

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on January 19, 1999 at
3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Fred Thomas, Vice Chairman (R)
Sen. Walter McNutt (R)

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddy McClure, Legislative Branch

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 68, SB 90
1/7/99
Executive Action: None

HEARING ON SB 68

Sponsor: SEN. DALE MAHLUM, SD 35, Missoula

Proponents: Nancy Butler, State Fund
Al Smith, Montana Trial Lawyers
Debbie Berney, Professional Insurance Agents
Marvin Eicholtz, Department of Administration
Mona Jamison, Montana Physical Therapy Association
Gary Lusin, Physical Therapist

Opponents: Don Judge, AFL-CIO

Opening Statement by Sponsor:

SEN. DALE MAHLUM, SD 35, Missoula, opened SB 68 by stating it is an act of revising certain statutes relating to the State Compensation Insurance Fund. This provides some exemptions, one being the current dividend statute which needs to be updated. The State Fund is now dispersing dividends. In 1989 the State Fund was a half billion dollars in debt and now, with the help of employers and employees together, dividends are now being dispersed. One amendment clearly sets forth the requirement to establish appropriate surplus prior to declaring the dividend, the second item is to allow different policy effective dates, as the current statute only contemplates policies for the fiscal year. **SEN. MAHLUM** felt that we should be service-oriented today if we want the business, therefore, the State Fund will be offering policy-effective dates that meet their customers' criteria. State Fund is now very consumer-oriented. He would like to see the State Fund from the State Procurement Act because needs can develop almost overnight, and customers would like to obtain expertise quickly. Insurance consultants, employers' liability, Workers' Compensation, legal services, loss control, underwriting audit services, public relations, consultants, are needed and this is the reason we need this bill. The surplus listed on page 4 is a result of our State Fund and is a little over \$100M and we had to have no more than 25% in this Fund. They now feel the need to extend that amount to 25% being the base minimum and the surplus amount up to 100%. The State Fund has grown and the reason for this is they have people able to run a large organization effectively.

{Tape : 1; Side : A; Approx. Time Counter : 5 - 26}

Proponents' Testimony:

Nancy Butler, State Fund, submitted a copy of her testimony **EXHIBIT (las14a01)**, explaining SB 68.

Al Smith, Montana Trial Lawyers, stated they do like Sections 2 and 3 of this bill which clarify the injured worker is not

responsible for a medical bill in which he has no control. It is the physician who will know whether the injured worker is covered or not. They are, however, concerned that an amendment be added for physicians who refer to hospitals. He would like to note that regarding declaring dividends, that some consideration be given to giving back the injured workers some of the benefits.

Debbie Berney, Executive Vice President, Professional Insurance Agents' Association, said they support the exemption from the Montana State Procurement.

Marvin Eicholtz, Department of Administration, said they were in support of SB 68, specifically Section 1 which deals with the request to be exempt from the Procurement Act for insurance-rated services.

Mona Jamison, Montana Physical Therapy Association, explained they understand the necessity for the provisions for addressing the surplus. However, Sections 2 and 3 of the bill, which they believe were more of a secondary thought in terms of the content of the bill since the primary focus was the surplus, do present problems to the physical therapists of the state. They need to know who is liable if a treating physician does not have prior authorization from an Managed Care Organization of a particular service which is provided. Mr. Gary Lusin of the Physical Therapy Association, who will testify next, will talk about why changes should be made to these two sections.

Gary Lusin, Physical Therapist, Bozeman, said he has been a practicing physical therapist for 18 years. Sections 2 and 3 present concerns for physical therapists because it appears the physician must secure authorization of physical therapists to provide service to an injured worker. Most of the time, questions are asked providing treatment plan and no one other than a physical therapist can provide that information. Therefore, they would like clarification of the language in order to make physical therapists the people to call for authorization of physical therapy services. If the physician refers a patient for physical therapy, the physical therapist would prefer to make the call for authorization rather than the physician's office. The physical therapist may not know if the injured worker has obtained authorization. Also, the procurement section of the bill has been inserted so that insurers can expedite service. The physical therapists would like to be included in that authorization process to expedite the provision of services to injured workers. The physical therapists have experienced authorization to be very cumbersome and can delay services.

The other concern they have is if there is any clarification of 'authorization' or 'prior authorization'. That is a significant distinction because authorization may mean that they can treat a patient for two weeks, then call for authorization. Prior authorization means they must call the treating physician prior to performing service to obtain authorization. The language now does not distinguish that. One of the main concerns is the authorization process, whether or not language belongs in this bill to explain that. Their experience is that the Managed Care Organizations should have some accountability to the authorization process.

They have demonstrated tactics which delay the process. His office has called for authorization on a Tuesday and may not hear until the next Tuesday whether or not they have authorization of services. He believes clarification needs to be made on how that process works, because the Managed Care Organizations will be receiving hundreds of calls a day from providers wanting authorization of services. Also, if authorization is not given, they would appreciate a logical, medical reason. They would like clarification in the language so the process is delayed and injured workers will have better service.

Physical therapists have an obligation to treat the patient and if they do not treat that patient because of an authorization process and further injury occurs with that patient, the physical therapist could be liable. This is happening nationally with Managed Care Organizations and Health Care Organizations when authorization is not provided for treatment and complications arise. They would like to know who is responsible if this occurs. They are proponents of this bill with amended language.

Opponents' Testimony:

Don Judge, AFL-CIO, said his concerns are that the areas in Sections 2 and 3 need to be clarified. They are concerned about an injured worker not being treated because a medical care provider is unwilling to provide the appropriate treatment unless the authorization is available. There is no mechanism for providing authorization in this bill. Mr. Judge doesn't think we do much to regulate Managed Care Organizations and Preferred Physician Organizations in Montana. They have been in existence in other states for some time and those other states are moving toward the regulation of those industries.

There is room for great mischief in this. They don't object to most of the language in this bill and believe it is a good idea to get workers out of the middle of having to pay for treatment they have received. They don't want an injured worker to get mired down in such bureaucracy that he becomes permanently

disabled or injured because a physician is unwilling to provide care until a decision is made. If those problems are fixed, Mr. Judge said they could probably become proponents as well.

{Tape : 1; Side : A; Approx. Time Counter : 26 - 43}

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA called on **Nancy Butler**. **SEN. COCCHIARELLA** mentioned she is a Workers' Compensation Claims Adjuster for a Plan 1 self-insurer. She asked Nancy Butler is she is aware of a bill which is attempting to clarify the definition of choice of treating physician for workers.

Nancy Butler responded she is not aware of any such bill.

SEN. COCCHIARELLA said she is curious about the changes in Section 2, it seems to her they need a coordination clause in order to choose their treating physicians to clarify this. She asked if any language was being changed which allows a worker to choose his own treating physician.

Nancy Butler said no, they are not changing that, this bill is trying to clarify the payment issue.

SEN. ALVIN ELLIS, JR., asked what the status of the surplus from the sponsor's testimony was.

Nancy Butler answered the surplus is at \$107M.

SEN. ELLIS asked the status of the fund in regard to unfunded liabilities as the figure of \$300M or \$400M was given.

Nancy Butler responded the State Fund was separated in 1990 and the Old Fund generated liabilities of approximately \$500M. That has been taken care of through the Old Fund Tax. The New Fund moved forward in 1990. Initially, the first couple of years there was a dip and had an unfunded liability of approximately \$42M, however, now they have built surplus as would a private company which runs well.

SEN. ELLIS said he thought both funds had substantial unfunded liabilities.

SEN. SUE BARTLETT mentioned she could understand the desire to not have to go through the State Procurement process for insurance-related services, although, insurance-related services is a pretty broad spectrum. She asked **Nancy Butler** if there is anything in the State Fund statutes elsewhere that requires them

to award those contracts in a competitive manner, so if they came out of the Procurement process they would still use a competitive process of one sort or another.

Nancy Butler answered there is nothing expressed in any statute in the State Fund requiring a competitive process. However, she talked to the President of State Fund about this. As a good business practice, they will whenever possible, use a process of selection. They believe it is important to get the best candidate for their services.

SEN. BARTLETT asked on the surplus, page 4, line 15, where it mentions obtaining an excess of surplus over the amount. Why were the words 'in excess of' added?

Nancy Butler responded they are regulated every year by the legislature, but if they were regulated by the Insurance Commissioner, if they reach the risk based capital level as a private company, that's when the regulator would question financial solvency. The idea in this is that they maintain an excess of surplus over that amount. The next question is how much surplus to maintain, and this is where the actuary gives advise to the Board as far as the appropriate surplus for the State Fund, taking into consideration a great number of factors.

SEN. BARTLETT asked **Nancy Butler** the difference between annual premium and annual earned premium.

Nancy Butler responded she thought annual premium is charging a premium rate which may include a modification factor or volume discount, things which may impact the rate. Annual earned premium is actually received from the policyholder.

SEN. BARTLETT stated she asked the question because the language is being stuck on page 4, line 15 about 25% of the annual premium, then on line 20 stating the minimum surplus will be 25% of the annual earned premium.

Nancy Butler responded that surplus will be 25% of the annual earned premium.

SEN. VICKI COCCHIARELLA asked **Nancy Butler** with the language that is being eliminated on page 5 related to the safety surcharge or the safety program, does this mean these services are being eliminated by State Fund.

Nancy Butler answered 'no', by no means are they eliminating the safety program. This language gives them the ability to price at a higher level if someone did not implement a safety program.

SEN. COCCHIARELLA asked in Section 2, how many times does it happen that a service is provided that shouldn't have occurred in the Managed Care Organizations or the Preferred Provider Organizations, and if that has an impact on how many doctors will participate in treating Workers' Compensation claimants.

Nancy Butler responded they have contacted several Managed Care (MCO) and Preferred Provider Organizations (PPO), and they indicated they see this problem about five to ten times a year.

SEN. COCCHIARELLA asked if that could have an impact on doctors who participate, by eliminating them and reducing the number if they are threatened by this non-payment language.

Nancy Butler responded they would be concerned if it did, they would work with these organizations.

SEN. ALVIN ELLIS, asked if 25% of the earned premiums would now be about \$30 M.

Nancy Butler responded 25% would be approximately \$17 M to \$18 M. If they use the NCIC risk base capital requirements it would be \$34 M. They added a floor so it would be absolute.

CHAIRMAN KEATING mentioned in Sections 2 and 3, there is a negative statement stating that the insurer and worker are not liable. There is no positive statement as to who is liable. He asked why this language is vague.

Nancy Butler said she apologizes if it is vague. There have been some drafting concerns which have been raised. The intent was that the provider would be liable, because they are charging for the services. She stated they would work on that to clarify it.

CHAIRMAN KEATING asked **Gary Lusin** if he was in a Preferred Provider Association or an HMO.

Gary Lusin responded he is a member of an Managed Care Organization.

CHAIRMAN KEATING asked if then, he were the treating physician, he would want to make sure the authorization is absolute before the injured worker is treated, if it is unauthorized by the MCO he would get stuck with the bill.

Gary Lusin responded that he is not classified as a treating physician, physical therapists are not treating physicians. However, they receive referrals from treating physicians to provide physical therapy service. Under this language, if they receive a referral from a physician to treat an injured worker,

and they initiate that treatment as soon as possible to expedite that injured worker's return to work, if they do not receive authorization they are accepting a risk of not getting paid.

CHAIRMAN KEATING asked if the treating physician authorizes the work if that is sufficient authorization.

Gary Lusin said the authorization process typically involves a case manager or a nurse asking questions about treatment plans. If this passes and an injured worker is in a physician's office and that physician wants physical therapy, X-rays, and lab work and writes those orders, someone in the office has to call the MCO, and state there is an injured worker. The MCO may or may not have that person's claim. They may not even know about this incident. If they don't know about this injured worker, there will be a delay. If the MCO does have their paperwork, and authorizes it, the physical therapist has to verify that authorization. He said as a business person, he is not going to risk reimbursement in the hands of a third party whom he has no connection with. As the language stands now, he still has to call to verify authorization.

CHAIRMAN KEATING asked **Nancy Butler** in the event of an injury, who notifies the MCO.

Nancy Butler responded if the worker needs certain criteria, the insurer has the responsibility to refer the MCO.

CHAIRMAN KEATING asked if they do not get the authorization to the MCO right away so that they can authorize treatment, how is that justified.

Nancy Butler answered in another section of law the worker chooses his initial treating physician. The insurer is responsible for the medical bills associated with that initial treatment. If the injured worker meets certain criteria, for instance if they are going to be on wage loss benefits, the insurer can send them to the MCO. This amendment would apply only after the referral is made and the MCO is taking care of the patient.

CHAIRMAN KEATING suggested this be clarified so that the fourth party does not get stuck.

Nancy Butler said she understands that.

SEN. ELLIS asked if an injured worker has to go through his employer, even though his employer files the First Report of Injury.

Nancy Butler said they do not have to go through their employer.

SEN. ELLIS asked if they go directly to the doctor, how the physical therapist becomes the first physician involved.

Nancy Butler responded they shouldn't, because they do not have treating physician status, so it would be through a doctor's prescription they would be treated by a physical therapist.

SEN. ELLIS asked if any service can be authorized before the employer files the report.

Nancy Butler responded not before the report is filed, that it would be very difficult to authorize treatment before the insurer saw a report.

SEN. ELLIS stated, then any of these providers can be left on the hook before this report is filed.

Nancy Butler answered, again, the injured worker initially has the right to choose his doctor. They may receive the notice of the injury from the employer later, but the bill will be taken of with the first choice of the worker.

SEN. ELLIS asked after the insurer receives the report from the employer, how long it is before authorization is given and payments are made.

Nancy Butler answered the insurer has 30 days to accept or deny a claim, but they try to respond in 14 days. They also try to pay bills within 30 days of receipt.

Closing by Sponsor:

SEN. MAHLUM closed by thanking Mr. Judge for his concerns about the bill and was hopeful, with work on the bill, Mr. Judge would become a proponent. Regarding Section 6, the safety program, the State Fund has operated very well in the past few years with this program. He stated that the president, Carl Swanson of State Fund is a very qualified person as well as a good business person. Mr. Swanson surrounds himself with good people to run the departments in State Fund. This is why the State Fund has turned around 180 degrees. This is a good bill and with Sections 2 and 3 being worked on, he hopes the bill will pass.

{Tape : 1; Side : B; Approx. Time Counter : 43 - 47; Comments : Turned tape towards end of Closing by Sponsor.}

HEARING ON SB 90

Sponsor: SEN. BARRY "SPOOK" STANG, SD 36, St. Regis

Proponents: Rep. Bob Pavlovich, Representing Self
Polly Latray Halmes, Technical Advisor, Department
of Labor, Veterans' Employment & Training
Jim Jacobson, Administrator, Montana State
Veteran's Affairs
Larry Longfellow, Veteran of Foreign Wars
Hal Manson, American Legion
John Sloan,

Opponents: Kate Cholewa, Montana Womens' Lobby
Leroy Schramm, Board of Regents

Informal Testimony: John McEwen, State Personnel Division

{Tape : 1; Side : A; Approx. Time Counter : 43 - 77}

Opening Statement by Sponsor: SEN. SPOOK STANG, SD 36, St. Regis, opened by stating SB 90 revises the Veterans' Preference Law for the State of Montana. The bill incorporates accountability which ensures Veterans' Preference in our government agencies is applied, utilizing a scored procedure which is a 'plus, check minus' procedure or utilizing a combination of both in the process. The bill requires an employer to apply preference for applicants to meet minimum qualifications for utilizing a training position. This bill does not assure a position to individuals on the premise they are a veteran. They must first meet the qualifications or be eligible for the training position when preference points are applied. Unlike other employment preferences, Veterans' Preference is an earned preference. Veterans leave families and careers in order to serve the country that their homelands will be free from harm. Montana now has over 800,000 plus veterans who have honorably served this nation. **SEN. STANG** mentioned they did not want this bill to get mixed up in the political process and loose the Veterans' Preference. If this were to happen, they would rather the bill died. He stated most of the agencies in most places in the state have been applying the preference on a scored procedure or another procedure. They have had problems in the University System when veterans apply for those jobs and haven't been using a scored procedure and the veteran has not received the preference.

Proponent's Testimony:

REP. BOB PAVLOVICH, HD 37, Butte, said he stands in support of this bill. He also would like to see this preference kept intact. He has worked on the Veterans' Preference since 1981 when it was first started and finally finished it in 1985. We have a subcommittee which studies all of the needs of Veterans' Preference in the state. He urged the Committee to take care of the veterans.

Polly Latray Halmes, Technical Advisor, Veteran's Employment & Training, Department of Labor, testified in favor of SB 90.

EXHIBIT (las14a02)

Jim Jacobson, Administrator, Montana State Veteran's Affairs Division, said he administers to the division for the state for our Veterans. He has string of Veteran's Service offices across the state to visit each county in the state on a regular basis, assisting the Veterans. He is the veterans' advocate for the State of Montana. They have 92,300 veterans in Montana which have about 140,000 family members. Veterans' Preference is an earned entitlement, not a benefit. We rank about 4th or 5th in the nation for having the most veterans. He encouraged the passage of SB 90.

Larry Longfellow, Court Master, Montana Veterans of Foreign Wars, said they go on record to support SB 90 so that it will strengthen the preference law now in existence.

Hal Manson, American Legion of Montana, stated that before the Supreme Court decision of 1981, which tore up the Veterans' Preference because of a complaint by some disabled people, we had a very good law which covered everybody. Currently, what we ended up with was a compromise and we gave a lot away to get on the books. They believe SB 90 takes care of the problems they have had with regards to state agencies circumventing the intent of the bill. If a person qualifies as a veteran, he or she should get the position as a trainee. He strongly suggested the Committee support this bill.

John Sloan, Disabled American Veterans, said he has been a veteran's advocate for the past 55 years and strongly supports this legislation. He was the Disabled American Veterans' National Service Officer at the Veteran's Administration for 40 years before retiring, he worked through directors and he is well-aware of the problems that Veteran's have had over the years with Veteran's Preference. He said there has been talk of giving disabled people the same preference as disabled veterans. For these reasons, he strongly supports this bill.

Opponents' Testimony:

Kate Cholewa, Montana Women's Lobby, said she is submitting testimony on behalf of WEEL (Working for Equality and Economic Liberation) **EXHIBIT(las14a03)**, which is a group of 1100 low income families in Montana. On behalf of WEEL, she said they oppose this bill, not because they feel veterans are not in need of training, but they feel there are many sub-categories of people who could use this kind of help and that women and many single moms are entering the workforce as public assistance is no longer an option after two years for many of these families.

These individuals are just as deserving and in need of training. As **Montana Women's Lobby**, they certainly don't object to making the Veteran's Preference work with the 'check, plus minus' system. She said what they object to is in Section 1, lines 6,7, and 8, where it states that if no applicant meets the minimum qualifications, the position will then be a training position and that Veterans' Preference be applied. There are many programs that are trying to help families into the workforce. Some of these people have no experience and no training. She mentioned they are not indicating those folks should have special preference, but they are asking in that position, there not be a preference created for another category. They see no reason to give this preference over someone else who has had no training and may benefit more from the training position.

LeRoy Schramm, Chief Legal Counsel, Board of Regents, The Montana University System, opposed SB 90. **EXHIBIT(las14a04)**

Informal Testimony:

John McEwen, Administrator, State Personnel Division, presented information on this bill. **EXHIBIT(las14a05)**

EXHIBIT(las14a06) EXHIBIT(las14a07) (These exhibits were handed in after the hearing on SB 90)

{Tape : 2; Side : A; Approx. Time Counter : 77 - 106}

Questions from Committee Members and Responses:

SEN. ELLIS said he had an uncle who served in the Navy in WWII and fought in the Battle of Midway. By comparison, when Sen. Ellis went to school, he faced reserve duty of eight years and some active service, took ROTC in school, chose to do six months active duty, all of which was tied up in artillery and jump schools and actually did not go into active service. **SEN. ELLIS** mentioned he believes we cannot overstate this nation's obligation to his uncle, but he has trouble equating his uncle to

himself. He asked **Jim Jacobson** to explain why he would be entitled to the same benefit that his uncle is.

Jim Jacobson responded the State identifies a veteran as one who has served on active duty and not active duty for training.

{Tape : 2; Side : B; Approx. Time Counter : 80 - 106}

SEN. ELLIS referred the question to **LeRoy Schramm**. He asked him if the definition of a Veteran is one who is a member of a reserved component under an order of active duty pursuant to...., etc. as stated in Montana Code Annotated. He went on to read that the Veteran must have served on active duty during a period of war in a campaign or expedition for which a campaign badge is authorized and was discharged and released from duty under honorable conditions. The Veteran must have served more than 180 consecutive days, other than for training. The 'reserve' component part does not mention the 180 consecutive days. He asked how that should be interpreted, then said he understood without Mr. Schramm's answer.

SEN. BILL WILSON asked **Jim Jacobson** what the definition of a 'general' discharge is. Veterans qualify as long as they possess a discharge other than a dishonorable discharge. There are several grades of an honorable discharge and a general discharge is in the middle; that person probably wasn't the best soldier but he certainly wasn't the worst soldier. There were certain conditions, perhaps, to his behavior which caused him to obtain a general discharge. Sometimes it is duty connected and/or off-duty connected.

SEN. WILSON used a scenario. He wanted to be a police officer in Great Falls and he was already a railroad worker. When he applies for the job there are several people. A Malstrom Security Policeman has applied for the job who has not served in the armed forces. Both these men are equal in ability. **SEN. WILSON** asked **Jim Jacobson** whether or not he would lose that job to the policeman in relationship to a scored test.

Jim Jacobson answered in order to receive Veterans' Preference you must provide a discharge paper, which identifies exactly what type of discharge you have. He referred the rest of the question to **Polly Latray Halmes**.

Polly Latray Halmes responded if **SEN. WILSON** was a police trainee and both were applying for the job, and in using a 'plus, check minus' procedure, all things between the two men were equal, the Veteran would have gotten the job because he would have received five points. This is on initial employment only, it does not concern a promotion. She defended the Veterans' Preference by

stating the man who has been a Veteran is usually behind in his civilian career by three years. This is not a hand out. When a war occurs, they do not get the option to say they are not going.

SEN. DALE BERRY said it appears to him Veterans' Preference removes accountability of that person of the applicant. He asked **LeRoy Schramm** if he could expound on this statement.

LeRoy Schramm answered under the existing statute, when you use an non-scored procedure, the Veteran does not have to apply. He said he does not know what will happen in this case, but if the law is passed, they have to comply by the law. He said he does not know what 5% of these subjective judgements amounts to.

SEN. BERRY stated that answered his question because at least with the new system, there is an opportunity of some consideration.

SEN. SUE BARTLETT asked **Jim Jacobson** his response to the suggestion from **John McEwen** about using the Veterans' Preference as a tie-breaker when there are at least two candidates who have equivalent qualifications for a position in a non-scored application.

Jim Jacobson responded that is something they need to discuss and negotiate. He still believes the Veteran should have the preference.

SEN. BARTLETT mentioned she is curious if some of the concerns which have been raised might have been addressed in the Interim Committee and what they might have discussed.

SEN. STANG answered that he was under the impression that the way the bill was drafted included the questions that was brought up, at least from the Womens' Lobbyist Group. The reason the bill has been drafted is because the University System has no accountability of neither their administrative nor classified employees. They use the 'plus, check minus' system with no scoring with any of their employees. He said he could understand the administrative employees not being scored, but when a janitor applies for a job, they have no system of scoring for Veterans' Preference. He is willing to work with the Womens' Lobby if he misunderstood this was taken care of, but the main thrust of this is the University System.

SEN. WILSON asked **John McEwen** what the criteria is for determining whether or not a person is hired.

John McEwen responded the first step is to identify the duties and responsibilities of their position and then to identify what qualifications are needed in the job. He then reads applications and scores them according to the ratings. Next, they go through a structured formal interview where they ask a question and have a model answer in which they scale it, excellent, good and bad. When this process is finished, a judgement is made according to 'pluses, checks and minuses'.

SEN. WILSON inquired who **John McEwen** was accountable to.

John McEwen responded he works with his agency personnel officer but also is accountable to himself.

SEN. WILSON asked if anyone else takes a look at this balance sheet.

John McEwen answered the personnel officer typically does. The director may or may not go through the detail also, depending upon the position which is open.

SEN. DALE BERRY stated it seemed to him that the 'plus, minus' system actually avoided the preference. He asked why it couldn't be '0,1,2'.

John McEwen answered it is not intended to avoid the preference. The problem with scored procedure involves a lot of technical terms, including liability and validity. They approach agencies in a careful manner when a scored test is involved. In selection, setting up a true valid scored procedure must be properly weighted. Those kinds of selection systems are subject to more scrutiny in appeals process because of the potential impact they may have on certain selective groups, such as race, religion, sex, etc. Agencies which have scored testing, have a room full of test development specialists.

SEN. COCCHIARELLA stated that Mr. McEwen described the process for state agencies. She asked if he has oversight over the hiring in the University System.

John McEwen answered he did not.

SEN. COCCHIARELLA asked **LeRoy Schramm** if he would be willing to bring to the Committee a University of Montana classified position application and examples of how those are rated.

LeRoy Schramm said he would do that. He said the University System does not have a centralized system in hiring. The commissioner's office does not impose on each campus what types

of applications and scoring systems they should have, so this will vary from campus to campus.

Closing by Sponsor:

SEN. STANG closed by mentioning he found Mr. McEwen's remark quite interesting regarding the 'plus, check minus' procedure and then said they score, so there is a number in there. This may or may not be intended to avoid the Veterans' Preference Law. It appears to him if there was a tie-breaker system in the University System, it would probably be used but it isn't there. The problem has been people have applied for non-classified employment at the University System and there is no way for the Veteran to receive a preference. There are times that those of us who aren't Veterans forget what those people gave up. He said some of his classmates who served in Vietnam are unemployable now because they couldn't get jobs, and he believes it is important to make the agencies accountable to give this preference. The last time this bill was before the legislature it was killed by **REP. PAVLOVICH** because it was getting confused with other issues. He believes this should not happen.

ADJOURNMENT

Adjournment: 4:46 P.M.

SEN. TOM KEATING, Chairman

GILDA CLANCY, Secretary

TK/GC

EXHIBIT (las14aad)