

RETIREMENT BOARD HIRING AUTHORITY – BASIC BACKGROUND

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The Public Employees' Retirement Board authority to hire necessary employees was statutorily granted by HB169 (Ch. 532, L.1997). HB 169 was initiated by Rep. Zook (R-Miles City) and Rep. Kadas (D-Missoula) on the interim Legislative Finance Committee. The bill was carried in the legislature by Rep. Zook and Sen. VanValkenburg (D-Missoula).

In short, Ch. 532, L.1997 required Retirement Board control of staff because:

- Retirement Boards are required by the Montana Constitution to act as a trustees of the pension funds.
- The Department of Administration has no such responsibility.
- Retirement Boards must have authority to administer the retirement systems according to their responsibility.
- As Rep. Zook testified, without clear statutory authority, a retirement board's job is nearly impossible -- he wouldn't take the job without the language in HB169.

After significant discussion of the PER Board hiring authority at every stage,

HB169 was APPROVED:

- ✓ By the Legislative Finance Committee (only 2 dissenting votes).
- ✓ By the House Appropriations Committee (unanimously).
- ✓ By the House 67-33 (a number of Democrats defected from a second reading vote of 82-15, because of an unrelated concern in HB 169).
- ✓ By the Senate on third reading by a unanimous voice vote.

The PER Board authority to hire necessary personnel, recognized in Ch.532, L.1997, fulfilled the constitutional promise of Constitutional Amendment 25 (the Public Pension Protection Act), that administration of pension benefits and pension trust funds will not become a political tool of either the legislature or the executive branch.

CA-25 was endorsed by Governor Racicot, approved by the 1993 legislature overwhelmingly, and approved by Montana voters overwhelmingly. When voters passed

CA-25 by constitutional referendum, they cemented the Teachers' Retirement Board and Public Employees' Retirement Board authority to administer the retirement systems.

(1) Public retirement systems shall be funded on an actuarially sound basis. * * *

(2) **The governing boards of public retirement systems shall administer the system, including actuarial determinations, as fiduciaries of system participants and their beneficiaries.**

Montana Constitution, Article VIII, Section 15 (emphasis added).

The Montana ballot measure was motivated by a 1992 California case that showed that retirement system administration could be subject to political manipulation, unless pensions were constitutionally protected.^{1/}

As a result, both California and Montana adopted constitutional language that made retirement system administration the responsibility of retirement boards, subject to a fiduciary duty of proper administration, owed to members and beneficiaries of the retirement system (like a trustee's duty to trust beneficiaries) – not subject to politics.

Article VIII, section 15 was clearly intended to have the same effect as the California constitutional amendment, "to strictly limit the Legislature's power over [public pension] funds, and to prohibit the Governor or any executive or legislative body of any political subdivision of this state from tampering with public pension funds."

Board of Administration v. Wilson, 52 Cal.App.4th 1109, 1121, 61 Cal.Rptr.2d 207, 216 (1997).

The voters, in passing Constitutional Amendment No. 25, recognized the importance of protecting the retirement systems from the politics of the day.

^{1/} *Claypool v. Wilson*, 4 Cal.App.4th 646, 6 Cal.Rptr.2d 77 (Cal.App.3d Dist. 1992). This 1992 California case allowed actuarial determinations for the California retirement systems by an elected official, rather than the administering retirement board.