



State Administration, Public Retirement, and Veterans' Affairs Interim Committee

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56th Montana Legislature

SENATE MEMBERS

SUE BARTLETT, VICE-CHAIR
E.P. "PETE" EKEGREN
DON HARGROVE
GLENN A. ROUSH

HOUSE MEMBERS

MATT BRAINARD, CHAIRMAN
EDITH J. CLARK
TOM DELL
CAROL WILLIAMS

COMMITTEE STAFF

SHERI HEFFELFINGER
RESEARCH ANALYST
JOHN MacMASTER, ATTORNEY
DAVID NISS, ATTORNEY
JOANN JONES, SECRETARY

MINUTES

Federal Building
Helena, Montana
May 9-10, 2000

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

COMMITTEE MEMBERS PRESENT

Rep. Matt Brainard, Chairman
Sen. Sue Bartlett, Vice Chair

Sen. Don Hargrove
Sen. Glenn A. Roush

Rep. Edith J. Clark
Rep. Tom Dell
Rep. Carol Williams

COMMITTEE MEMBERS EXCUSED

Sen. E.P. "Pete" Ekegren

STAFF PRESENT

Sheri Heffelfinger, Research Analyst
Jo Ann Jones, Secretary

VISITORS

Visitors' list, Attachment #1.

CALL TO ORDER AND ROLL CALL

Rep. Brainard called the meeting to order at 9:30. Roll call was noted. (See Attachment #2)

OVERVIEW OF MONTANA'S PUBLIC RETIREMENT PLANS

Exhibit #1: Overview of Montana's Public Retirement Plans

Exhibit #2: Comprehensive Annual Financial Report for the fiscal year ended June 30, 1999, by the Public Employees Retirement Board

Exhibit #3: Montana Teachers' Retirement System Annual Report, Fiscal Years Ended June 30, 1999 and 1998

Exhibit #4: Montana Public Employees' Retirement System Member Handbook

Exhibit #5: Draft copy of Tables 1 through 6 of detailed retirement system data

Sheri Heffelfinger, staff, discussed Exhibits #1, #2, #3, and #4.

Tom Schneider, Montana Public Employees Association (MPEA), said that members of the Teachers' Retirement System (TRS) who begin employment with the University system may stay with TRS, rather than changing retirement systems.

Ms. Heffelfinger said a frequently asked question is why not consolidate all of the retirement plans.

Rep. Brainard said one difficulty in consolidation is the perceived advantages of one system over another. He said that he would personally like to see one comprehensive plan for all state employees, but realizes that the state is a long way from that. Mr. Schneider said that at least a couple studies have been done and the major issue

involved IRS qualification. He said that all plans could be administered by one entity, although the TRS might not agree with that suggestion.

Rep. Brainard asked if there had been legislation last session that changed the permissible ratio of investment for the Board of Investments. Mike O'Connor, Executive Director, Public Employees' Retirement Board (PERB), said that change was a component of HB 79, and it eliminated the book value basis for investments.

Ms. Heffelfinger said that she had one copy of the Board of Investments annual report, but could acquire others if Committee members wished to have a copy.

Rep. Dell asked about the indicated \$20 million loss in 1996 for the Public Employees' Retirement System (PERS) in Age and Service Requirement, and the subsequent \$28 million gain for 1998. Ms. Heffelfinger said the information consisted of a snapshot of the PERS at a certain time. Sen. Bartlett said a simple analogy is comparing budgeted expenditures to the actual expenditures--some are correct and some are incorrect.

Ms. Heffelfinger distributed copies of Exhibit #5 and explained that it is a draft copy only and that a final version will be distributed later.

Rep. Brainard drew the Committee's attention to pages 98 and 101 of Exhibit #5. He said that it was a good example of why plan consolidation is such a difficult issue.

Ms. Heffelfinger said that she has been working with Glen Leavitt, Office of the Commissioner of Higher Education (OCHE), to obtain detailed information on the Optional Retirement Plan for the University system, but that she does not yet have the data.

Sen. Bartlett asked how the Judges' Retirement System (JRS) became overfunded. Mr. O'Connor said the system is not really overfunded and explained that it appears that way because the members who were affected by the change to Final Average Salary from Final Month Salary have not yet retired. He said the JRS is so small that even a small event can have a major impact. He said that benefits for future members were cut when GABA was enacted.

Rep. Brainard said that in the 1994 election, a constitutional amendment was approved that required all retirement systems to be actuarially sound. He said that was the best thing that ever happened to the retirement systems.

Sen. Bartlett asked about the development of policy standards for the Defined Contribution (DC) plan. Rep. Brainard said some of those policy discussions took place during the development of HB 79. Ms. Heffelfinger said the 457 plan is a deferred compensation plan and was not included in earlier discussions because it is not a retirement plan, and said that there are statutes that govern its operation.

Rep. Brainard said there are a number policy issues regarding the state's relationship with local government that should be addressed at some point.

Ms. Heffelfinger said the Committee will meet again on June 20 to finalize all work on the contracting study, and will meet on June 21 to consider retiree health care benefits. She said the Committee should keep June 22 open, too, in the event that the meeting would have to be extended to a third day.

Ms. Heffelfinger said that between now and the August meeting, she will send out a letter soliciting proposals on retirement issues. She said the Committee question is whether the letter should go to all legislators and all interested persons. She said that, in the past, the letter of solicitation has gone to all legislators. Rep. Brainard

said that he believes filtering as much as possible through the Committee is a good idea, and recommended that the letter be sent to all legislators and interested parties. Sen. Bartlett said the process does not preclude an individual from submitting a proposal and, in the past, the Committee has examined proposals that are sketchy and not highly detailed. She said that it would not be necessary to send the letter to those interested persons who are on the mailing list for veterans' issues or the contracting study.

Sen. Roush suggested adding a statement to the letter to request a suggestion for a source of funding if the proposal consists of increasing benefits, although he conceded that it may not be practicable or fruitful. Rep. Brainard said that, typically, approximately 90% of the suggestions will rely on unfunded liability or a general fund appropriation.

Rep. Dell asked why the cost of health care plans has not been a big item for discussion. Ms. Heffelfinger said health care costs are skyrocketing but the discussion so far has been specific to retirement plans, although health care is under the purview of the Committee. Rep. Brainard said he introduced a bill during last session that established a medical savings account for state employees. He said that health care systems are complex and have no built-in shock absorber that the retirement system has for changes in costs. He said the closest thing to health care that has been brought before the Committee is the VEBA. Sen. Bartlett said she believes the Personnel Division may be bringing similar concerns to the Committee.

RECESS

The meeting was recessed at noon, to be reconvened on Wednesday, May 10, at 10:00 a.m.

Federal Building,
Helena, Montana
Wednesday, May 10, 2000

COMMITTEE MEMBERS PRESENT

Rep. Matt Brainard, Chairman
Sen. Sue Bartlett, Vice Chair

Sen. Don Hargrove
Sen. Glenn A. Roush

Rep. Edith J. Clark
Rep. Tom Dell
Rep. Carol Williams

COMMITTEE MEMBERS EXCUSED

Sen. E.P. "Pete" Ekegren

STAFF MEMBERS PRESENT

David Bohyer, Director, Office of Research Policy and Analysis
John MacMaster, Staff Attorney
Jo Ann Jones, Secretary

VISITORS

Visitors' list, Attachment #1.

CALL TO ORDER

Rep. Brainard called the meeting to order at 10:10. Roll call was noted. (See Attachment #2)

UPDATE ON DRAFT LEGISLATION

Exhibit #6: Copies of LC 0001, LC 0004, LC 0005, LC 0006, and LC 0007

John MacMaster, staff attorney, explained that LC 0002 and LC 0003 were not included in the packet because the Committee had not requested changes be made to them.

Steve Garrison, staff attorney, Department of Transportation (DOT), suggested that no changes be made to 18-1-404, MCA, because the issues were handled by amending 17-8-244, MCA, and the extra changes would create problems later on. Rep. Brainard said Mr. Garrison's comment would be noted but explained that the Committee planned to take no action today.

DISCUSSION IN REGARD TO MONTANA PREFERENCES

Exhibit #7: Types of Preferences

#1 Montana resident selling goods

#2 Montana resident contractor offering to do construction, repair, and public works

#3 Montana resident workers on public works contracts

#4 Indian workers residing on reservations on which a construction project will be carried out

#5 Montana residents offering printing, binding, or stationery work

#6 Commodities, equipment or services offered by small businesses

#7 Montana-made goods

David Bohyer, Office of Research Policy and Analysis, said there is confusion about the Committee's direction in regard to preferences, and requested clarification of preferences to be eliminated and preferences to be made reciprocal.

Mr. MacMaster said the key preferences on Exhibit #7 are #1, #2, and #7. He said #5 is affected by the previous three, as well.

Rep. Brainard said one of the principle goals was to address those statutory preferences that cause damage to Montana vendors who are attempting to conduct business out of state. He said that he was not sure that preferences #3 and #5 enter into interstate commerce, and thought them probably beyond the scope of the Committee. He asked for Committee comment.

Rep. Dell said that he would agree to eliminate some of the items on the preference list that the Committee had never discussed, especially #3 and #4.

Sheryl Motl, Bureau Chief, State Procurement Bureau, said that it might be helpful if she explained the list. She said the biggest item was #1, #2 was to be retained because it is reciprocal in nature, and that it was understood that #5 should be eliminated.

Rep. Brainard asked if Montana printers are losing work to printers in other states. Marvin Eicholtz, Administrator, Procurement and Printing Division, said that he is not aware that Montana printers are actually losing business, but they could be barred from obtaining contracts in other states because of Montana's preferment policies. He said that the preferences need to be eliminated except for the resident preferences, and they should be made reciprocal.

Dal Smilie, Chief Legal Counsel, Department of Administration (DOA), said the difficulty with a preference for Montana-made product lies in when an acceptable Montana-made product comes along when the contract is half completed.

Ms. Motl said that if a preference is made reciprocal, she would prefer the language in the bill to state that if a contractor comes from a listed state, there will be a stated percentage applied to the contractor's bid.

Sen. Bartlett said she had only the 3% provisions in mind to make them reciprocal. She said she didn't have the Montana-made goods in mind, and did not recall the preferences on printing. She said that, however, she could see the Montana-made preferences creating problems. She would prefer to make any changes applicable to the state only and leave out political subdivisions.

Rep. Brainard said the competitors for a bid are the ones who are most aware of preferences and will use anything that they can find in code as a tool to debar a Montana vendor from competition. He said that the Montana-made goods preference might be just as harmful as any other.

Sen. Hargrove said preferences are not analyzed, when another state notices that Montana has preferences, they merely debar the vendor without asking questions.

Mr. Bohyer restated the seven listed preferences with his interpretation of Committee intent (Reciprocity for Montana residency and printing & binding, #s 1 and 5; keep #2, #3, #4 and #6; repeal #7; and repeal 18-1-111,112, MCA) and asked if that was an accurate summarization. Rep. Brainard said Mr. Bohyer's interpretation was in line with what he wanted, and asked if the members had differing opinions. None was offered.

Mr. Bohyer said it was his impression that the boilerplate language in contracts (18-1-112, MCA) stating that the contractor must use Montana-made goods, if possible, was to remain as is because it was essentially "feel good" in nature and had no real impact. Rep. Brainard said that he would prefer to see that language removed, too.

Rep. Dell said he believes one of the reasons that the code has become so voluminous is because of provisions like the standard language in contracts that Mr. Bohyer described, and agreed that it should be removed.

Mr. MacMaster said the language of 18-1-112, MCA, is not only "feel good" because the section states that the contractor must use Montana-made goods. He said that section 18-1-111 also has a stated preference.

Sen. Hargrove said he does not know how the DOA could administer and enforce sections 18-1-111 and 112.

Rep. Brainard said the history of those sections indicate that the last time they were amended was 1987, which was a long time ago and things have changed since then.

Mr. Smilie said section 18-1-111 is used in the event of an absolute tie in bids, that section 18-1-112 is the real problem, but both can be repealed.

Rep. Brainard said he does not believe in ties, in all reality, because a tie indicates that the criteria may not have been correctly set. He said the state is trying to reach out to the global market for its goods and services, and that it cannot be taken for granted that everyone in the world wants to come to Montana to do business.

Mr. Eicholtz commented that he cannot remember an instance where there was a tie bid.

Sen. Roush said he agreed with Rep. Brainard's comments and felt that 18-1-111 and 18-1-112 should be repealed.

Rep. Brainard said the Legislature can do more for Montana business by providing vendors with information than by encouraging buyers to seek out Montana vendors. He was he would prefer the state be proactive than reactive.

Rep. Brainard said the Committee consensus is to repeal 18-1-111 and 112, MCA.

REVISION OF THE MONTANA PROCUREMENT ACT

Exhibit #8: LC 5557

Exhibit #9: Copy of proposed 18-4-122

Sen. Hargrove said that he thinks LC 5557 is an excellent approach, although he can see some concerns in trusting the bureaucracy. He said that he believes adequate safeguards are built into the bill, however.

Rep. Brainard said he concurred with Sen. Hargrove. He noted that any proposed rules in regard to alternative purchasing will automatically provoke the loser vendetta situation, but said that he was certain the DOA would keep that in mind while drafting rules. He said that the information technology contracts might be for 10 years to ensure that what the state has bought will work.

Rep. Brainard asked for the DOA's comments on electronic procurement. Mr. Eicholtz said he does not believe that legislation would be required to convert to electronic procurement, just resources to get it done. He said the biggest item is in regard to signatures achieved electronically, but that was dealt with in the last legislative session.

Mr. Bohyer said that he has drafted some preliminary language in regard to that issue and will be working with the Office of the Legislative Fiscal Analyst to further refine it. He said that in consultation with the Department's chief legal counsel, it seems more appropriate to place it in HB 2 rather than in a separate bill.

Rep. Brainard said attention to detail and policy gets lost in HB 2 and it is very easy to lose on the floor because it's merely a line item appropriation. He said that it might be advantageous to draft a separate bill so that attention and debate will be focused on the issue.

Sen. Hargrove said that Rep. Brainard was correct in his analysis, but added that it could fail as a separate bill.

Rep. Brainard said that the Committee's work should be identified as such, indicating that the issues have been considered.

Sen. Bartlett agreed that HB 2 is not the place to make policy statements. She said that one potential outcome is that the legislation could pass, but not the appropriation.

Sen. Hargrove asked if Rep. Brainard was considering a separate appropriations bill. Rep. Brainard replied that he was. He said the Legislature should be made aware of the consequences of not following up on contracts that it enters into and should be informed that it is a policy decision that requires money.

Sen. Bartlett said if that is the approach to be taken, the Legislative Audit Committee might be approached for an endorsement of the bill because they have heard many audits stating that a major problem is the lack of contract management and enforcement.

Rep. Brainard asked that Mr. Bohyer consult with the Legislative Auditor's Division during the drafting of the bill.

Mr. Bohyer explained that Exhibit #10 (LC 5555) clarifies the requisition of both used and new vehicles by the state, and eliminates the twice-yearly submission of requisitions.

Diane Tordale, Chief, Purchasing Services Bureau, DOT, said she saw no problem with the bill.

Rep. Brainard told Mr. Bohyer to proceed with LC 5555. Mr. Bohyer said that he would include LC 5555 in the body of the procurement bill to avoid having too many Committee bills. Rep. Brainard said that he would prefer fewer bills.

EXHIBITS DISTRIBUTED BUT NOT DISCUSSED

Exhibit #11: Copy of magazine article, "The Practice of Partnering"

OTHER BUSINESS

Ms. Heffelfinger asked if the Committee desired an update on the National Guard Youth Challenge Program at the June meeting. Rep. Brainard requested a short update on the first meeting day.

Sen. Bartlett said the agencies under the Committee's oversight had indicated at the first meeting that they may be offering legislation for the 2001 legislative session, and that she would like to revisit those issues at some point. Rep. Brainard requested that the agencies be asked to prepare information for presentation at the August meeting. He requested that staff send a letter to the agencies requesting a status report on the issues formerly presented and their intentions in regard to legislation. He said to ask the agencies to submit the information to Ms. Heffelfinger for mail distribution to Committee members.

ADJOURNMENT

The meeting was adjourned at 11:50, the motion was made by Sen. Bartlett.

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