



# State Administration and Veterans' Affairs Interim Committee

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## 59th Montana Legislature

### SENATE MEMBERS

JOSEPH TROPILA--Vice Chair  
BILL TASH--Chair  
KEITH BALES  
CAROLYN SQUIRES

### 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

**Outlined minutes with audio recording.** These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. For each activity listed, the minutes will indicate the 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. To access the minutes, click on the date of the meeting. To hear the audio recording, click on the Real Player icon.

**Note:** You must have Real Player to listen to the audio recording.

October 6, 2005

Capitol Building, Room 172  
Helena, Montana

### COMMITTEE MEMBERS PRESENT

SEN. BILL TASH, Chair  
SEN. JOSEPH TROPILA, Vice Chair

SEN. KEITH BALES  
SEN. CAROLYN SQUIRES

REP. RALPH HEINERT  
REP. VERDELL JACKSON  
REP. VERONICA SMALL-EASTMAN

### COMMITTEE MEMBERS EXCUSED

REP. RALPH LENHART

### STAFF PRESENT

DAVE BOHYER, Lead Staff  
JOHN MACMASTER, Staff Attorney  
FONG HOM, Secretary

### Visitors

Visitors' list ([ATTACHMENT 1](#))

## **COMMITTEE ACTION**

- Accept recommendations made by Mr. Niss in regard to the process of notification for Administrative Procedure Act
- Amend 2-4-306 in the language provided by David Niss and present it to the Committee for review in bill draft form
- David Niss draft proposed legislation regarding compensation for violation of Administrative Procedure Act on three issues: the level of violation, the size of the penalty, and the source of the money involved in the penalty
- Draft proposed legislation to look at how to increase legislative scrutiny of future retirement legislation
- Draft proposed legislation to address the monetary infusion and close the loopholes
- Next meeting will be November 4, 2005

## Part 1

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

00:00:30 SEN. TASH called meeting to order 8:35 a.m. Visual roll was taken by the Committee Secretary. Everyone was present except for Rep. Lenhart who was excused (**ATTACHMENT 2**).

00:01:44 There was a correction to the September 9, 2005 Minutes, on page 3, paragraph 4, change "inequities" to "equities". The corrected September 9, 2005 minutes passed unanimously.

00:02:51 DAVID NISS discussed the first paragraph contained in the Sheriffs' and Peace Officers' letter (**EXHIBIT 1**) and made a recommendation.

00:18:47 Discussion by REP. JACKSON and Mr. Niss on what happens if the Montana Administrative Procedures Act is not followed, why do we need to put that in a notice as long as it is clear in the law. Discussion on the question that the Sheriffs' and Police Officers' Association had raised as to what happens when an agency intentionally or negligently violated the Administrative Procedure Act.

00:30:18 SEN. TASH asked Mr. Niss to respond to the urgency of timing in implementing SB 370 as stated in the letter from Ms. Carey. MR. NISS said the requirement is in law and there are no exceptions.

00:33:45 **SEN. SQUIRES moved to accept recommendations Mr. Niss prepared in his informal analysis in regards to the process of notification for Administrative Procedure Act, seconded by Rep. Small-Eastman. MOTION PASSED UNANIMOUSLY.**

MR. NISS said that it was his intent to prepare remarks for a word by word review of the letter by the Committee. Several recommendations will result in amendments to the Administrative Procedures Act and will apply to all agencies that have to comply with the Administrative

Procedures Act.

00:38:52 SEN. BALES asked Mr. Niss if he knew how many bills were passed that the sponsors had not been notified of rulemaking? MR. NISS said "no", that was difficult to say because the legal office of LSD that reviews rules do not hear from members saying they had not been contacted.

00:42:18 MR. NISS discussed Paragraph 2 of the letter, the allegation that there was no rationale covering the portion of the proposed rules that left out the detention officers from the three types of facilities.

00:47:52 MR. NISS referred to Paragraph 3 of the letter, the allegation that the retirement administration tried to enforce the proposal requiring county sheriffs to provide data to the retirement administration. He would suggest that an amendment be made to 2-4-306, MCA, which says that an agency may not enforce or treat a proposed rule as effective until after the publication in the Montana Administrative Register.

**SEN. SQUIRES moved to amend 2-4-306 in the language provided by David Niss and present it to the Committee for review in bill draft form. REP. EASTMAN seconded the motion. Motion carried unanimously.**

00:50:55 MR. NISS considered the allegation in Paragraph 4 of the letter dealing with the inability of the Association to obtain the home addresses of the members of the PERB as moot.

00:58:20 MR. NISS said that he did not have a response for Paragraph 5 of the letter, the allegation that the Board and its staff was able to spend government time to write rules that ultimately, lead to this controversy and to resist the Sheriffs' and Peace Officers' Association.

01:07:52 MR. NISS discussed the last paragraph, on page 2 of the letter, where the Executive Director says "we wonder whether there is any penalty for a state agency that violates provisions of the MAPA statutes." Mr. Niss proposed legislation that would address the level of noncompliance or the type of noncompliance which would trigger the penalty, what type of penalty, and the size of the penalty.

DISCUSSION REGARDING A COMMITTEE BILL DEALING WITH PENALTIES FOR ADMINISTRATIVE PROCEDURE ACT VIOLATIONS

01:42:27 SEN. TROPILA stated that he could not concur with monetary penalties. SEN. TASH discussed Mr. Niss' "other options" but there could be residual effect or concern coming from a budget of a department that may have some cause or effect on benefits. SEN. BALES thought that there has to be some consequence when there is negligence by an agency. REP. JACKSON talked about reprimands and putting reprimands in a person's file.

**SEN. SQUIRES** moved that David Niss bring to the next meeting proposed draft legislation regarding compensation for violation of Administrative Procedure Act on three issues: the level of violation, the size of the penalty, and the source of the money involved in the penalty. **REP. HEINERT** seconded the motion. Motion carried unanimously.

#### ACTUARIAL VALUATION REPORT ON TRS - David Senn, Ex. Director, TRS

02:01:21 DAVID SENN discussed (**EXHIBIT 2**), TRS Actuarial Valuation.

#### QUESTIONS FROM COMMITTEE

02:23:45 SEN. BALES asked for clarification of Mr. Senn's presentation, specifically on "normal costs".

02:28:00 REP. JACKSON wanted to know what benefit would make teacher retirement 20 years and what type of financial impact that would have. MR. SENN cannot recall doing a 20 year estimate.

02:30:36 SEN. TROPILA said that if the legislature sees fit to infuse money into the system, what would be the minimum required in actual dollars. MR. SENN did not have the number today but will give that to him when he gets it.

#### FUNDING PROPOSALS OF TRS - David Senn

02:31:17 DAVID SENN discussed funding proposals of TRS (**EXHIBIT 3**) for consideration.

#### 2005 ACTUARIAL VALUATION ON PERS - Mike O'Connor, Executive Director, PERA

02:35:18 MIKE O'CONNOR discusses Montana PERA 2005 Actuarial Valuation (**EXHIBIT 4**).

#### QUESTIONS FROM COMMITTEE

02:53:44 SEN. BALES asked as salaries go up, is there an inflation factor figured in the salaries that normal costs are based on or not; how does that work? MR. O'CONNOR discussed the experience study done by the actuary. In the study, salaries are looked at and a salary increase assumption is determined.

SEN. BALES asked that if the salaries were brought up over what the amount was figured in normal costs, would that put us further in the unfunded liability bracket and what effect will it have on accelerating

salaries faster than the actuarially normal amount. MR. O'CONNOR discussed retirees who will receive the benefit of increased salaries versus the benefit of new hires.

FISCAL NOTE - CARROLL SOUTH, Executive Director, Board of Investments

03:01:04 CARROLL SOUTH discussed the handout, Fiscal Note (**EXHIBIT 5**), and a proposed Pension Fund Fiscal Note (**EXHIBIT 6**).

03:09:57 Discussion between Sen. Bales and Mr. South on the unfunded liability of \$530M, and the \$220M cost of the bill that will be paid for by increased contributions.

REP. JACKSON and Mr. South discussed the "surplus" in the retirement system (in 2001) and how it got there.

PUBLIC COMMENT

03:15:12 TOM BILODEAU, Research Director MEA/MFT, suggested adding in the proposed new fiscal note the amount in actuarial years and amortization period; discussed turnover of staff in TRS system due to salary and structure of the system.

03:18:15 FRANK COLE, retired police officer, made comments regarding the unfunded liability, Retirement Board and his case.

LUNCH

PART 2

STATEWIDE VOTER DATABASE - Mark Simonich, Secretary of State's Office

00:00:05 MARK SIMONICH, Chief Deputy of Secretary of State, gave an update of on the development of the Statewide Voter Database. In 2003, Congress passed a requirement that every state develop a statewide voter registration database, to be implemented in 2004. Congress extended that deadline to January 1, 2006. The Secretary of State's Office made a decision to delay the roll out at the request of County Clerk and Recorders to add more counties into the pilot. SEN. TROPILA asked if Mr. Simonich was discussing the computer system and if there was a paper trail or backup to the system. MR. SIMONICH said the system is an electronic database and the paper trail is composed of the actual registration cards that are filled out at the local level.

00:08:54 SEN. SQUIRES asked when the voter file would be available for purchase by political parties and interested individuals. MR. SIMONICH said that it would be the middle of February when that information would be available.

## COMMENTS FROM THE COMMITTEE

00:13:11 SEN. TROPILA requested that Mr. O'Connor address Mr. Frank Cole's concerns.

## ISSUES AND OPTIONS - Dave Bohyer, LSD

00:14:12 DAVE BOHYER talked about the memorandum dated October 5, 2005, written in response to the Committee's request for examples on how benefits are calculated (**EXHIBIT 7**). The retirement benefits are calculated by formula laid out in statute: the amount of benefit due to any particular retiree reflects that retiree's final average compensation; the retirement system they participate in; and amount of time spent working in that retirement system.

00:21:47 DAVE BOHYER discussed Issues and Options Checklist (**EXHIBIT 8**), to be used as a tool to discuss the issues identified in HJR 42.

MR. BOHYER stated that the staff is willing to provide the committee with more information, more analysis, or legislation if that is the wish of the Committee.

00:55:14 SEN. TROPILA asked for a figure to buy down the unfunded liability in the retirement systems. MR. SENN said that \$440M would buy down the unfunded liability to the point where the amount left could be amortized over 30 years. MR. O'CONNOR said that \$266M would pay down the unfunded liability and the remainder would be paid off over 30 years.

00:56:25 REP. JACKSON asked Mr. O'Connor how he predicted what the stock market would do to contribute to this. MR. O'CONNOR said when the actuary comes up with estimates as of January 1, 2006, he assumed going forward that the assumptions in place for that valuation would be true.

01:00:57 Discussion between SEN. BALES and MR. O'CONNOR regarding the breakdown of where funding comes from for the retirement systems that are actuarially unsound so that if we do go ahead and put in some money, who will be the benefactor of that additional money.

## DISCUSSION ON WHERE DO WE GO NOW

01:07:09 DAVE BOHYER said that it will take a certain amount of time to get legislation prepared in draft form, disseminate it to the committee members and interested persons so that everyone can review it by the November 4 meeting. Then the committee can take further action on how to amend the legislation or come up with new legislation. Whatever action is taken at the November 4 meeting would roll up into the final meeting on the HJR 42 study, which will happen at the November 28 meeting and the Committee could sign off on a bill and make a

recommendation or adopt a motion that if a special session is called, that the bill be introduced as a committee bill.

01:09:12 SEN. BALES said he would state some of the things that this committee should look at. First of all, try to get as much money into these funds as we can and as soon as we can; need to look at possible legislation on new employees and try to address the relationship between employee contribution and employer contribution; look at a new fiscal note for all of this; discover some way of getting more institutional memory, whether it be an interim committee that is strictly for that, or find some other way of getting our committees during legislature up to speed; the ability of teachers to go ahead and retire and get a contract back, close loopholes of people retiring and yet not retiring.

01:12:29 REP. JACKSON added that he would like to have information on advantages and disadvantages of each of the funding sources; contribution rate of both employee and employer, the advantages and disadvantages of those sources; more information on the last part of the "perfect storm", investment returns cannot fix the problem.

01:14:45 SEN SQUIRES hopes next time that we would take a look at what the Governor has in mind and to the infusion of the money.

SEN. SQUIRES has concerns about Mr. O'Connor retiring, what if the new person doesn't like what the Committee has done, how well do messages get carried back to the Board.

01:21:10 REP. HEINERT said that we need to increase legislative scrutiny so that we do not find ourselves in this situation in the future. It also appeared that the legislation that we should come up is a combination of designing a new system of prospective employees, a one-time contribution, and increasing contribution levels.

#### MOTION TO DRAFT LEGISLATION

01:24:28 **REP. HEINERT made a motion to draft proposed legislation that would look at how we can increase our legislative scrutiny of future retirement legislation and to have Mr. Bohyer prepare some wording for that proposed legislation. REP. JACKSON seconded the motion. MOTION CARRIED UNANIMOUSLY.**

#### DISCUSSION ON REP. HEINERT'S MOTION

01:26:41 Discussion on whether it would be this committee or a separate committee to focus on retirement legislation. Mr. Bohyer stated that he needed clarification on how the Committee wants him to expand scrutiny during the interim and during the session.

01:40:52 REP. HEINERT said that the motion was to provide some proposed legislation that does increase the scrutiny, both in and out of session, propose an increase in this committee so that a subcommittee could be utilized to scrutinize any of the proposed actions with respect to the retirement plans and that we continue to use the process that is available to us through our standing committees during session as we have in the past, and a different fiscal note be looked at.

Discussion on resources needed to do actuarial reports and what the review of proposed legislation will cost.

REP. HEINERT asked if the resources (appropriation) can be provided as part of this same bill. DAVE BOHYER said any House member can introduced a bill with an appropriation; Senate members cannot. Rep. Heinert said that his motion should also include an appropriation necessary to carry out these particular tasks.

01:46:47 DAVE BOHYER wanted to know who is to do the actuarial review. SEN. BALES wanted to know how much an actuarial review would cost. DAVID SENN said that they do actuarial review of any bill that comes across that affects teacher retirement system and it will not be a huge increase in costs.

01:48:59 JOHN MACMASTER made an observation that the total costs of all actuarial reviews could become very high if you have a situation where numerous legislators want their bills reviewed and you have several bills on the same issue.

#### MOTION TO DRAFT AND INFUSE ONE-TIME MONEY INTO RETIREMENT SYSTEMS

01:52:51 **SEN. TROPILA made a motion for Dave Bohyer to draft and infuse into the retirement systems one-time money and allocate it proportionately.**

#### DISCUSSION ON SEN. TROPILA'S MOTION

01:55:13 SEN. BALES wondered if the Committee should use some special revenue funds instead of general fund money to fund the systems. REP. HEINERT agreed that a one-time infusion of cash should be put into those programs.

01:58:16 MR. SOUTH made some recommendations: fix the problems that TRS and PERS have addressed, propose a bill to provide funding to close the loopholes of the systems.

**SEN. TROPILA withdrew his motion.**

MR. SOUTH discussed whether or not there will be a special session called by the Governor. It would depend upon the actions of the Quality

Schools Interim Committee. If a special session is called, the issues of the pension funds should be addressed at the session.

MOTION FOR PROPOSED LEGISLATION TO ADDRESS MONETARY INFUSION INTO PENSION FUNDS

02:06:14                    **REP. HEINERT made a motion that Mr. Bohyer develop proposed legislation that addresses the monetary infusion and close the loopholes. REP. JACKSON SECONDED. MOTION PASSED UNANIMOUSLY.**

NEXT MEETING DATES

02:08:26                    SEN. TASH confirmed next meeting dates for November 4 and November 28.

ADJOURN

02:09:30                    SEN. TASH adjourned at 3:30 p.m.

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