

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN CAROLYN SQUIRES**, on January 19, 2005
at 3:00 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Carolyn Squires, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Vicki Cocchiarella (D)
Sen. Mike Cooney (D)
Sen. Jon Ellingson (D)
Sen. Jeff Essmann (R)
Sen. Steven Gallus (D)
Sen. Rick Laible (R)
Sen. Dave Lewis (R)
Sen. Jim Shockley (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: SB 182, SB 148, 1/17/2005;
1/17/2005; SB 197, 1/17/2005; SB
206, 1/17/2005
Executive Action: None.

{Tape: 1; Side: A; Approx. Time Counter: 15.3 - 25.5}

HEARING ON SB 182

Opening Statement by Sponsor:

SEN. KIM GILLAN (D), SD 24, opened the hearing on **SB 182**, Count absentee ballots cast by voters who die before election day. She said if a voter has already returned or mailed in their ballot it will still count. She gave an example of a soldier in Iraq who voted before the primary, mailed his ballot in, and was killed in the line of duty before the election took place. This bill will protect those people who have cast their vote and have passed away before the elections, and their votes will still count.

Proponents' Testimony:

Bill Kennedy, Commissioner of Yellowstone County, Billings, said this issue came to light after the election in Billings. Absentee ballots had been taken out and thrown away when it was discovered the voters had passed away before election had taken place. He gave an example of a friend in Billings who had passed away three days before election, and her vote had been taken out and not counted. He stated that SB 182 will look at uniformity across the state so everyone's vote will count even if they have passed away three days before election.

Duane Winslow, Election Administrator of Yellowstone County, Billings, informed the Committee that out of 18,331 absentee ballots last election, 24 people had passed away before elections took place. Out of those 24 ballots, there were eight that should not have been counted, because they were gone before the primary.

Vicki Zeier, Montana Association of Courts, Missoula, urged the Committee to pass SB 182. If a signature is on the absentee ballot it should count.

Marilyn Lemm, volunteer advocate for AARP of Montana, distributed a written handout, and urged the Committee to pass SB 182.

EXHIBIT (sts14a01)

Brad Martin, Executive Officer of the Democratic Party, stated his support for SB 182. He urged a do pass vote from the Committee.

Darryl Haser, representing the AFL-CIO, stated his support for SB 182. He said he concurs with all the comments made before him. He stated his appreciation for **SEN. GILLAN'S** comments.

Opponents' Testimony: None.

Informational Testimony:

Robert Throssell, representing Montana Association of Clerks and Recorders, informed the Committee that he is present for any questions they may have.

Questions from Committee Members and Responses:

SEN. LAIBLE asked **Mr. Winslow** how this is handled on the federal level when voting for president. **Mr. Winslow** responded that the signature of the voter is verified against the absentee ballot.

{Tape: 1; Side: B}

The Committee discussed with **Mr. Winslow** how absentee ballots are counted. **Mr. Winslow** informed them that the votes are not counted until the end of election day.

{Tape: 1; Side: B}

Closing by Sponsor:

SEN. GILLAN closed by thanking everyone for a good hearing. She said that SB 182 will just make absentee voting consistent throughout the state. She urged a do pass motion.

HEARING ON SB 148

{Tape: 1; Side: B; Approx. Time Counter: 3 - 25}

Opening Statement by Sponsor:

SEN. DAN MCGEE (R), SD 29, opened the hearing on **SB 148**, Criminal record checks for Information Technology (IT) professionals. He distributed written testimony which he read. He served on the Homeland Security Task Force from 2001 to 2004. He said that information technology is significant when it comes to security. With the imposed requirements being imposed by the FBI, IRS, and by the Health Information Portability & Privacy Act (HIPPA), our information technology needs to be safeguarded. This bill allows authorization for state agencies to control, to be able to audit trails, to prevent intrusions by outsiders, and perform criminal

behavior checks on the backgrounds of IT staff and programming contractors through the Criminal Justice Information System. He said that the cost per person for background check is less than \$50, and it will be the responsibility of the agency doing the checking. **SEN. MCGEE** distributed two amendments that he has proposed. (see exhibits 3 and 4)

[EXHIBIT\(sts14a02\)](#)

[EXHIBIT\(sts14a03\)](#)

[EXHIBIT\(sts14a04\)](#)

Proponents' Testimony:

Steve Bender, Deputy Director of the Department of

Administration, distributed written testimony in support of SB 148. He said that significant investments have been made by the agencies to secure their critical information from misuse and inappropriate access by staff. He stated that we must reduce the risk of abuse by placing trust in the IT staff. This is not a "witch hunt", and doesn't target any particular group or agency. He urged the Committee to consider SB 148.

[EXHIBIT\(sts14a05\)](#)

Jeff Brandt, Acting State Chief Information Officer (CIO),

distributed written testimony and asked the Committee to pass this bill. He said the safeguards are improved by this act, and will more than justify its modest costs.

[EXHIBIT\(sts14a06\)](#)

Opponents' Testimony:

Joan Anderson, Superintendent of Operations with Office of Public

Instruction (OPI), stated that OPI mildly opposes SB 148. She said they are concerned with the way the IT positions will be defined. She added there are some positions in the agencies that may be more risky by the access to certain data programs. She asked the question "does the agency have the full discretion to describe if the criminal background checks and the records are significant or not in dealing with the employee or potential employee". She said that OPI is supposed to insure how everyone under a software or other IT contracts can be held to this requirement. She gave a scenario where OPI contracted with a large national firm that has several hundred employees located throughout the United States, and most of the contract work that OPI had this firm do was done in Sacramento, California, and not in Montana. She said under the contract they had to offer OPI a

level of security, but it wasn't known which individuals of that firm were involved under the contract.

Todd Lovshin, representing Montana Education Association (MEA) and Montana Federation of Teachers (MFT), stated they are not opposed to background checks of new employees, but feel the way section one of the bill reads "any employee in the state of Montana who touches a computer, may touch a computer, or look at a computer is too vague if an employee has had a minor infraction for theft or shoplifting 20 years ago, and has been a solid employee for the last 15 years. He inquired if this bill is implemented will that employee be able to continue working. He urged the Committee Members to not pass SB 148 out of Committee.

Tom Schneider, representing the Montana Public Employees Association (MPEA), said that the MPEA expresses the same sentiments that Mr. Lovshin just discussed. **Mr. Schneider** stated that what will be done to employees that haven't been hired yet is one thing, but what is done with employees that are currently working is a different situation. He said if they are covered by a collective bargaining agreement, this will have to be negotiated at that time. He discussed the Montana Highway Patrol, which MPEA represents. He said that once a Highway Patrolman is hired, the MPEA doesn't go back five years to do a background check. He said the state does have the right to do what they want to do when they hire people, but once the employees are hired the state cannot go back and change the game.

Scott Crichton, Executive Director of American Civil Liberties Union (ACLU) of Montana, stated the ACLU opposes this bill, because employees to be hired will have to prove that they are not criminals when applying for a position with a state agency.

{Tape: 2; Side: A}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. SHOCKLEY asked **Mr. Schneider** if "we" already have bad apples we have to keep them, but if a person is applying for employment has a criminal past, then they can be kicked out." **Mr. Schneider** responded no. He said if a current employee is found to have a criminal background, but hasn't been out of line, that person is not a bad apple. He said if that person does step out of line, then there is protection to get rid of the bad apple. He said if an employee can hold a job is no guarantee that job is for life.

SEN. SHOCKLEY asked **Mr. Lovshin** what about an employee currently employed. **Mr. Lovshin** said a current employee who has the ability to apply for promotions will be scrutinized to determine how they can move into that position. This bill states that the Department of Administration can decide if that employee should be terminated regardless of what their current job is, be demoted, or moved to a different job or city where that employee doesn't want to go.

SEN. COCCHIARELLA said she is concerned about the language on page 1, line 27, stating that every employee could be at fault if an e-mail is opened causing the computers to crash. She wanted to know how this bill can justify this one bunch of people that opens a e-mail, when other employees in the state system could also be connected to that outside person. **SEN. MCGEE** said that the agency can identify those areas that have been tampered with.

SEN. COCCHIARELLA asked **Mr. Brandt** about the number of positions that are in place now and the scope of effect. **Mr. Brandt** discussed the positions that are identified now. He stated there are 700 plus IT positions that have keys to the "back door" of the systems. There is a mechanism in place now that identifies IT people.

SEN. COCCHIARELLA wanted to know who will be doing the background checks, where is the information kept, and where is it going. **Mr. Brandt** said when an agency's Human Resources request a background check they can run it through the Department of Justice. When these records are obtained, they are kept in the employee files of that agency where they work.

Closing by Sponsor:

SEN. MCGEE closed stating he would like to see the OPI issues worked out with the Department of Administration. He said these IT people are working with sensitive information. The confidentiality of an agency will have a list and recommendations if someone wants to do something to the computer system. He said the bill addresses "liberty in one hand and security in another". He urged a do pass for SB 148.

{Tape: 2; Side: B}

HEARING ON SB 197

Opening Statement by Sponsor:

SEN. KELLY GEBHARDT (R), SD 23, opened the hearing on **SB 197**, Revise pension benefits for volunteer firefighters. **SEN.**

GEBHARDT distributed an amendment that deals with the number of years of active service for volunteer firefighters retirement. He said there is an error on the fiscal note, but it doesn't affect the benefits presented in this bill.

EXHIBIT (sts14a07)

Proponents' Testimony:

John Semple, representing the Montana Fire Alliance of Volunteer Firefighters, distributed a newspaper article that addresses the nation's fire departments, and how they are all understaffed, especially in the rural areas. He asked the Committee members to give SB 197 a do pass.

EXHIBIT (sts14a08)

Ross Fitzgerald, representing the Teton County Fire Department, informed the Committee that the fire department in his county has lost most of its volunteers due to early retirement. He said they are currently down to less than nine members. By placing this bill into effect it will present an incentive for the volunteer firefighters to stay on after they reach the age of 55. He distributed a handout that shows the years of service, and the amount received for retirement.

EXHIBIT (sts14a09)

Terry Shepherd, Fire Chief of the West Valley Volunteer Fire Department, stated his support for SB 197. He asked the Committee members to support this bill. He said this bill allows those members who retired at the age of 55 to keep working without losing their benefits.

Dave Mason, Fire Chief for Baxendale Fire Department, stated his support for SB 197. He urged a do pass motion.

John Northy, Fire Chief for Birdseye Fire Department, stated his support for SB 197. He asked for a do pass motion.

Opponents' Testimony:

Mike O'Connor, Executive Director representing Montana Public Employees Retirement Association, stated his opposition to the bill. He distributed written testimony, and addressed the Volunteer Firefighters Compensation Act (VFCA) of 1965. He explained how the Volunteer Firefighters Compensation Act is designed. He stated it is a non-contributory plan for volunteers formed in unincorporated areas of Montana. The system is funded

from the insurance tax premium money collected, and the VFCA receives five percent of the money collected each year. Retirement is provided after completion of 20 years of service, and are a least 55 years of age, then that volunteer will receive \$150 per month. He said the plan also provides a survivorship benefit of \$6,000. He discussed unfunded liability. He urged a do not pass for SB 197.

EXHIBIT (sts14a10)

Informational Testimony: None.

Questions from Committee Members and Responses:

The Committee Members and Mike O'Connor discussed the actuary report, which states this bill will cause a \$1.1 million in unfunded liability. **Mr. O'Connor** stated that to fund the second component of the bill will take \$97,000 per year. He said there needs to be a funding source to pay for this bill.

SEN. COONEY asked **Mr. Northy** about HAVA dollars, and is there decreasing revenue when tax is five percent of the tax premiums in the state. **Mr. Northy** thought it could be an actuarial cost, but stated it cannot be predicted.

Mr. O'Connor was questioned about meeting the two criteria; 20 years of service and 55 years of age.

Closing by Sponsor:

SEN. GEBHARDT closed stating it doesn't matter how many years of service the volunteers have served. This bill allows those who can retire to continue working as an active member without losing their benefits.

{Tape: 2; Side: B}

HEARING ON SB 206

Opening Statement by Sponsor:

SEN. DAVE LEWIS (R), SD 42, opened the hearing on **SB 206**, Apply 1-1-05 pay increase to all state employees. He distributed a conceptual amendment that will give the employees that were left off of the pay plan bill from the last legislature a 25 cent raise. He said there were 162 employees from Deer Lodge and Warm Springs that didn't receive this pay increase along with 52 state workers that were also left out of the pay raise because they were at the top of the market. This bill will address this cost

of living expense for these employees to make sure they don't lose the pay increase for the next biennium next year also.

EXHIBIT (sts14a11)

Proponents' Testimony:

Eric Feaver, representing MEA, stated this is a simple fix for a problem that no one invited. He said when the legislature passed this pay plan on the last day of the session, it wasn't the legislators' intention to leave anyone off. The bill takes effect January 1, 2005. He stated that if HB 13, the pay plan bill in the Appropriations Committee, doesn't go through, the state employees that received the 25 cents will also not lose this increase.

Tom Schneider, representing Montana Public Employees Association, said that he has 20 to 30 employees who were affected by the pay plan from last session. He stated it was an oversight on the last day of the 2003 Legislature. He urged a do pass for SB 206. He informed the Committee that he wanted to go on record for the Helena Area Chamber of Commerce who also support SB 206 with the conceptual amendment that **SEN. LEWIS** presented.

{Tape: 3; Side: A}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. BALYEAT asked about the amendment. **SEN. LEWIS** said the oversight statutorily gave authority not to give everyone the 25 cent raise.

Closing by Sponsor:

SEN. LEWIS closed, and asked for a do pass motion on SB 206.

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. CAROLYN SQUIRES, Chairman

CLAUDIA JOHNSON, Secretary

CS/cj

Additional Exhibits:

EXHIBIT ([sts14aad0.PDF](#))