policy and Services Division, Department of Public Health and Human Services (DPHHS), stood in support of SB 115. DPHHS will have two members serving

on the SERC, one from Emergency Medical Services and one representing DPHHS in general. She said DPHHS serves a variety of constituencies that will be able to be part of the solution through representation.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: REP. BOOKOUT-REINICKE closed.

EXECUTIVE ACTION HB 115

Motion/Vote: SEN. KELLY GEBHARDT moved that HB 115 DO PASS. Motion carried unanimously. SEN. COBB will carry HB 115 to the floor.

HEARING ON HB 143

Sponsor: REPRESENTATIVE CAROL LAMBERT, HD 1, HAMMOND

Proponents: Kelly Jenkins, Montana Public Employees Retirement Board (MTPER Board)

Opponents: None.

Opening Statement by Sponsor: REPRESENTATIVE CAROL LAMBERT, HD 1, said HB 143 was a housekeeping bill to include matters overlooked in the retirement bill. She said the MTPER Board has very concerned and committed people, who are conscious of their fiduciary duty. HB 143 clarifies that the MTPER Board has no responsibility for erroneous reporting. Erroneous reporting was not an issue until the Defined Contribution Plan (DC) came into the retirement system. Now, if a report is filed late or incorrectly, the law doesn't specifically hold PERS harmless.

Proponents' Testimony: Kelly Jenkins, representing the Montana Public Employees Retirement Board submitted testimony.

EXHIBIT (sts27a05)

Opponents' Testimony: None.

Questions from Committee Members and Responses: SENATOR MICHAEL WHEAT asked for an example of incorrect reporting by an employer. Mr. Jenkins said the problem originally arose in relation to the Defined Contribution Plan (DC). Under the old benefit plan (DB),

the situation doesn't arise because if a report is late, it doesn't affect benefits. The DC plan is more like the 401K that people in the private sector are familiar with. If a report and/or money is submitted late by an employer, there could be a substantial error in a member's account. The member might be rightfully upset that money wasn't in their account when the market moved up, causing them to lose money. **Mr. Jenkins** said the DB pension plan has a lot of money which, to the uninitiated, looks like a deep pocket, but the DB plan can't take recovery for the DC plan out of those funds because the plans are entirely separate. Administrative costs, fees, and overhead from each plan have to come from the respective plan. In fact, there is no fund from which to recover losses for erroneous or late reporting.

Mr. Jenkins said a complaint would probably end in court, where PERS would be found to have no liability since it was not the party at fault. HB 143 says, up front, that PERS is not responsible for losses incurred as a result of incorrect reporting by an employer or reporting agency. **{Tape: 1; Side: B}**

SEN. WHEAT asked for clarification. If money comes in a week late, and assuming the market moves up, that loss to the DC member would be the amount that would have been earned had the money been in the account. **Mr. Jenkins** said yes.

SEN. WHEAT asked what was a reporting agency. **Mr. Jenkins** said, in a limited number of circumstances, the reporting agency isn't the employer for other purposes under law. He gave as an example an inter-local governmental agreement between a city and a county for the purposes of running a library. Under those circumstances, the county might not be the employer, but might be the reporting agency. One entity or the other must assume responsibility for reporting.

CHAIRMAN COBB asked if other states had similar issues. **Mr. Jenkins** said Montana is on the cutting edge in terms of adopting a DC plan. Not many states have them. State governments have traditionally adopted the DB plan for governmental employees. There is very little precedent from other states to rely on.

Closing by Sponsor: **REP. LAMBERT** said HB 143 is a money-saving, housekeeping bill.

HEARING ON HB 87

Sponsor: **REPRESENTATIVE LARRY JENT, HD 29, BOZEMAN**

Proponents: **Rita Blouke, President, Helena Area League of Women Voters; Janice Doggett, Chief Legal Council, Secretary of State (SOS); Elaine Graveley, Election Deputy, SOS; Robert Throssell, Montana Association of Clerks and Records**

Opponents: None.

Opening Statement by Sponsor: **REPRESENTATIVE LARRY JENT, HD 29,** said HB 87 banned punch card voting machines in Montana. In addition to HB 87, a trilogy of election reform bills are in the legislature (HB 155, HB 190 and HB 201). This activity comes from the State Administration Joint Interim Committee on Veterans' Affairs as a result of Gore v. Bush. In Gore v. Bush, the U.S. Supreme Court stopped the recount ordered by the Florida Supreme Court because the way votes were counted--county to county, counting board to counting board, and precinct to precinct--did not ensure people equal protection of the laws. Equal protection analyses on voting were undertaken by a number of commissions in the country. The Help America Vote Act resulted, and was signed by the President October 29, 2002. \$1.5 billion dollars was appropriated by the U.S. Senate Appropriations Committee last week. The appropriations bill is now in the U.S. House of Representatives.

Five Montana counties use punch card voting machines. Money from the Help America Vote Act is designated to replace punch card voting machines with new technology. The deadline under that Act is November 2, 2004. There is a waiver provision of one year for good cause. **REP. JENT** said an amendment to HB 87 requested to postpone replacement of punch card machines until 2005. He recommended not to accept the amendment because there is a need now, a mechanism now to pay for replacement, and a consensus now among Clerks & Recorders that it should be done. **REP. JENT** said HB 155 was germane to HB 87. The Secretary of State (SOS) is given a definition as to what constitutes a vote, and is directed to develop standards for all the different types of voting systems: counting boards, recount counting boards, and absentee counting boards. If Montana does not ban punch card machines, it will not be eligible for replacement funds under the Help America Vote Act. **Rep. Jent** said there was a consensus from those testifying to the Interim Committee that punch card ballots should be eliminated.

Proponents' Testimony: **Janice Doggett, Chief Legal Council, Secretary of State** said Bob Brown supports this legislation. He also is a resident of Flathead County, which is the largest county that uses punch cards, and has personally experienced the frustration as a voter.

Rita Blouke, President, Helena Area League of Women Voters, said the League was strongly in support of HB 87, but recommends the amendment not be approved. The League sees no reason to wait, as only five Montana counties are involved.

Robert Throssell, representing the **Montana Association of Clerks and Records**, stood in support of HB 87. He said there has never been a problem with punch cards in Montana, but the technology is on its way out. Most of the larger counties in Montana now have optical scan. The five counties that still use punch card ballots want to go to optical scan. Unless these counties get a new system in place, and have some experience with it, it won't be ready for 2004 elections. Federal money has been specified, but is not yet here. **Mr. Throssell** said if punch cards are banned at the end of this year, and if money is not available from the Help America Vote Act, some counties may go back to paper ballots. He wasn't recommending to delay implementation of new technology, but wanted to be sure everyone knew that if money was not forthcoming from the federal government, the counties would need to raise the money for new technology themselves. Money is needed not only for technological equipment, but also to implement it and put it in place. He said the clerks and recorders were in favor of optical scan equipment.

Opponents' Testimony: None.

Questions from Committee Members and Responses: **SEN. WHEAT** asked what the cost would be to Flathead County to convert from punch cards to optical scan. **REP. JENT** said about \$300,000 has been designated for the State. The question was re-referred to **Elaine Graveley, Election Deputy, Secretary of State (SOS)**, who said each precinct has been allocated \$4,000. Flathead County has about 43 precincts, which is about \$200,000.

SEN. WHEAT asked why the decision couldn't be extended until December 31, 2004, because the federal government has been known not to fund mandates. **REP. JENT** said the Help America Vote Act sets a deadline of November 2, 2004. There is a waiver procedure if the deadline is not met, but he's not sure what it is. HB 87 uses the deadline in the act.

SEN. WHEAT asked if Flathead and other counties are undertaking proactive steps to convert their systems now. **REP. JENT** said he didn't know. The question was re-referred to **Ms. Graveley**, who said when she was Clerk & Recorder for Broadwater County three or four years ago, she suggested to the Commissioners that they begin to look for a new system. She felt punch cards were on the way out because the public was starting to doubt them. At that time, money was put in the budget for an upgrade. **Ms. Graveley** said the new Clerk & Recorder from Flathead County contacted her office recently. She is looking at new systems. **Ms. Graveley** said some counties are taking proactive steps. **SEN. WHEAT** asked if she saw the target date of December 31, 2003, as a hardship for these counties. **Ms. Graveley** said she did not.

SEN. GEBHARDT asked how much money was being set aside by the federal government. **REP. JENT** said about five million dollars is coming to Montana. Some of the money will be used to buy out punch cards, some to purchase VREs (which are now required in every precinct to help the visually-impaired), and some money is for training and other things. **REP. JENT** said a State mandate had been considered before the Help America Vote Act was passed. Replacement cost had been estimated at between \$300,000 and \$400,000. The timely federal bill takes care of the expense.

SEN. GEBHARDT noted the large spread between \$400,000 and \$5,000,000. He asked if counties that had already made upgrades would be reimbursed. **REP. JENT** said Glacier County may be able to be retroactively reimbursed. He said five Montana counties use punch cards, 26 use optical scan, and about 20 still use paper ballots. He didn't know when the various counties started to use optical scan, and he didn't know if money would be available retroactively. He said one of the compliance measures is to get rid of punch cards. There is substantial funding available from the Help America Vote Act to improve voting. **SEN. GEBHARDT** said he didn't remember what it cost Musselshell County to convert to optical scan, but it was considerable. There was a fairness issue involved if some counties are funded to convert and other counties that have already converted are not reimbursed, particularly if there is money available. **REP. JENT** said there may be some flexibility. HB 2 will authorize the Secretary of State (SOS) to spend up to a certain amount. The SOS will control the purse strings, and ensure money is spent in compliance with the act.

CHAIRMAN COBB asked if the money was included in the big appropriation bill now being negotiated. **REP. JENT** said yes. **CHAIRMAN COBB** said the committee would hold the bill for a month or so to see what happens. If money is forthcoming, and the Governor signs, the Committee will take action on HB 87. **CHAIRMAN COBB** said the bill didn't need to be out until March or April, and he would rather have things settled at the federal level. **REP. JENT** said he believed that would give HB 87 a better chance of passing, and it was a good way to do it.

Closing by Sponsor: **REP. JENT** thanked the Committee for a good hearing. Irrespective of where funds come from, he said conversion to optical scan voting systems should be done. He believes deadlines set forth in the Help America Vote Act should be met, and asked the Committee to pass the bill unamended as far as the effective date.

EXECUTIVE ACTION HB 143

Motion/Vote: SEN. COBB moved that HB 143 DO PASS. Motion carried 4-1 with SQUIRES voting no. SENATOR COBB will carry HB 143 to the floor.

BOARD APPOINTMENTS

CHAIRMAN COBB said Board Appointments would be discussed on Monday. Appointment list procedures were distributed. He explained what had happened in the past.

HEARING ON HB 213

Sponsor: REPRESENTATIVE DAVE GALLIK, HD 52, Helena

Proponents: Melanie Symons, Montana Public Employees Retirement Board (MTPER Board)

Opponents: None.

Opening Statement by Sponsor: REPRESENTATIVE DAVE GALLIK said HB 213 was at the request of the Public Employees Retirement System (PERS). This is their general revisions bill that consolidates and makes statute uniform. The 97-page bill has been reviewed with Melanie Symons and Kelly Jenkins, the lawyer for PERS. HB 213 passed from the House State Administration without a negative vote, and passed both second and third readings on the House floor without a negative vote. There is a technical amendment prepared by Sheri Heffelfinger. EXHIBIT(sts27a06) Ms. Symons will explain it. REP. GALLIK asked the Committee to direct any questions they may have for him at this time, and waived the right to close. {Tape: 2; Side: A}

Proponents' Testimony: Melanie Symons, Montana Public Employees Retirement Board (MTPER Board), said because HB 213 is a 97-page bill, a table has been prepared to assist the Committee. EXHIBIT(sts27a07) She said a similar bill is presented every session that reflects changes made by the Board, the courts, and the Legislature. The goal is to make statutes as uniform as possible among the various retirement systems. Ms. Symons reviewed major changes. She said the terms "service," "service credit," and "membership service," cause confusion. Service credit is used to determine how much money a person receives when he or she retires, and it regards how many years of service have been worked. Membership service is used to determine retirement eligibility. If a person works just one hour in a month, one

month of membership service is earned. For a month of service credit, 160 hours must be worked in a month. **Ms. Symons** said the words "member," "participate," and "employee" are often used interchangeably. The Defined Contribution (DC) Plan and the Defined Benefit (DB) Plan are both plans in the Public Employees Retirement System. Those who choose the DB plan are participant in that plan; those who choose the DC plan are participant in it. **Ms. Symons** said employer reports and contributions need to be submitted together. If they are not, they are delinquent. The law does not currently specify that a member may designate his or her estate as beneficiary. Since the estate is the default beneficiary, HB 213 makes that change to statute.

HB 213 has many coordinating amendments that apply to the purchase of military time. A member can now purchase active military time. HB 213 allows for general revision to purchase reserve military time. HB 44 and SB 66, as part of the coordinating amendments, permit members to purchase active or reserve military service at an earlier time than they presently can, and at a different rate. The intent is to make policy uniform throughout the system so that in each retirement plan military service can be purchased at actuarial value after five years of service.

If retirement is part of a distributed marital estate in a divorce, PERS needs a family law order. That change in wording has been made, because it is required under statute.

The legislature passed a Deferred Retirement Option Plan (DROP) for the Police Retirement System last session. Some necessary terms were not defined, and are now included in HB 213. A group of amendments have to do with the DC Plan. One of the important changes allows members to purchase service from other agencies and other retirement systems. An Employee Investment Advisory Council was created as a result of the DC plan. The Council now meets on a quarterly basis. HB 213 makes provision for the Council to meet four times a year, but not necessarily on a quarterly basis.

HB 213 makes provision to provide long-term disability benefits in the DC plan equal to what would have been provided had an employee elected to remain in the DB plan until the age of 60. At age 60, the DB plan ends, and the member accesses their DC account. A member still has the option to waive disability payment and access their DC account immediately. **Ms. Symons** said the federal government has issued guidelines that may make the age 60 limit a violation under the Discrimination in Employment Act. Changes have therefore been made to reflect new guidelines: A person found to be disabled by the Board prior to age 65 earns disability benefit until age 65, rather than age 60. If the disability occurs after age 60, so there are less than five years until age 65, the deadline is changed from age 60 to age 65.

Different accounts have been made more portable and accessible relative to the Federal Economic Growth and Tax

Reconciliation Act. Changes have been made to permit rollovers and transfers of money in and out of the DC plan and the 457 plan. **Ms. Symons** noted that amendments that went before the house are bolded in the table.

Opponents' Testimony: None.

Questions from Committee Members and Responses: **SEN. WHEAT** said legislation dealing with retirement for military service had been in Committee. He asked **Ms. Symons** to explain what happens if someone has a military retirement, but also retires from the state. **Ms. Symons** said people who are currently in a job with a PERS retirement system, and who also have past reserve time, can purchase that service just as they could if it had been past active service time. People who are now being called up under the Federal USERA Act have the right to purchase their retirement when the return to their employment.

SEN. WHEAT asked if someone who had been in the reserves, but is working now and wants to purchase reserve time, would be ineligible for any kind of military retirement benefits. **Ms. Symons** said she thought that person would not be eligible. **SEN. WHEAT** said he thought the state had a military retirement plan. **Ms. Murdo** agreed, saying Page 95, line 23 had coordination instructions.

SEN. SQUIRES asked how AmeriCorp time would be counted. She wanted to be sure AmeriCorp coordination language is included.

CHAIRMAN COBB suggested holding the bill in Committee. **Ms. Symons** had no objections.

SEN. WHEAT, referred to the **Sheri Heffelfinger** amendment. He asked if **Ms. Heffelfinger** agreed with changes. **Ms. Symons** said yes.

CHAIRMAN COBB said executive action on HB 213 would not be taken right away, to allow time for all the coordination language to be included.

BOARD APPOINTMENTS, cont.

CHAIRMAN COBB reviewed how the nomination process would be handled in Committee. **EXHIBIT(sts27a08)**

ADJOURNMENT

Adjournment: 4:20 P.M.

SEN. JOHN COBB, Chairman

MONA SPAULDING, Secretary

JC/MS

EXHIBIT (sts27aad)