MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN LARRY JENT**, on January 28, 2005 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:
Rep. Larry Jent, Chairman (D)
Rep. Dee L. Brown, Vice Chairman (R)
Rep. Veronica Small-Eastman, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Mary Caferro (D)
Rep. Sue Dickenson (D)
Rep. Emelie Eaton (D)
Rep. Robin Hamilton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. Hal Jacobson (D)
Rep. William J. Jones (R)
Rep. Gary MacLaren (R)
Rep. Bruce Malcolm (R)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Marion Mood, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: HB 290, 1/18/2005;
HB 253, 1/21/2005;
HB 297, 1/21/2005
Executive Action: HB 102; HB 239
HB 152 - continued on 2/11/05

HEARING ON HB 290

Opening Statement by Sponsor:

REP. VERONICA SMALL-EASTMAN (D), HD 42, opened the hearing on **HB 290,** Revise laws governing parole board members. She stressed the importance of having a Native American on the Parole Board because of the relatively high Indian prison population; she felt that a Native American had the ability to understand their culture and the problems they faced in the legal system. The bill also provides for the Governor to dismiss a member who has missed two Board hearings without good cause and appoint someone to fill the balance of the term.

Proponents' Testimony:

REP. MARGARETT CAMPBELL, HD 31, rose in support of HB 290. She stated that while Native Americans make up seven percent of Montana's population, Native American males represented 16 to 18 percent of the prison population between 1995 and 2004; the percentage among females was higher yet. She agreed that having a Native American on the Parole Board would provide parity.

REP. NORMA BIXBY, HD 41, stood in support of HB 290, stating that she was concerned with the racial imbalance on the Board. She recalled that non-Indian Board members were to receive training in Indian culture but did not know how far this had progressed.

REP. JOEY JAYNE, HD 15, said that asking for a Native American representative on the Board was not meant to give Indian inmates a break, but rather to provide greater insight into the cultural background of the inmate and the reason for his imprisonment.

Opponents' Testimony: None

{Tape: 1; Side: A; Approx. Time Counter: 0 - 13.0}

Informational Testimony:

Craig Thomas, Executive Director, Board of Pardons and Parole, stated that Native Americans have had representation on the Board since 1985 and provided a brief look back at previous Board members. **Mr. Thomas** went on to say that according to a ruling by the Supreme Court, the reason for an American Indian to serve on the Board was to hear and act on all American Indian cases; this was an impossible task, considering that hearings are conducted on a monthly basis all across the state as well as outside of Montana. The requirement would seriously delay hearings, adding

that in his opinion, it would require at least three members to cover the whole state.

Mr. Thomas referred to HB 211, 2003 Session, which required that all Board members receive training in American Indian culture and problems; he added that this was being done.

He did not agree with the statement that members missed hearings since they are scheduled based on availability of each of the citizen-members and their proximity to the hearing location.

Don Hargrove, Montana Board of Pardons and Parole, offered to answer any questions. He explained that the Board was an entity separate from the Department of Corrections. He, too, stated that the mere logistics of scheduling citizen-members was a daunting task and conveyed the need for a Fiscal Note as at least one Full-Time Equivalent (FTE) would have to be added.

Questions from Committee Members and Responses:

VICE CHAIR DEE BROWN, HD 3, HUNGRY HORSE, having heard the high percentage of Native Americans among Montana's prison population, she asked Mr. Thomas about the ethnicity of the rest of the inmates. **Mr. Thomas** stated he did not know the percentage of each race but offered to obtain the information and repeated that the Native American population certainly was over-represented.

VICE CHAIR BROWN inquired which court prisoners belonging to a sovereign nation would have to go to in order to be sentenced to a Montana correctional facility. **Mr. Thomas** advised all Native Americans in the system have gone through Montana State District Court.

CHAIRMAN LARRY JENT, HD 64, BOZEMAN, asked Mr. Thomas how many Board members normally attend a hearing. **Mr. Thomas recounted** that the previous Legislature authorized the Board to appoint two-member panels because of the diversity of the prison population; primarily, two-member panels hear all of the cases in each facility throughout the state. He added that in 2004, the Board heard roughly 2,000 cases, held almost 1,000 parole and over 160 revocation hearings. **CHAIRMAN JENT** wondered who determined whether to select one of the three regular or the four auxiliary members of the Board. **Mr. Thomas** advised that he and the members collaborate on the time and location of hearings. **CHAIRMAN JENT** asked if he was referring to regular or auxiliary members. **Mr. Thomas** stated that due to the number of hearings and their location, all seven of the members work every month. **CHAIRMAN JENT** inquired how the requirements of HB 290 would affect the composition of the two-member panels. **Mr. Thomas**

stated that if HB 290 was enacted, that member would be required to attend all hearings involving American Indians in accordance with the Supreme Court ruling, meaning he would have to conduct hearings on at least eight days per month and travel from Shelby to Glendive to Billings and all other facilities across the State. **Mr. Thomas** added that it was not a matter of travel alone but also involved a lot of preparation since Board members are required to thoroughly prepare for each case. The packets sent out by the Board contain the offender's background information and history, requiring numerous hours of reading. He repeated that all of this was too much responsibility for one member unless he was a full-time staff member. **CHAIRMAN JENT** asked who ultimately made the decision to grant parole. **Mr. Thomas** advised that the two-member panel is authorized to make the final decision. If those two members cannot agree, a three-member panel is convened and charged with making the decision.

REP. BRUCE MALCOLM, HD 61, EMIGRANT, inquired how many hearings had to be cancelled because of members being absent. **Mr. Thomas** replied that no hearings were cancelled in 2004.

{Tape: 1; Side: B}

REP. SUE DICKENSON, HD 25, GREAT FALLS, requested that Mr. Thomas describe the kind of training Board members have to undergo to gain knowledge of the Native American culture. **Mr. Thomas** advised that they had developed an Administrative Rule, 2-25-102, which says, "All Board members shall receive or have received training that addresses the following issues relevant to American Indians in the State of Montana: the culture and problems of Montana tribes and reservations; statistical and comparative data regarding correctional populations; distinction between urban and reservation populations; federal, state, local, and community services available to paroled or discharged American Indian inmates. Board members who have not received training regarding American Indian issues must complete the training within a reasonable time from the date of appointment. A member that has not yet completed training may not participate on a hearing panel acting on American Indian offender dispositions unless a trained member is also participating on the panel. New Board members may attend a nationally recognized training or comparable training program for parole board members." He went on to say that it requires some additional training for members and added that currently, a convened Board determines which members need training. As it stands now, there are five members who are either American Indian or designated knowledgeable by Gov. Martz; one is retiring and his replacement will receive training as will Mr. Hargrove.

REP. DICKENSON asked what the training consisted of. **Mr. Thomas** replied that the Board determines what type of training each person required, adding it did not stipulate a specific number of hours.

REP. GORDON HENDRICK, HD 14, SUPERIOR, asked about the length of training, the cost involved and who paid for it. **Mr. Thomas** advised that the Board utilizes the National Institute of Corrections which provides training for newly appointed Board members at no cost; it consists of 36 hours of training. He added that staff receives 40 hours of training with regard to Board policy, procedure, law and the like. The training is paid for by the Federal government, there is no cost to the State other than the per diem and travel expenses.

REP. ROBIN HAMILTON, HD 92, MISSOULA, determined that the Board was authorized to schedule hearings with a two-member panel and asked what was meant by Section 1, Subsection (2)(b). **Mr. Thomas** replied he read this to mean that when someone is scheduled on a panel to attend a hearing, he does not attend and then misses a second hearing, he would be replaced. He was not sure, though, who would determine what constituted a "good reason."

CHAIRMAN JENT asked the sponsor whether it was her intent that one member of the two-member panels must be an American Indian or just one member of the seven-member Board. **REP. SMALL-EASTMAN** replied that she would like to see that one member of the two-member panel was a Native American. **CHAIRMAN JENT** pointed out that the bill as written did not accomplish that. **REP. SMALL-EASTMAN** stated that she would amend the bill, adding that some of the auxiliary members should be Native American also.

REP. MACLAREN wondered about the difference between a regular and an auxiliary Board member. **Mr. Thomas** clarified that both have the same rights and responsibilities.

REP. HENDRICK asked what type of burden would be put on the Board by requiring a permanent position for a Native American who had to be present for all cases involving Native Americans. **Mr. Thomas** did not feel it would be a burden to the Board or the staff; it would, however, require a fiscal note. He advised that nationwide, the average salary for a Parole Board member is between $60,000 and $80,000 annually; the seven volunteer members in Montana are paid $26,950.

REP. BERNIE OLSON, HD 10, LAKESIDE, asked Mr. Thomas if the sponsor had contacted him or another member of the Board with regard to today's hearing. **Mr. Thomas** advised that he had been in contact with the sponsor through Mr. Hargrove because he

worked in Deer Lodge. He added that last session, he was involved in the drafting of HB 211.

REP. MARY CAFERRO, HD 80, HELENA, wanted to make sure that he had said the addition of an American Indian would require an FTE at $60,000 to $80,000. **Mr. Thomas** clarified that the Board members' compensation is $26,950 annually and added that he had estimated it would take three Native American members on the seven-member Board if an American Indian was to attend every hearing across the State. The other option would be to add an FTE to the Board who would be a Native American.

REP. JOAN ANDERSEN, HD 59, FROMBERG, asked if there were statistics showing the percentage of hearings for Native Americans. **Mr. Thomas** replied that information was not available per se; he referred to the Board's Biennial Report which contained some the relevant data.

Closing by Sponsor:

REP. SMALL-EASTMAN closed, repeating that she would request drafting of the amendment necessary to add two Native American auxiliary members to the Board.

(REP. ALAN OLSON left at 8:51 A.M.)
{Tape: 1; Side: B; Approx. Time Counter: 0 - 20.4}

HEARING ON HB 253

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS (D), HD 66, opened the hearing on **HB 253,** Revise tie breaker method for tied elections. He explained that for any tied election in Montana, the Secretary of State would choose a one-time random method to determine the winner. This solution would take politics out of the process and correct an antiquated and potentially dangerous system. To bolster his claim, he submitted a copy of the section of the Montana Code Annotated which deals with this issue; it shows that currently, every office applies a different method. He summarized and commented on the negative aspects and consequences of each method.
EXHIBIT(sth22a01)

Proponents' Testimony:

Brad Johnson, Secretary of State, stated that the ideal outcome in any election was for the voters to render a clear decision. Recent history has taught that this is not always the case, and

he lauded the sponsor for suggesting the second best alternative. He praised HB 253 for being far more palatable to all parties involved and because it takes politics, speculation and potentially hard feelings out of the process.

SEN. MIKE COONEY, SD 40, HELENA, former Secretary of State, testified in support of HB 253. He advised that this bill was presented in previous sessions and felt that it had been taken lightly because people do not believe that elections can be this close. He stressed the importance of establishing a system that is both fair and straight forward.

{Tape: 2; Side: A}

Verner Bertelsen, (former Secretary of State), self, stated this legislation simplified and added fairness to the process of dealing with tie votes. He advised that random methods for determining the winner in a tied race had been employed for two thousand years. **Mr. Bertelsen** also pointed to current law, saying it was cumbersome, outdated and expensive. He went on to say that if it was up to the Governor to appoint the winner, he would choose a member of his own party because he would not feel free to pick a candidate from the other party. The same could be said if it was up to the Legislature; the candidate representing the majority party would be chosen.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. EMELIE EATON, HD 58, LAUREL, wondered what would be the right time to decide the outcome of an election by coin toss, in light of absentee, provisional, voided, and missing ballots. **REP. HARRIS** advised it would be following the canvassing board's certification of the final count should it result in a tie. He added that HB 253 had nothing to do with the way votes are counted. **REP. EATON** ascertained that it was the canvassing board which determined which ballots were double-marked or otherwise invalid which **REP HARRIS** confirmed.

VICE CHAIR BROWN asked Secretary of State Johnson how many times a tie vote had occurred in the last 50 years in Montana. **Mr. Johnson** deferred to Elaine Graveley, Deputy for Elections. **Ms. Graveley** replied that she was unable to supply information for the last 50 years but during the last 15 years, tie votes had occurred at least six times.

REP. B. OLSON wondered if the random method chosen by the Secretary of State was, in fact, a coin toss, who would choose the proper coin, making sure that it was not two-headed. **REP. HARRIS** stated that the Secretary of State will need to determine an absolutely fair and impartial method of resolving the tie. This meant that the chosen coin could not be questionable.

(REP. JACOBSON left at 9:10 A.M.)

REP. ANDERSEN wanted to make sure that a random method would be chosen by the Secretary of State if there was a tie vote in any election which **REP. HARRIS** confirmed. **REP. ANDERSEN** asked if this applied to primary elections as well. **REP. HARRIS** advised that in the event of a tie in a primary election, current law provides for the decision to be made by coin toss or lot. With HB 253, he is seeking to expand current law to cover any election, including the general election.

Closing by Sponsor:

REP. HARRIS closed, stating that the majority of other states requires decisions by lot or some other random method; Idaho specifically requires a coin toss.

(REP. A. OLSON returned and VICE CHAIR BROWN left at 9:15 A.M.)
{Tape: 2; Side: A; Approx. Time Counter: 0 - 14.7}

HEARING ON HB 297

Opening Statement by Sponsor:

REP. BRADY WISEMAN (D), HD 65, opened the hearing on **HB 297**, Require use of paper ballots in all elections, which would eliminate the possibility of using touch screen voting machines in Montana. He advised that as a software engineer, he was bringing a good deal of expertise to this subject and submitted two handouts: Exhibit 2 contains the talking points of his presentation, and Exhibit 3 is a table showing touch screen voting machine failures throughout the country on election day 2004. The machines which are called Direct Recording and Entry (DRE) machines are used in about a third of all states. **REP. WISEMAN** advised that the manner in which ballots are counted by these machines is considered a trade secret; it is open to neither the candidates nor the public which makes the process suspect. He considers the privatizing and outsourcing of counting votes a basic flaw. He pointed out that all vendors of DRE's are tied to one party; that an inventory of machines large enough to accommodate a maximum turnout has to be purchased and maintained; and that there is an ongoing expense in having the

original vendor re-program them for each election. In addition, there are many technical and security flaws which he proceeded to review, see Exhibit 2.
EXHIBIT(sth22a02)
EXHIBIT(sth22a03)

(VICE CHAIR BROWN returned at 9:25 A.M.)

Proponents' Testimony:

Brad Johnson stated that as Chief Election Officer for the State of Montana, the most important aspect of his responsibilities is to make sure that public confidence in the electoral process is preserved. In light of recent election problems, he agreed that HB 297 was an important first step, stating that he concurred with the sponsor's assessment of the risks involved by relying exclusively on touch screen voting machines. **Secretary Johnson** stressed that we owe it to the people of Montana to demonstrate beyond a question of a doubt who casts votes for whom and who the winners are.

{Tape: 2; Side: B}

Bill Kennedy, Yellowstone County Commissioner, rose in support of HB 297, echoing many of the previously expressed concerns. He added that it becomes apparent during hand recounts that machines do not count ballots that are not marked properly; this emphasized the need for a paper trail.

Eric Stern, Senior Counsel to Governor Schweitzer, conveyed the Governor's support for HB 297, stating that Governor Schweitzer believed in the importance of a paper ballot as something tangible which would make it easy for everyone to participate in the election process.

Brad Martin, Democratic Party, stressed, as evidenced by previous testimony, that this was not a partisan bill. He went on to say that the extent to which DRE's expose our democracy to mischief greatly outweighs the benefits originally envisioned. He lauded the sponsor for requesting a bill that resists bringing DRE's to over 900 precincts which would create a huge liability in terms of permanent maintenance, upgrades and technical support; he felt the money required for this could be better spent on other technologies and approaches. **Mr. Martin** cited the various improvements made to paper ballots because they facilitate participation among disabled voters.

Stan Frasier, self, stated that as an Election Judge in Lewis and Clark County for the past 12 years, he felt the simplest way was

to vote by paper ballot; moreover, they could be counted by machine or by hand. Another advantage was that the voter is not limited to a handful of machines which may or may not work.

Terry Kendrick, Montana Women Vote, stated that the coalition of nine statewide agencies worked to encourage low-income women to participate in the democratic process and registered some 7,000 women statewide in 2004. She recounted that many people are disenfranchised, believing that their vote will not matter or that one vote cannot change the outcome of an election; everyone present knows that this is not so. She contended that people lose confidence in government and the democratic process if they stop believing that their vote will be fairly counted. She added that without a paper ballot, there is no evidence to support or refute charges of fraud or to resolve suspicions about an election. This weakens a democracy and undermines the legitimacy of elections.

Opponents' Testimony: None

Informational Testimony:

Robert Throssell, Montana Association of Clerk and Recorders, claimed that HB 297 could create a situation where Montana was forced to have dual elections. Under federal law, the election of presidents, senators and congressmen is controlled by Congress; Congress directs how elections for those offices are conducted whereas elections for state offices are up to each state. So far, Montana has held elections and voted for all candidates in one manner. **Mr. Throssell** contended that the federal government may mandate at some point that DRE's are used in all federal elections, and Montana's election administrators will have to comply. If HB 297 was enacted, it would mean that a voter would vote for the federal candidates on a DRE and for the state and local candidates by paper ballot. **Mr. Throssell** went on to say that optical scans are 100% accurate so long as the ballots are marked properly, and improperly marked ones are kicked out and can be counted by hand. The concern of the election administrators is twofold: the new technology (DRE's) is not to the point where they inspire trust, and HB 297 could set up a dual election system as noted above.
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Questions from Committee Members and Responses:

REP. DICKENSON surmised that the sponsor's goal was to have more than just a paper trail which **REP. WISEMAN** confirmed, adding that he wanted a paper ballot marked by or on behalf of the voter. **REP. DICKENSON** asked about his response to people who insist on embracing technology and moving forward. **REP. WISEMAN** replied

that his experience in this field has taught him that technology had to be appropriate for the task; elections are held once or twice a year, and the appropriate technology is something which everyone can use and understand, and anybody should be able to count the votes.

CHAIRMAN JENT commented that to date, Congress has not introduced any legislation mandating a national voting system. **Mr. Throssell** advised that a congressional committee was looking at alternative DRE methods. **CHAIRMAN JENT** surmised that while the Federal government sets forth certain criteria pertaining to the election of Federal candidates, it delegates to the states the nuts and bolts in running those elections. **Mr. Throssell** confirmed this, adding that what they may delegate might conflict with state law.

REP. EATON contended that if Congress mandated the use of DRE's nationwide, they would have to fund the project. **Mr. Throssell** asked the Chairman's permission to pass on an answer. **CHAIRMAN JENT** felt REP. EATON was correct in her assumption and advised the members of the unfunded mandate law. He added, though, that he was still not sure that the Federal government could mandate a certain voting system.

Closing by Sponsor:

REP. WISEMAN agreed that Mr. Throssell's concerns were real and legitimate, adding that passage of this legislation would change conversations and deliberations in every state. It was his understanding that the federal elections authority considered the current optiscan technology to be perfectly viable, and expressed hope that the federal government would agree with Montana that too much technology was not the solution. As an aside, he told of touch screen machines such as poker and Keno machines being used recreationally and advised that the Department of Justice employs full-time engineers who test every single variant on every model poker machine to verify that the machines work, pay out and record properly. He added that the gaming industry pays about $55 million in taxes annually. The voting machine industry does not pay taxes so there are no funds for IT staff to check the machines.

CHAIRMAN JENT announced a ten-minute break; the Committee reconvened at 10 A.M.
{Tape: 2; Side: B; Approx. Time Counter: 0 - 25.3}

{Tape: 3; Side: A; Comments: REP. JACOBSON is not present.}

EXECUTIVE ACTION ON HB 102

Motion: REP. BROWN moved that HB 102 DO PASS.

Motion: REP. BROWN moved that AMENDMENT HB010201.ASH BE ADOPTED. EXHIBIT(sth22a04)

Discussion:

CHAIRMAN JENT asked Sheri Heffelfinger, Legislative Services Division, to explain the amendments. **Ms. Heffelfinger** reviewed each amendment with the committee and, at the behest of **CHAIRMAN JENT**, clarified the term "statutory appropriation".
{Tape: 3; Side: A; Approx. Time Counter: 0 - 11.1}

VICE CHAIR BROWN remarked that it made her uneasy when the amendments to a bill have as many pages as the bill itself. She asked Ms. Heffelfinger to address this. **Ms. Heffelfinger** advised that much collaboration went into the drafting of HB 102 in order to simplify how the fees were paid; she added that they did not go the extra step: have the fees go into the General Fund and the appropriations come out of the General Fund. As introduced, the fees would go into the General Fund, be transferred into the Special Revenue Account and then paid out of the Special Revenue Account. Since this was still rather complicated, the amendments provide for the money to be put into the General Fund and the benefits are paid out of the General Fund.

VICE CHAIR BROWN referred to Page 7, Item #26 and asked why this change was made. **Ms. Heffelfinger** explained that this amendment dealt with the disposition of fees and would strike Subsection (a) of the bill in its entirety, meaning that the 54.5% is increased by 22.3% to 76.8% and the 62%5% is increased by the same percentage to 87.5%.

REP. DICKENSON referred to Page 4, Amendment 9, and asked whether pension benefits would be jeopardized by the Legislature having to appropriate 26.15% through HB 2 every two years. **Ms. Heffelfinger** advised that 19-6-404 contains the amount of money promised by the State to the pension fund; it has to add up to 36.33% of contributions made up of various fees. The 26.15% comes from the gas tax, and is appropriated every two years in HB 2 as required by law.

REP. TERESA HENRY, HD 96, MISSOULA, wondered whether the statutory appropriation in 19-6-404 as amended would need to be

included on Page 1, Line 26 of the bill which **Ms. Heffelfinger** confirmed.

REP. ANDERSEN referred to Page 5, No. 11 through Page 6, No. 20 of the amendment and asked whether HB 102 provided for the fee increases. **Ms. Heffelfinger** advised that language on Page 4, Lines 14 through 19 of the bill specifies a one-time $1.25 fee paid at the time of registration. This was originally transferred into the Special Revenue Account; since this provision was stricken, the $1.25 has to be added back in to the main fund.

REP. WILLIAM JONES, HD 9, BIGFORK, wondered whether the committee would be able to look at the bill again after these changes were amended in. **CHAIRMAN JENT** advised that it would be introduced for debate on the House floor and gave an explanation of the term "gray bill."

Vote: Motion TO ADOPT AMENDMENT HB010201.ash carried unanimously by voice vote, REP. JACOBSON votes aye by proxy.

Motion/Vote: REP. BROWN moved that HB 102 DO PASS AS AMENDED. Motion carried unanimously by voice vote, REP. JACOBSON votes aye by proxy.

EXECUTIVE ACTION ON HB 239

Motion: REP. BROWN moved that HB 239 DO PASS AS AMENDED.

Discussion:

VICE CHAIR BROWN advised that David Senn had informed her that the provisions in HB 239 will not affect Social Security Disability benefits and urged the Committee to pass the bill. She also provided a letter by Tammy Rau, Teachers Retirement Systems.
EXHIBIT(sth22a05)

CHAIRMAN JENT asked Mr. Senn if he had any more information. **Mr. Senn** stated that Social Security Disability benefits are not affected unless an individual had received a salary not covered by Social Security but rather received a public pension. He added that some school districts and the Flathead Valley Community College (FVCC) do not have Social Security benefits for their teachers; if one of those teachers had a disability, there might be a small impact but absent any statistics, he could not identify the districts.

{Tape: 3; Side: B}

Vote: Motion carried unanimously by voice vote, REP. JACOBSON votes aye by proxy.

Motion/Vote: REP. BROWN moved that HB 239 BE PLACED ON THE CONSENT CALENDAR. Motion failed 14-2 by voice vote with REP. ANDERSEN and REP. HENDRICK voting no, REP. JACOBSON votes aye by proxy.

EXECUTIVE ACTION ON HB 152

Motion: REP. DICKENSON moved that HB 152 DO PASS.

Discussion:

REP. DICKENSON refreshed the Committee's collective memory, stating that the small group of firefighters who retired prior to 1987 received benefits equal to 50% of their original salary; for firefighters retiring after 1987, the benefits were increased to 75% of their original salary. HB 152 is an attempt to bring about parity for the 136 firefighters who had been left out when policemen's and sheriff's pensions were adjusted accordingly. **REP. DICKENSON** stated that according to information she had received from Mike O'Connor, Montana Public Employees Retirement Administration (MPERA), these people's current average monthly benefit is between $980 and $1,400 minus their monthly health insurance premium of $400. Since there is no funding source available for the proposed increase, she requested two amendments which would take care of this issue. Before she introduced the amendments, however, she wanted to find out whether the Committee agreed with the concept of the bill.

VICE CHAIR BROWN advised that this bill had come before the State Administration Committee in five or six prior sessions; in her opinion, the 136 firefighters had made a decision on their retirement benefits plan some twenty years ago, and Social Security was part of that choice because then, it made for a larger benefit package. Now they wanted the Legislature to shore up their past decision, and she advised she would not vote for the bill.

REP. B. OLSON stated that according to his notes, this increase represented a $3.5 million unfunded liability which, if funded by contributions, would mean a .94% increase in everyone's contributions. He called the Fire Chief and firefighters in his district who had been following this bill and found that they, as well as the union, were not in favor of increasing their contributions to pay for this benefit.

CHAIRMAN JENT advised that this Committee is charged with observing three criteria before making changes to the retirement systems: that it would not create an unfunded liability as per constitutional requirement; that it be actuarially sound, meaning any unfunded liability created would be amortized over a 30-year period; and that the change was desired by the majority of members of the retirement system who would be impacted.

REP. DICKENSON recalled a one-time adjustment benefitting policemen and sheriffs which was made in a prior session. **VICE CHAIR BROWN** invited Mr. O'Connor to speak to this issue. **Mr. O'Connor** advised that in the 2001 Session, there had been a bill providing a purchasing power increase for members of the police retirement system who had not elected the Guaranteed Annual Benefit Adjustment (GABA).

REP. B. OLSON asked him to explain "purchasing power," and **Mr. O'Connor** stated that due to inflation, rather than increasing benefits by a certain amount, increases are based on 75% of the "purchasing power" of the original compensation; the longer a person has been retired, the more they would be below the 75% of purchasing power.

(VICE CHAIR BROWN left at 10:50 A.M.)

REP. B. OLSON wondered about the dollar amount of the 2001 increase. **Mr. O'Connor** stated it was not all that much because it affected very few people: only those police officers who had decided not to elect GABA.

REP. CAFERRO asked REP. B. OLSON to clarify where the amount of $3.5 million had come from. **REP. B. OLSON** replied that it was the actuary's estimate.

REP. MALCOLM contended that the amount was based on the life expectancy of the retired firefighters which was estimated to be seven years; at $500,000 per year in benefits, the projected total is $3.5 million.

REP. DICKENSON surmised that the amendments should be introduced now since the committee members seemed to have a problem with funding the benefit increase.

Motion: REP. DICKENSON moved that AMENDMENT HB015201.ash BE ADOPTED.
EXHIBIT(sth22a06)

{Tape: 3; Side: B; Approx. Time Counter: 0 - 16.2}

Discussion:

REP. DICKENSON agreed with REP. B. OLSON in that an increase of .94% was necessary but she was hesitant to ask the employers to fund the adjustment. Therefore, Amendment HB015201.ash provides for an increase out of the General Fund, from 32.61% to 33.55%. Amendment HB015202.ash offers a means to reimburse the General Fund by way of the tax collected on fire insurance premiums. She recalled that this tax was used to pay for a number of retirement programs, and asked Ms. Heffelfinger to elaborate. **Ms. Heffelfinger** advised that Amendment HB015202.ash indeed offset the cost incurred by the General Fund for increasing the contribution. She referred to Page 3, Section 4 of the amendment which stipulates that 2.67% of the tax collected from fire insurance premiums is to be deposited to the General Fund; .94% of these funds are then allocated to the firefighters retirement fund. **Ms. Heffelfinger** discovered an oversight and explained she would have to correct the amendment by adding a statutory appropriation to this section saying, "an amount equal to the .94% required for the State contribution will be statutorily appropriated to the pension trust fund." She advised that passage of the amendment would necessitate a new fiscal note since it was unclear how much the .17% would actually raise for the General Fund.

CHAIRMAN JENT asked Ms. Heffelfinger whether the first amendment had to be enacted in order to have the contribution from the General Fund, and then the second amendment in order to fund it, or whether the second amendment could be enacted alone. **Ms. Heffelfinger** contended that either one could be enacted, depending on the intent, but not both. **CHAIRMAN JENT** ascertained that revenue is raised by taxing the insurance policies, gets deposited into the General Fund and becomes a statutory appropriation thereafter, adding to the State's fixed obligation which **Ms. Heffelfinger** confirmed.

(REP. MALCOLM left)

REP. HENRY wondered if the amendment would raise funds for the next seven or thirty years. **Ms. Heffelfinger** stated the tax would be forever since no provision for a sunset. She added that salaries would increase by four or four and a half percent per year which would increase the .94%; this was more than sufficient to cover future benefits.

REP. B. OLSON asked if the money would be collected and deposited into the General Fund even after the 136 affected firefighters pass on. **Ms. Heffelfinger** surmised that it would.

(REP. JACOBSON returned at 11 A.M.)

REP. ANDERSEN ascertained that the tax collected would stay in the General Fund even after the money is no longer needed to fulfill the obligation and would not be used to enhance the firemen's retirement fund. **Ms. Heffelfinger** explained that in the past, the Legislature would take dedicated revenue to fund certain benefits. This was not an actuarial way to fund a retirement system because it tied benefits to a revenue source; if the revenue source did not pay the benefits, the State was contractually obligated to pay the benefits. She was quick to point out that this was not the case here; the fire insurance premium tax is not tied directly to the firemen's retirement benefit. All the amendment does is take the required funding directly from the General Fund; it does not tie it to a specific revenue account but increases the revenue to the Fund by going to the traditional source which traditionally has been associated with firemen's retirement. **Ms. Heffelfinger** cautioned that if HB 152 passed as amended, the State will be contractually obligated to pay the benefit regardless of the funding source.

{Tape: 4; Side: A}

REP. EATON asked if this was a localized issue. **REP. DICKENSON** saw a member of the State Firemen's Association in the audience and asked the chairman if he could be allowed to address this concern. **VICE CHAIR BROWN** stated that she would not mind finding out more as long as it did not evolve into testimony. **CHAIRMAN JENT** agreed, adding that he would allow public input so long as there was no objection from the committee members. Seeing none, he invited Doug Neal, State Firemen's Association, to answer REP. EATON'S question. **Mr. Neal** stated that the 136 retirees are spread out across Montana and come from roughly 12 departments.

REP. DICKENSON asked REP. B. OLSON how much he paid for fire insurance. **REP. B. OLSON** replied it was $840 per year. **REP. DICKENSON** stated that her premium was $700, and $17.50 of this amount went to the fire insurance premium tax. If this was increased by .17%, she would pay a total of $18.69, or an additional $1.19, per year. She felt not too many people would begrudge having to pay such a small amount more. **REP. DICKENSON** commented that she purposefully did not include a sunset, wanting to leave the decision for a future Legislature to make after these 136 retirees have passed on.

Vote: Motion that AMENDMENT HB015201.ASH BE ADOPTED failed 0-12 by roll call vote; REP. MALCOLM voted no by proxy. (**REP. CAFERRO** asked to change her vote: without objection, **CHAIRMAN JENT** allowed it.)

Motion: REP. DICKENSON moved that AMENDMENT HB015202.ash BE ADOPTED.
EXHIBIT(sth22a07)

REP. B. OLSON asked whether it was common for this Committee to levy a tax affecting an entire industry. **CHAIRMAN JENT** replied that it was not.

REP. A. OLSON voiced the same concern, stating that HB 152 had started out as a one-page bill and now there was an amendment which not only was bigger than the bill but changed it substantially. He charged that there had not be a hearing on the tax increase, either.

CHAIRMAN JENT agreed and submitted that matters governed under Title 33, Insurance Code, were routinely brought before the Business and Labor Committee. He stated this tax increase was neither part of the initial hearing nor part of the bill's title; in fact, it amends the title to include the tax increase. If it passed out of Committee, he would not oppose a floor motion to re-refer HB 152 which would ensure a fair hearing on the topic of a tax increase.

REP. B. OLSON remarked to REP. A. OLSON that he was leery of the "leap of faith" as far as having the bill re-referred on the House floor. **REP. A. OLSON** replied that he wished for the proverbial crystal ball. **CHAIRMAN JENT** explained that most of the re-referral motions were done without objection; other times, they require a super majority or 60% of the House of Representatives. He did not want to take a position on the amendment until everyone had commented and advised the Committee that he would vote against it because of the tax increase which had not been part of the initial hearing.

REP. B. OLSON wondered if there was time to re-write the bill. **CHAIRMAN JENT** deferred to **Ms. Heffelfinger** who said that because the bill request deadline had passed, the sponsor would not be able to request a new bill.

REP. A. OLSON commented that there were numerous requests for generally revised tax issues; since the amendment fit into this category, the sponsor could send the bill to the Taxation

Committee, and it could be acted on upon passage. He suggested putting a contingency on HB 152.

REP. HAL JACOBSON, HD 82, HELENA, surmised that if the bill as amended was passed out of Committee and did not get re-referred to the Taxation Committee but passed out of the House, it would still get a hearing in the Senate,

REP. A. OLSON favored declining the amendment and passing the bill as introduced. He added that the Committee would have to get the LC number for the contingency bill.

Without objection, REP. DICKENSON withdrew her motion that AMENDMENT HB015202.ASH BE ADOPTED.

Note: Executive Action on HB 152 was continued on 2/11/05.

ADJOURNMENT

Adjournment: 11:20 A.M.

_____
REP. LARRY JENT, Chairman

_____
MARION MOOD, Secretary

LJ/mm

Additional Exhibits:

EXHIBIT(sth22aad0.PDF)