EXHIBIT 5
DATE 3-23-05
SB 370

TESTIMONY OPPOSING SENATE BILL 370

On behalf of the Public Employees' Retirement Board
Kelly Jenkins, General Legal Counsel
Before the House State Administration Committee
March 23, 2005

The first page of the exhibits provided contains Montana Constitution, Article VIII, Section 15 because it includes two relevant critical points.

- The retirement systems must be funded on an actuarially sound basis, an actuarial determination that is made by the retirement board according to statutory requirements.

- The retirement board must administer the retirement systems.

These two points form the basis of fundamental problems the PER Board has with SB370. The PER Board will offer amendments to improve the bill, but no amendment can remedy the lack of serious study given the proposal.

SB370 proposes, essentially, to adopt a new retirement system for detention officers that is nearly equal in size to the Firefighters Unified Retirement System. The consequences of such an enormous change have not been considered. By contrast, the last substantial retirement system change, the creation of the PERS Defined Contribution Retirement Plan, was studied for two interims and had a delayed effective date so legislative changes could be made if necessary.

Proponents urge the adoption of the sweeping changes of SB370 based on assumption and anecdotal evidence. It's easy to assume that a law enforcement retirement system for detention officers is just the right thing to do. Some individuals provide anecdotes that SB370 would be a good thing for them. Certainly, a turnover rate of 20% to 100% (proponent testimony in Senate Local Government Committee) each year suggests a serious problem.

However, you have no way of knowing if SB370 will have a positive impact. The only thing you can know with certainty is that if SB370 is an error, if SB370 is a waste of money better spent on an effective solution, if SB370 has negative consequences, the effects of SB370 cannot be reversed next session. Once individual detention officers are put into the Sheriffs' Retirement System, they cannot be removed from the SRS for the remainder of their careers or for the remainder of their retirements. The effects of SB370 will be immediate but they will also last for decades.

Such substantial retirement system changes should <u>never</u> be made without thorough consideration and study of the consequences. There should be analysis of fiscal and managerial impact on large employers, on small employers, on full time detention officers, on part time detention officers, on the retirement

system, on the pension trust fund. But there has been no credible analysis of any of these issues.

The proponents of SB370 must carry the responsibility of justifying change as necessary and appropriate. Instead, the proponents simply assert that change is obviously good and should be done. The proponents challenge the PER Board to demonstrate that change is inappropriate. That isn't the Board's job. But the Board does have two fundamental concerns:

- The PER Board must be able to administer SB370.
- The SRS must remain actuarially sound.

Amendment will make HB370 a better bill. However, no amendment can substitute for the study and analysis needed for an actual understanding of the problem and a well-considered solution.

Proposed Amendment 1 changes the effective date of SB370 from July 1, 2005 to October 1, 2005.

- As a practical matter, the PER Board staff is concerned about administering the enormous changes in SB370 if those changes begin July 1, 2005. At this time, no one has identified the affected employees.
- Transfer procedures and calculations will need to be done so that affected employees can choose whether to stay in PERS or transfer to SRS.
- SB72, co-sponsored by Senators Mangen and Lewis (now in Senate Finance and Claims), a bill to provide a retirement incentive for state employees by payment of health insurance, is anticipated to cause roughly 800 retirements between July 1 and October 1; about five times the normal workload for the PER Board staff. The Board staff simply can't absorb the workload of more than 400 anticipated SB370 transfer calculations at the same time. Fiscal Note Assumption 10.

Proposed Amendment 2 decreases the administrative confusion, although no language will establish a bright line of coverage.

- No definition of "detention officer" is as clear as "sheriff" or "deputy sheriff".
  - "Detention officer" includes employees with only part time, even minimal or possibly occasional, detention duties. By statute:
    > "Detention officer" means a person or a peace officer who has full-time <u>or part-time</u> authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center. Section 44-4-302(5), MCA (underlining added for emphasis).
  - Whether an officer receives or is expected to receive training depends on each county's sheriff. "Each department unfortunately may report some [of] those persons differently." Allen Horsfall, P.O.S.T. Executive

Director, Montana Board of Crime Control, e-mail of March 7 (attached to Amendment 2).

- For example, the Gallatin County detention facility FY2005 budget (p. 138, attached to Amendment 2) included 27.5 FTE but only listed 9 detention officer positions.
- The FY2003 Gallatin County budget included 22.5 FTE in their budget (same source) but identified only 12 individuals as detention officers to the SPOA in response to a request from the PER Board.

- Such variance will cause constitutional equal protection issues and administrative difficulties for a retirement system that must be administered uniformly throughout the state. See legal and policy memorandum dated March 17, with attachments (all attached to Amendment 2). The PER Board is placed in the impossible position of having to determine who are "detention officers" and who are not. Are radio dispatchers "detention officers" because they do a pat down of a female prisoner once a month and they took detention officer training?

- Proposed Amendment 2 reduces the confusion by defining "professional detention officer" as an employee "whose **sole** job function, authority and responsibility is maintaining custody of inmates", who receives detention officer basic certification within one year of such employment. A second option, Option B, corrects an apparent oversight in the legislation by giving juvenile detention officers the same coverage as detention officers.

- Proposed Amendment 2 (both Option A and Option B) also corrects an error in referring to the coverage group and clarifies the effective date of individual elections filed with the PER Board (to allow time to notify employers).

Proposed Amendment 3 is an effort to resolve the actuarial funding problem caused by SB370, as nearly as the problem can be known at this time.

- Are the numbers provided in the Fiscal Note unerringly precise? Absolutely not. The limitations of that information are reflective of the fact that there is virtually no information available about the impact of SB370. What can be said with certainty is that an enormous change is being recommended without sufficient consideration – really without any consideration at all. What is provided in the fiscal note is based on unqualified and unsubstantiated names of those identified as detention officers by the 46 counties with detention facilities, provided to the PER Board in the Fall of 2002. We can reason that they underestimate the current number of detention officers (and therefore the impact of SB370), based on the Gallatin County budget figures from FY2003 and FY2006 (proposed), which show a 33% increase in FTE.

- The SRS had a 30 year funding deficiency of 2.15% of salaries in FY2004. This means that although the system is 95% funded, it will take an increase in contributions of 2.15% of salary immediately for the system to pay the normal cost of providing the benefits promised to current SRS members and pay off the unfunded liability over 30 years. (Legislative Audit Division Report, in relevant part attached to Proposed Amendment 3) HB148 has been introduced to bring funding to a constitutionally required level. However, HB148 only places the SRS on the edge of the cliff. Any increase in the cost of the system not paid for now pushes the system off the cliff again.

- SB370 increases the normal cost of benefits by .54% of payroll.

- Adding detention officers will increase the payroll and increase the cost of providing benefits, double compounding the additional money that will be needed to keep SRS actuarially sound.

- Counties are already reimbursed by the state for the operational overhead of keeping parole violators in custody. Section 7-32-2242, MCA. So a portion of the additional cost will be borne by the state. The counties also have already asked the state for additional reimbursement of detention costs (HB243, passed 2d Reading in the House 94-6, attached to Proposed Amendment 3). This suggests two things: First, the counties do not have enough money to add additional costs to detention center operations, as SB370 will. Second, if HB243 passes, this bill will increase costs to the state for the state's portion of the operational cost reimbursement.

Two funding options are provided in Proposed Amendment 3. Option A is a state contribution to the SRS. Option B is an increase in the county's employer contribution. Whichever the funding source, you might consider that the same funding source may be used next session if the impact of SB370 is greater than anticipated.

Millions of additional dollars will be spent over several decades and the very actuarial soundness of an entire retirement system will be placed in jeopardy if SB370 passes. Such long-term, extreme consequences cannot be justified by assumption and anecdote. Prudence dictates a more judicious course.

This committee has the knowledge and understanding to justify a vote in favor of thoughtful consideration; against SB370. The PER Board respectfully requests a DO NOT PASS on SB370.

I'm available to answer your questions.