



# State Administration and Veterans' Affairs Interim Committee

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## 59th Montana Legislature

**SENATE MEMBERS**  
KEITH BALES  
CAROLYN SQUIRES  
BILL TASH  
JOSEPH TROPILA

**HOUSE MEMBERS**  
RALPH HEINERT  
VERDELL JACKSON  
RALPH LENHART  
VERONICA SMALL-EASTMAN

**COMMITTEE STAFF**  
DAVE BOHYER, Lead Staff  
JOHN MACMASTER, Staff Attorney  
FONG HOM, Secretary

# MINUTES

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 the document.**

June 9, 2005

Room 102  
Capitol Building  
Helena, Montana

### COMMITTEE MEMBERS PRESENT

SEN. KEITH BALES  
SEN. CAROLYN SQUIRES, Conference Call  
SEN. BILL TASH, Conference Call  
SEN. JOSEPH TROPILA, Conference Call

REP. RALPH HEINERT, Conference Call  
REP. VERDELL JACKSON, Conference Call  
REP. RALPH LENHART, Conference Call  
REP. VERONICA SMALL-EASTMAN, Conference Call

### STAFF PRESENT

DAVE BOHYER, Lead Staff  
DAVID NISS, Staff Attorney  
FONG HOM, Secretary

### Visitors

Visitors' list, [Attachment #2](#).

### COMMITTEE ACTION

- Send out information packet to all members of the Legislature to include the ballot language that has been adopted; a copy of the enrolled version of SB 370; a copy of the voting record of both houses on SB 370; a copy of MAR Notice 2-2-354; and the rationale as to why the Committee is conducting the poll.
- Send the packet on June 15, prior to the June 24 meeting.

## **CALL TO ORDER AND ROLL CALL**

Senator Bill Tash called the meeting to order at 8:30 a.m. The Committee Secretary noted roll. ([Attachment #1](#))

## **AGENDA**

### Status report on MAR Notice 2-2-354, proposed Rules implementing SB 370

DAVID NISS addressed the Committee on the status report on MAR Notice 2-2-354 chronologically. The reason for this is to give background information on the Public Employee' Retirement Board's proposed Rules.

- April 15, 2005 Governor Schweitzer signed SB 370, effective July 1. SB 370 authorizes "Detention Officers" to leave the Public Employees' retirement system and join the Sheriffs retirement system, which is for all current members who are detention officers, and that detention officers who become detention officers after the effective date of the bill be required to join the Sheriffs retirement system.
- May 12, 2005 The Public Employees' Retirement Board ("PERB" or "Board") proposed three rules in the Montana Administrative Register, Issue 9; a copy of that was mailed on May 20, 2005, to members of the Committee.
- May 18, 2005 The Committee's counsel sent a written objection to the Executive Director of the Montana Public Employees' Retirement Administration, Michael O'Connor.
- May 20, 2005 After reviewing the rules, sending out objections of the Board, and discussing all of the events that had transpired to that date, Sen. Tash asked Mr. Niss to send to the Committee members all of the information concerning the proposed rules that had been generated at that time, including the objection letter of May 18, and to include with those copies the opportunity by mail ballot for a majority of the Committee members to object to the proposed rules (2-4-305(9), MCA) that would halt the rulemaking proceeding.
- May 26, 2005 A majority of the members of the Committee had sent the mail ballot to Sen. Tash objecting to the Rules and thereby stopping the rulemaking proceeding. Committee counsel wrote to Michael O'Connor, Executive Director of Public Employees' Retirement Administration, informing him that the proposed Rules had been objected to by a majority of the members of the State Administration and Veteran's Affairs Interim Committee and drawing attention to the fact that under section 2-4-305(9), the rulemaking proceeding was now on hold per the terms of the statute.
- June 2, 2005 The Public Employees Retirement Board held a public hearing on the proposed rules.
- June 8, 2005 Mr. Niss, and some members of the Committee, received a letter with

enclosures from Mr. Kelly Jenkins, Attorney for the Public Employees Retirement Board.

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Mr. Niss received a copy of a letter from the Sheriffs and Peace Officers Association addressed to a member of the Public Employees' Retirement Board. Mr. Niss also received a letter from the Governor's legal counsel addressed to Michael O'Connor objecting to the rules proposed by the Board on May 12th.

In summary, the rules are still proposed but they have not been adopted. The notice by Committee counsel on May 26, has stopped the filing of that adoption notice. One item: during this whole time period since approximately the date of the original objection letter on May 18, the Committee staff has been receiving on behalf of the Committee, 26 or 27 objections to the proposed rules from members of the Legislature.

There is some disagreement between counsel for the Board and counsel for the Committee on whether or not the statutes (2-4-403 and 4-4-404) require, rather than allow, the poll. Counsel for the Board felt that the poll is only allowed; Mr. Niss felt that on the basis of the two statutes that the Committee has no choice but that the poll is required by law.

#### PUBLIC EMPLOYEES' RETIREMENT BOARD RESPONSE

KELLY JENKINS, counsel for Public Employees' Retirement Board, presented the position of the Board.

#### PUBLIC COMMENT

KATHY MCGOWAN, Montana Sheriffs and Peace Officers Association said that the Committee needs to continue their present objection and at least put this on hold until the next meeting so that they have an opportunity to meet with Mr. Jenkins and his Board and to try and work out these issues.

#### COMMITTEE DISCUSSION AND ACTION

SEN SQUIRES said that as all of you are aware, Rep. Lenhart and myself were the sponsors. She was never informed or ever notified by PERB, that they were going through the rulemaking process.

REP LENHART said that he too was never contacted, nor did he know of this rulemaking process that was in progress. It was done very quietly. It seemed to him that the bill sponsors should have been told about this. He thought that it might be a good idea if the Committee would delay any executive action until our June 24 meeting.

SEN BALES asked if the Committee could have more time to look at the issues before taking any action and how does the Committee resolve the polling situation, what would be sent as a poll to the legislature, whether we send out the current or the proposed rules with the changes.

SEN SQUIRES moved to renew the Committee's actions to continue their objection to the rules as proposed.

SEN TASH said the motion would be to continue the Committee's objection to MAR 2-2-354, as expressed to Committee Chair by Committee ballot. Roll call vote was taken ([Exhibit 2](#)) and

with it being unanimous, the motion was passed.

SEN BALES asked what the time line on the six-month on the rulemaking was. DAVID NISS said that the 6-month clock for adoption of all agency rules by any agency subject to the MAPA rulemaking process begins with the date of publication of the agency's proposal notice. He did not have a copy of Issue 9 of the Montana Administrative Register but he believed that it was May 12.

SEN TASH called for a motion to add this to some parameter of time as far as the time to respond by the legislative members to the proposed rule change and one that is consistent with our gubernatorial veto responses.

DAVID NISS said the 30-day period that he recommended would begin with the receipt of the ballot. However, because that day of receipt maybe different for some members than others, he would recommend is that the motion be understood to provide a specific date in the mailing of the ballot to the committee, state at the bottom of the ballot that this ballot is to be returned to Legislative Services Division, on behalf of the SAVA Committee, by July 15.

SEN SQUIRES moved that members of the Legislature return the mail ballot no later than July 15, 2005. Motion passed on a unanimous voice vote.

REP HEINERT asked what exactly will the poll question be and if Mr. Niss had comments as far as upholding the purpose and intent of SB 370 in regards to the proposed rule change.

DAVID NISS read his proposed mail ballot to the Committee. The ballot would refer to SB 370 and the MAR proposal notice number in which those rules were proposed by the Board and it would be his recommendation and the issue is be included in the mailing along with the ballot itself, and he would recommend that both a copy of the enrolled version of the bill and a copy of MAR Notice 2-2-354 be included along with the ballot. Without that inclusion, some members would not know what the bill said and what MAR Notice 2-2-354 said.

SEN BALES asked if there needed to be further explanation of the pros and cons on any of the issues involved. DAVID NISS said that again the items raised by the Senator are some of that detail that is not addressed in the two statutes. The only part of what he understood what Sen. Bales question to be is, would the agency be able to contribute an explanation of the rules and what its rationale was and why the agency thinks that they are consistent with legislative intent. In other words, because the ballot has two choices for each of the three rules, there are two sides to the issue. The agency has one side, who has the other? The Committee should consider the language of the ballot itself first, and then what goes into the mailing and then deal with who represents the other side.

SEN TASH would want to submit for further discussion purposes the voting records of the legislators as SB 370 was passed. DAVE BOHYER said that one of the things we can include is the second and third reading votes in each house, but he concurred with Mr. Niss' suggestion that we deal with just the ballot language at this point and then deal with what other information should be included with the packet of information that will be sent to each legislator.

SEN SQUIRES moved to adopt the language proposed by Mr. Niss. On a voice vote, the motion was passed unanimously.

SEN BALES asked if we needed a motion to actually go ahead and do the polling. SEN SQUIRES said it was her understanding that we did not have an option. SEN BALES said that he agreed with that, but there might be some question. DAVID NISS said that the statute requiring the poll of the legislature divides the issue of whether it is mandatory or whether the committee votes to have a poll, into two subsections. In subsection 1 of the statute, it says if the committee votes to have the poll, then the poll will be taken. In the second subsection it says if 20 or more legislators object to the rule, then the poll must be taken. At this point, what you have is a mandatory requirement for the poll, but if the committee members wanted to cover their bases and also vote a motion to take the poll, there would be nothing wrong with that. There would then be two statutory authorities for the poll, one because it was mandated, and secondly, because the committee voted for it.

SEN BALES wanted clarification as to whether the Committee had authority or not. DAVID NISS said that because of the disagreement between the Board's legal counsel and himself as to the reading of the statute requiring the poll, he would suggest that the legal basis for the poll be augmented by the committee members voting to conduct the poll and using both of those statutory bases as legal authority for the poll, rather than the one basis on which there was disagreement.

SEN SQUIRES moved that the poll be conducted. Motion passed on a voice vote with Sen. Bales being absent.

DAVE BOHYER said that the discussion so far has indicated that we need to include the ballot language that has been adopted, that we will include a copy of the enrolled version of SB 370, a copy of MAR Notice 2-2-354, and there was some discussion about language from the committee that would indicate why the poll is being conducted. He had written on the agenda the following options: 1) the committee could create its own language; and 2) Sen Squires, as the sponsor of SB 370, could work with staff to create language to include the rationale for the poll.

DAVID NISS said that there would be a letter by Sen. Tash explaining the reason for the poll but not necessarily the committee's position on the intent of the legislature; a second document that addresses what the Committee's position is if this Committee feels that it is important to include that position statement.

SEN SQUIRES moved that a cover letter for Sen. Tash's signature be written and then do organizational work at the June 24 meeting.

DAVE BOHYER believes that the intent is to get the material ready and sent out prior to the June 24 meeting, send it out June 15.

REP LENHART signed off leaving his proxy with Sen. Squires.

DAVID NISS asked if it was consensus or do they want to vote that they be combined, that the position statement of the committee be combined with the administrative letter, both one letter for Sen. Tash's signature, elected to be reviewed and that it be drafted by staff to be reviewed by the Chairman and Sen. Squires and approved by them prior to mailing. Do you want to vote on that, or do we just need committee consensus.

SEN TASH said that he believed that there was consensus on it, however, if there is comments from other committee members as far as a vote, he thinks it probably more straightforward to do the one letter. No other comments, it is the consensus of the committee.

ADJOURNMENT

Motion made by Sen. Tropila to adjourn. Meeting adjourned at 10:30 a.m.

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CI2196 6132kkxa.