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State Administration and Veterans' Affairs Interim Committee

61st Montana Legislature

SENATE MEMBERS

JOE TROPILA--Chair
JOE BALYEAT
LARRY JENT
DAVE LEWIS

HOUSE MEMBERS

GORDON HENDRICK--Vice Chair
TIMOTHY FUREY
PAT INGRAHAM
ROBERT MEHLHOFF

COMMITTEE STAFF

RACHEL WEISS, Research Analyst
DAVID NISS, Staff Attorney
FONG HOM, Secretary

MINUTES

April 23, 2010

Room 137, Capitol Building
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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COMMITTEE MEMBERS PRESENT

SEN. JOE TROPILA, Chair
REP. GORDON HENDRICK, Vice Chair

SEN. JOE BALYEAT
SEN. LARRY JENT
SEN. DAVE LEWIS

REP. TIMOTHY FUREY
REP. PAT INGRAHAM
REP. ROBERT MEHLHOFF

STAFF PRESENT

RACHEL WEISS, Research Analyst
DAVID NISS, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, Attachment 1

COMMITTEE ACTION

- The committee requested that staff prepare an outline summary of stakeholder proposals in spreadsheet format.
- The committee adopted the May 19, 2010, date for the next meeting and noted that change in the work plan.

CALL TO ORDER AND ROLL CALL

00:00:02 Sen. Tropila reconvened the meeting at 8:03 a.m. The committee secretary called roll. Everyone was present. Sen. Tropila turned the duties of the presiding officer over to Rep. Hendrick.

AGENDA

COMMISSIONER OF POLITICAL PRACTICES RESPONSE TO MONTANA ELECTIONS

00:01:15 Dennis Unsworth provided written testimony that discussed 13-35-227, MCA, **(Exhibit 4)** and his conclusion regarding the Citizens United decision.

Questions

00:08:38 REP. INGRAHAM asked Mr. Unsworth if he has read *The Montana Lawyer's* article on money flooding into campaigns for state judgeships and wondered if they had seen problems or expected them. **Mr. Unsworth** said that he is aware that the problem is evident in those states that don't prohibit corporate contributions. Montana's prohibition on corporate contributions remains the law and is being defended by the Attorney General's Office. He said that he is not comfortable in speculating except to agree in general that judicial races are one place where outside funding and outside voice can have a tremendous effect and that is what we should be concerned about.

00:09:21 SEN. JENT said that given the fact that the statute names a corporation as a person, he assumes then that if the case doesn't go as planned and corporations are allowed to contribute, that they are subject to the limits of any person which is \$160. **Mr. Unsworth** said that it is his assumption as well, that the disclosure and limit requirements in law, because of the artful way that Montana statutes were crafted, we are in good shape.

00:11:21 Mr. Unsworth said that the issue in particular of the contribution limits is something that they can take a closer look at. His formal comments addressed disclosure and disclaimer requirements. He said he did not study the contribution limits. His legal staff would like to have some time to look at that and get back to the committee at a future meeting or through the mail or email regarding limits on corporate contributions.

- 00:11:55 SEN. JENT said that Mr. Nlss has pointed out that 13-37-216, MCA, refers to an individual rather than the word "person".
- 00:14:10 REP. HENDRICK asked if the committee would like Mr. Unsworth to address that issue at a future meeting or would an email be sufficient enough for an answer. It was the consensus of the committee that a response by email would be sufficient.

Public Comment

- 00:14:45 John Ward, former representative, said that one has to be an injured party and neither one of these organizations are injured. Therefore, he thinks the Western Partnership lawsuit will be thrown out. The committee should be aware that the structure is set up primarily to protect not the public nor the candidates, but is set up to protect the Republican Party and the Democratic Party in Montana and to keep other people out.

PROPOSALS TO REVISE MONTANA'S STATEWIDE PUBLIC EMPLOYEE RETIREMENT SYSTEMS

- 00:17:58 Ms. Weiss presented the guidelines for reviewing stakeholder proposals to amend retirement systems (**Exhibit 5**).

Montana Judges's Association's Retirement System (JRS) - Judge Edward McLean, Missoula District Court

- 00:25:05 Judge McLean presented the Montana Judges Association's Retirement System's proposal (**Exhibit 6**). He assured the committee that if a cost analysis comes in saying that this would be detrimental or would put the retirement fund at risk, they will not proceed with the legislation. If they get an actuarial report that says this plan is viable, he would request that the committee supports this proposal.

Public Comment

- 00:30:35 Roxanne Minnehan, Executive Director, Montana Public Employees Retirement Administration, said that they have been working with the Judges' Association and the Board has voted to remain neutral on this proposal until they get the actuarial results on the costs to the system.

Questions

- 00:32:52 REP. INGRAHAM asked Judge McLean if the state is the only contributor to the Judge's Retirement System. **Judge McLean** said that the state and the judges each contribute a certain percentage of the judge's salary.

00:33:06 REP. INGRAHAM said that she has concerns about increasing because in 2000 when PERS was doing well, the Legislature decided to increase GABA from 1.5% to 3%, which is part of our problem now. If we increase it this way, we don't know what is down the road. Today it may look good but down the road it may not. Has Judge McLean considered, instead of increasing benefits, going to the state and saying that because they are over fund, maybe the contributions could be dropped so both the state and the judges would have more money in your pocket now instead of 30 years from now? **Judge McLean** said that when the GABA option was introduced, several judges decided to exercise that option and several judges stayed on the traditional retirement plan. He said that asking the state to cut back on the contributions and give it to the judges, given the problems that the retirement funds are experiencing, would be suicidal. The money going into the funds should be directed toward the retirement to keep the fund sound and to give the employees a retirement benefit. There has been a salary bill that has been sitting on ice for several years because of the economic situation across the state. It is not their intention to come before the Legislature and ask for any salary increase until the economic times have improved. This is a fund that was set up for the retirement of judges, it is healthy, and their impression is that it could withstand increased benefit without putting the fund at risk.

00:36:31 SEN. BALYEAT asked Ms. Minnehan if there were any judges who have gone beyond 30 years of service. **Ms. Minnehan** said that normally the judges retired with an average of 13 years of service. Generally, judges are older when they started their career and they put in approximately two terms.

00:37:33 SEN. BALYEAT asked Ms. Minnehan about the formula for the JRS. **Ms. Minnehan** said the current formula is 3.33% for the first 15 years and 1.785% for each year after 15 years.

Montana State Firemen's Association - Rick Ryan, Secretary-Treasurer

00:41:19 Mr. Ryan presented the Montana State Firemen's Association's proposal **(Exhibit 7)** regarding the definition of compensation in the Firefighters' Unified Retirement System (FUR) and how it affects the calculation of their members' retirement benefits.

Public Comment

00:44:52 Roxanne Minnehan said that PERB supports this proposal with the provision that the association work with MPERA staff to address concerns with salary spiking

and adding comp time and over-time into the retirement calculation. She defined salary spiking as an intentional inflation of final compensation with the primary purpose of increasing retirement benefits.

Questions

- 00:47:48 REP. INGRAHAM asked Ms. Minnehan if this were to change, would it be an additional costs to the cities and counties? **Ms. Minnehan** said that the total compensation would increase and therefore the contributions would increase.
- 00:48:44 REP. INGRAHAM asked if Mr. Ryan had visited with the city commissions or the county commissioners in the counties to talk about where their finances are and what the impact might be to them if this law was enacted. **Mr. Ryan** said that as of now they have not. This is still in the preliminary stages but they are currently polling their member cities and fire districts for their overtime costs and trying to narrow that down to what it is going to be.
- 00:50:55 REP. MEHLHOFF asked where the sources for funding the State Firemen's Association comes from. **Mr. Ryan** said that currently their retirement system is funded by three sources: the employee contribution, which is 10.7% of salary; the city's contribution, which is 14.36% of salary; and the state's contribution, which is 32.61%. That money is generated from the general fund through the insurance premium tax that is administered by the State Auditor's Office.
- 00:53:33 SEN. BALYEAT asked who the employers are that contribute 14.36%. **Mr. Ryan** said that the members are covered through municipal class I and class II cities across the state and they have 5 rural fire districts.
- 00:56:30 SEN. BALYEAT asked if firefighters who work overtime get paid a higher hourly wage than their normal work hours? **Mr. Ryan** said that depending upon their collective bargaining agreements, overtime is paid at 1.5% of their hourly rate. Some departments in the state are straight time.
- 01:00:21 REP. MEHLHOFF asked if it would be possible to have a proposal for funding that would come strictly out of the premium insurance taxes? **Ms. Weiss** said that the money from the insurance tax goes into the general fund. You can increase the state funding, but it will be out of the general fund.
- 01:03:44 SEN. BALYEAT said that if we approve an increase and things take another downturn, could we go back and reduce it back to where it is at now based on the court case? **David Niss, Staff Attorney**, said that the answer to that question is answered by the presentations that he has made on the lack of clarity

in the Montana Supreme Court decisions. That answer is exactly the same for all increases in retirement benefits except for the issue of whether there a state contract to pay those benefits between the state and the retirement system member for two of the retirement systems, PERS and TRS, but none of the others. The answer to that question, which is the issue that you have to start with, to analyze contract interference; is there a contract to begin with, the answer to that question is very clear for TRS and PERS because the Legislature passed a statute in both of those cases that says that there is a contract.

01:05:44 REP. INGRAHAM asked, since the firemen's association has been in existence for 100 years plus, why wasn't compensation considered? If you can understand why not, it would help to understand why now?

01:08:17 **Michael O'Connor, former director of PERS**, said that back in 1981, all the local firefighter systems were consolidated into the state system. The objective was to try to define compensation the same as all their by-laws and written as it is today.

MEA/MFT - Tom Bilodeau, Director of Research and Bargaining

01:10:51 Mr. Bilodeau distributed and discussed MEA/MFT's proposal (**Exhibit 8**) for a professional retirement option (PRO).

Public Comment

01:23:56 David Senn, Executive Director, Teachers' Retirement System, said that this is an alternative retirement system for new hires. The Teachers' Retirement Board has recommended the Money Purchase Plan (MPP). The PRO would be another alternative to the MPP. Mr. Senn said he would like to see more development of both ideas so his Board can choose. He would keep both on the table.

Questions

01:26:31 SEN. JENT asked Mr. Bilodeau about funding for his proposal. **Mr. Bilodeau** said that whenever there has been additional employer costs imposed on the schools, there has been direct state general fund money used to backfill what otherwise would be county school retirement levy.

01:28:38 SEN. JENT said given the constitutional provision on the use of school trust land income for schools, has Mr. Bilodeau looked at the applicability of coal money to increase funding for teacher retirement? **Mr. Bilodeau** said that they have and those discussions have not gone very far. They have been trying to determine what their claim on those moneys might be.

- 01:30:09 SEN. JENT asked about having an opt-in program for current employees who would pay the actuarial cost of acquiring the higher qualifier. **Mr. Bilodeau** said that in an earlier version of PRO, they had a buy-in for current actives that required them to pay the actuarial cost of the benefit increase, but it was too expensive and a false promise because members couldn't exercise it.
- 01:32:34 REP. INGRAHAM asked if new hires from out of state could transfer and add their years of service into the Teachers' Retirement System? **Mr. Bilodeau** said that if you came into the state with 10 years service and transferred that service into TRS, you can only bring in 5 years and be 5 years closer to what is now a 25-years at any age requirement. **Mr. Senn** said that members coming in from out of state are limited to buying 5 years of service. New hires are paying the actuarial costs for those 5 years.
- 01:36:04 SEN. LEWIS asked if the person coming from out of state required to put the money in and pay for it? **Mr. Senn** said that often times they will have an employee account that they can withdraw in another state and roll that over to avoid the taxes on that withdrawal.
- 01:36:52 SEN. LEWIS said that yesterday he heard that it would cost \$42 million per biennium to bring the system actuarially sound based on current valuations. This proposal would cost \$28 million a biennium. If we were to fund this proposal, we would add the two numbers together, is there any offset between them? **Mr. Senn** said the intent of this bill is to provide an additional 2% of salaries to be applied towards the \$42 million that would be required for the biennium. He said that there will be some additional costs for this bill because it is a benefit enhancement for new hires. What he doesn't know is, is that sufficient to cover the costs for new hires? This bill has no unfunded liability because it only affects new hires and going forward, it will only credit additional service or additional multiplier on future service and then only if the individual works 30 years.
- 01:38:33 SEN. BALYEAT said that Mr. Senn said \$42 million per biennium, but based on the numbers yesterday, he came up with a figure of \$44.5 million. Could Mr. Senn give a more exact figure, is it \$42 million or \$44.5 million? **Mr. Senn** said that he can get a more exact figure for him.
- 01:39:20 SEN. BALYEAT said he has heard that teachers are so underpaid that they can't make ends meet and that it is worse for new hires because entry level is so low. He is trying to figure out how the new hires will be able to afford a 2% pay cut. He asked Mr. Bilodeau to address that. **Mr. Bilodeau** said that the issue of contract right maintenance of benefit under an existing pension program, promised to

active employees at a cost already established, is their attempt to say that they will try to come up with a program that will sustain a defined benefit program for current and future employees under the TRS.

01:45:31 SEN. BALYEAT said that Mr. Bilodeau's presentation says that all new hires following July 2011 will contribute an additional 2% from 7.15% to 9.15% of salary, and then on behalf of all active employees, not just new hires, there would also be a 2% of salary, roughly \$14 million per year. He asked what is the current rate that employers pay? **Mr. Senn** said that school districts pay 7.47% of salaries in employer contributions. The state general fund picks up another 2.38% of that. State agencies and the university that participates in the TRS pays an employer contribution of 9.85%

01:48:18 SEN. BALYEAT said if it goes from 7.47% to 9.47% and the state doesn't pick up the tab, that is 2% of the salary but it is a 30% increase over the 7.47% that they are currently paying out local mill levies. **Mr. Senn** said it is a percentage increase greater than 2%.

01:58:52 SEN. BALYEAT said that on the 2.38% that the state is also paying to shore up PERS, would it go up to 4.38%? **Mr. Senn** said that if the decision was to increase the state contribution to TRS in lieu of the employer contribution, yes, then the state's contribution would double from 2.38% to 4.38%, but then the employer would stay at 7.47%.

MEA/MFT's Proposal for MUS Optional Retirement Program (ORP) - Tom Bilodeau

02:00:39 Mr. Bilodeau discussed MEA/MFT's proposal on MUS Optional Retirement Program (**Exhibit 9**) amending 19-21-203(1), MCA, raising the combined employer and employee contribution.

Public Comment

None.

Association of Montana Retired Public Employees (AMPRE) - Russell Wrigg

02:05:28 Mr. Wrigg discussed the Association of Montana Retired Public Employees' proposal (**Exhibit 10**) to reduce the number of "active employee" members from 3 to 2 and increase the number of "retired public employee" members from 1 to 2.

Public Comment

02:08:18 Roxanne Minnehan said that the Board opposes this proposal and feel that the current makeup of the plan does not need a change.

Questions

02:08:58 REP. INGRAHAM asked if the members of the Board are appointed? **Mr. Wrigg** said that the members are appointed by the governor.

02:09:58 REP. INGRAHAM asked why AMRPE wants to see the Board change. **Mr. Wrigg** said that AMRPE was not happy with some of the recent appointments by the current administration because they felt that they were somewhat politically charged. They feel that they will have a better voice on the Board if they have at least one more member to balance the Board.

BREAK

TIAA-CREF - Rod Crane, Director, Institutional Business Development

02:31:28 Mr. Crane distributed and discussed his proposal for Risk-Managed Defined Contribution Pension Plans (**Exhibit 11**).

Questions

02:40:00 SEN. LEWIS asked if Mr. Crane had rate of returns for each account in the University System? **Mr. Crane** said that he didn't have that information but he could get it to him.

02:51:21 REP. MEHLHOFF asked if it was true that under a defined benefit plan, he will have money until he dies. **Mr. Crane** said that it is true that defined benefit plan participants will enjoy that lifetime guarantee. The defined contribution plan and the 401(k) typically do not, so you take the risk of outliving their account balance. For the Risk Managed Defined Contribution Pension design, one of the features is that they recommend that some substantial portion be annuitized so that a guarantee does exist. The ability to outlive one's asset in a core pension plan is not something that should be left to fate.

02:52:49 REP. MEHLHOFF said that assuming the same amount of money, same benefits coming out of both, what percent of Mr. Crane's plan would be guaranteed going forward in an annuitized plan? Would it compare with what you would get out of a defined benefit plan? **Mr. Crane** said the answer is that our guaranteed amount; i.e., you have \$100,000 available to pay for a defined benefit annuity or our annuity. Generally, their annuity is going to generate less retirement income. The reasons are important. First of all, they take less risks with their investments.

Their mortality assumptions are conservative, meaning that dollar for dollar, they will provide less retirement income than a DB plan will. They do that on a riskless basis, however, they can never come back to you, the state, or the employers and ask for more money if markets go bad. If their conservative assumptions are met and exceeded, it doesn't go to stockholders, it goes back to the participants in those products.

Public Comment

None.

COMMITTEE WORK SESSION

Additional work related to HB 659 study

No discussion.

Stakeholder retirement proposal decisions

02:56:39 There was a discussion regarding a summarization of stakeholder proposals put on a spreadsheet for the committee's use. It would contain information on what the changes to existing plans might be, what would be costs or savings to the proposals, and what actions might be needed from the committee.

Motion

03:04:59 REP. FUREY **moved** that staff prepare an outline summary of stakeholder proposals in spreadsheet format. The motion **passed**.

OTHER BUSINESS

03:06:00 SEN. LEWIS distributed and discussed an article entitled "Bad news for PERA" from the Denver Post regarding what Colorado has done in looking at COLA **(Exhibit 12)**.

Motion on the May 19, 2010, date for the next meeting

03:07:17 SEN. BALYEAT **moved** that SAVA adopt the addition of a meeting for May 19, 2010, in their Work Plan. The motion **passed**.

Public Comment

None.

ADJOURNMENT

03:12:27 With no further business before the committee, Sen. Tropila adjourned the meeting at 11:16 a.m.

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