



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.

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November 30, 2005

Capitol Building, Room 102
Helena, Montana

COMMITTEE MEMBERS PRESENT

SEN. BILL TASH, Chair
SEN. JOSEPH TROPILA, Vice Chair
SEN. CAROLYN SQUIRES
REP. RALPH HEINERT
REP. VERDELL JACKSON
REP. VERONICA SMALL-EASTMAN

COMMITTEE MEMBERS EXCUSED

SEN. KEITH BALES
REP. RALPH LENHART

STAFF PRESENT

DAVE BOHYER, Research Director
DAVID NISS, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, [Attachment #1](#).

TAPE 1A

CALL TO ORDER AND ROLL CALL

00:00:14 SEN. TASH called the meeting to order at 8:36 a.m. Sen. Bales and Rep. Lenhart were excused. The Committee Secretary took roll visually.

DRAFT LEGISLATION LC 2005-3

00:01:05 DAVE BOHYER presented LC2005-3 (**EXHIBIT 1**) and proposed technical amendments providing for the actuarial funding of the retirement systems.(1a)

00:20:42 Discussion by REP. JACKSON, SEN. SQUIRES, and DAVE BOHYER about employee contributions, what the process is if there is a change up or down in the rate that State Employees will have to pay, can changes be made.

PUBLIC COMMENT ON LC 2005-3

00:31:31 TERRANCE SMITH, Big Sky County Water & Sewer District 363, submitted written testimony (**EXHIBIT 2**) and his proposed additions to LC 2005-3. Mr. Smith wanted to let the Committee know of the results of the 11th hour benefit increase to the PERS Defined Benefit Plan that increased the GABA from 1.5% to 3%.

TAPE 1B

00:43:55 MARK BRUNO , Governor's Budget Office, discussed the draft Pension Fund Fiscal Note (**EXHIBIT 3**), which gives a big picture of what is going on with the retirement system.

00:47:18 REP. JACKSON asked if Mr. Bruno was saying that the employer rates were not high enough or is there a mechanism that reduces the rates again before it accomplishes the task.

00:49:15 CARROLL SOUTH, Executive Director of Board of Investments, talked about sunset provisions in fiscal note.

00:55:04 DAVID SENN passed out proposed amendments to LC 2005-3 (**EXHIBIT 4**) and commented on the area of closing loopholes.

00:59:22 BOB VOGEL, Montana School Board Association, passed out comments regarding LC 2005-3 (**EXHIBIT 5**). He said that as the bill is currently written, the Association will oppose the bill. He said that passage of this bill would guarantee that more teachers and administrators would move out of state, thus losing some of the best and brighter. He also speculated that the state would lose tax revenue, communities would lose respected members, and students would lose trusted mentors.

01:08:52 TOM BILODEAU, MEA/MFT, supported LC 2005-3, and said that he would endorse proposed amendments of the Board of Investments and David Senn to

remove the sunset provision. He said that he is concerned about the roller coaster effect that would result from the 30-year sunset in legislation.

- 01:11:24 TOM SCHNEIDER, Montana Public Employees Association, supported LC 2005-3 as it pertains to the PERS Systems. He said that he thought it was a good resolution that takes care of the actuarial problems. He also recommended to the Committee that the legislature hire an actuary.
- 01:15:01 LEO BERRY, Association of Montana Retired Public Employees, supports LC 2005-3 because it accomplishes the goals and purposes that the Legislature would like to see accomplished with fixing the actuarial soundness of the retirement systems.
- 01:15:45 CLAUDIA CLIFFORD, AARP Montana, told the Committee that she had provided testimony at the last meeting supporting this type of bill and their position on this bill has not changed. She said they are pleased with the changes made, particularly to increase the employer contribution to TRS over time.
- 01:16:29 CARROLL SOUTH, Board of Investments, discussed the proposed fiscal note. He said that Mr. Schneider made an accurate comment based on the fiscal note. The fiscal note that he handed out in the last meeting was designed for legislation with benefit increases. This fiscal note is not.

QUESTIONS FROM THE COMMITTEE

- 01:19:21 REP. JACKSON asked Mr. Vogel to elaborate on the section of the bill regarding spiking of salary. Mr. Vogel discussed a suggestion that the Committee look at the long standing 1/3 limitation post-retirement to keep people employed in the school system.

TAPE 2A

- 01:26:44 Discussion between SEN. SQUIRES, REP. JACKSON, and DAVE BOHYER regarding the four bills that Mr. Bohyer drafted in response to the Committee request to "tighten up" the language for last years of a TRS members' employment in response to Sen. Bales request, which have direct relationships to LC 2005-3. The four bills propose options to close the loopholes.

DRAFT LEGISLATION LC 3001

- 01:52:09 DAVE BOHYER presented LC 3001 (**EXHIBIT 6**) which will amend 19-20-731, MCA, dealing with post-retirement employment limitations for teachers.
- 01:55:42 Discussion by Sen. Squires, Dave Bohyer, and Mike O'Connor regarding what the impact would be if a PERS member returns to work full time after retiring, the 960-hour limitation, and the dollar-for-dollar reduction.

DRAFT LEGISLATION LC 3002

- 01:57:56 DAVE BOHYER discussed LC 3002 (**EXHIBIT 7**), which addresses the issue of the 1/3 final compensation limit for retired teachers returning to work. The amount put into this bill is \$15,806, which is 1/3 of what the retiree's final

compensation was during FY 2005. DAVID SENN talked about the dollar for dollar reduction. He said that under the Teachers' Retirement System, if a retiree earns more than he or she is eligible to earn, there's a dollar-for-dollar reduction up until the retiree earns an amount equal to one month's benefit.

DRAFT LEGISLATION LC 3003

02:00:42 DAVE BOHYER discussed LC 3003 (**EXHIBIT 8**), which eliminates the word "taxable" from fringe benefits which clarifies that earnings limitation would apply to all fringe benefits, not just the taxable fringe benefits.

DRAFT LEGISLATION LC 3004

02:01:52 DAVE BOHYER discussed LC 3004 (**EXHIBIT 9**), which establishes the fixed dollar amount that a TRS employee may be compensated in a TRS-eligible position for the retiree's retirement benefit to not be reduced and establishes that the value of fringe benefits paid to the retiree may not exceed 1/3 of that fixed-dollar amount of compensation.

DRAFT LEGISLATION LC 2006-2

02:04:57 DAVE BOHYER discussed LC 2006-2 (**EXHIBIT 10**), which expands the duties and responsibilities of the State Administration and Veterans' Affairs Interim Committee and incorporates into the duties of this Committee the duties that had been assigned to the old Committee on Public Employee Retirement Systems. This bill requires more in-depth review of proposed retirement legislation, requires that review earlier in the interim, and allows the Committee to set parameters over submissions and what they include. It requires the Committee, through its staff, to prepare a report on each bill considered, and if bill is introduced, that the report is attached to the bill as it goes through the legislative process.

There is an appropriation amount to follow through to expand the SAVA Committee by 4 members and to establish one more meeting to deal with the retirement bills.

02:07:49 **SEN. SQUIRES moved to pass LC 2005-3. Motion passed with Sen. Bales and Rep. Lenhart voting aye by proxy.**

DISCUSSION

02:08:59 DAVE BOHYER asked for clarification on the motion, stating that as he understood it: if a special session is called, LC 2005 will be put in as a bill draft request and will include technical amendments. SEN. TASH said that introduction is to include the sunset provision.

Motion made that if a special session is called, LC 2005 will be put forth as a bill draft request to include technical amendments and the sunset provision included in the introduction. Motion passed with Sen. Bales and Rep. Lenhart voting aye by proxy.

VOTING ON LC 3001, 3002, 3003, 3004

02:11:31 Discussion on voting on LCS 3001, 3002, 3003, 3004. Rep. Jackson suggested

voting on them separately. Sen. Squires and David Senn talked about conceptual amendments, that the bills address people who have not yet retired, that the district would be able to negotiate salaries at whatever level it needs to address the district's issue, and that the retirement issue would become a calculation and a function of the actuarial map.

DRAFT LEGISLATION ON LC 2006

02:16:52 DAVE BOHYER recapped LC 2006 that incorporates the duties and responsibilities of CPHERS with the duties and responsibilities of the SAVA Committee and to recommend an appropriation of \$5,000 which will accommodate a 2-day meeting with 8 members.

02:26:25 **SEN. SQUIRES moved to adopt LC 2006 for the Special Session if the bill is within the call. MOTION PASSED UNANIMOUSLY with Sen. Bales and Rep. Lenhart voting aye by proxy.**

TAPE 2B

DRAFT LEGISLATION ON LC 9991 - David Niss, Legal Staff

02:29:56 LC 9991 (**EXHIBIT 11**) amends the sponsor contact statute. This bill clarifies that only the primary sponsor of the legislation has to be contacted by the agency and the details of contact needs to be stated in the Notice of Proposed Rulemaking.

QUESTIONS

02:38:55 REP. SMALL-EASTMAN and David Niss discussed in what manner will the notice be received; i.e., certified letter stating that the primary sponsor received the notice.

DRAFT LEGISLATION LC 9992- David Niss, Legal Staff

02:45:07 LC 9992 (**EXHIBIT 12**) provides for an expressed statement that an agency may not enforce or implement an Administrative Rule until the effective date of that rule.

02:48:12 Discussion about the second WHEREAS, which states "WHEREAS, during the 2005-2006 interim, the State Administration and Veterans' Affairs Interim Committee dealt with a state agency that treated a not-yet-effective administrative rule as if that rule was effective as law".

DRAFT LEGISLATION LC 9993 - 9995 (EXHIBIT 13a, 13b, 13c**)**

02:56:24 DAVID NISS explained LC 9993, LC 9994 and LC 9995. He stated that all three bills cannot be enacted and still make sense in the context of the Montana Code Annotated. Therefore, it is up to Committee to decide how to proceed. Three bills deal with the same subject: whether there should be a penalty for a violation of the Administrative Procedure Act and if there is a penalty, what that penalty should look like.

TAPE 3A

- 03:21:58 Discussion between REP. HEINERT, SEN. SQUIRES, and REP. JACKSON about frivolous claims against an agency and having to expend funds to defend the agency's position.
- 03:26:24 DAVID NISS discusses LC 9990 (**EXHIBIT 14**) which clarifies the statutes regarding the legislative poll used by the Committee with respect to the rules proposed to implement SB 390 (2005) and the changes that will clarify that the poll can only be taken on a proposed rule.

PUBLIC COMMENT ON PROPOSED LEGISLATION

- 03:34:34 DAL SMILIE, Chief Counsel, Department of Administration, opposed LC 9993, LC 9994 and LC 9995.
- 03:38:42 JIM CASHELL, Sheriff of Gallatin County, agreed with the position of Dal Smilie. On behalf of the Sheriffs Association, thanked the Committee for attending to the rules issues. Supports the legislation as a positive action that will prevent individuals and other groups in the future from having to go through what the Sheriff's Association went through.
- 03:40:14 CLAUDIA CLIFFORD, AARP Montana, said that the proposed legislation are good. She thought that it is a good thing to have some oversight by committees and a process that notifies sponsors of bills so that there is discussion. Addressing the three other bills dealing with penalties, they are complex legal issues and the Committee should take more comment and discussion.

REVIEW OF LEGISLATIVE PROPOSALS

- 04:15:53 DAVE BOHYER discussed the review of legislative proposals made by any retirement systems, boards or stakeholder groups; a letter requesting proposals to be submitted prior to the March meeting for review and consideration.
- 04:18:40 REP. JACKSON asked Dave Bohyer about cash infusion of \$40M talked about by Mr. Vogel and Dave Bohyer contacting Mr. Vogel and requesting more information; would one-time cash infusion be a recommendation from this Committee. Mr. Bohyer would put that on the March agenda and ask Mr. Vogel to come up with a better proposal, such as draft, proposed legislation appropriating money.
- 04:22:11 SEN. TASH for other legislative proposals. SEN. SQUIRES talked about three bills. Talked about other bills on agenda.
- 04:23:29 Discussion about the options identified in David Niss' letter to Sen. Squires as an agenda item for the March meeting, what resources to be spent in the Defined Contribution Plan, and Mr. Bohyer's offer to do research and draft a white paper on historical background on the Defined Contribution.
- 04:27:38 Discussion between SEN. TASH, REP. SMALL-EASTMAN, and DAVE BOHYER on expansion of this Committee, whether or not there is a need for the expansion and more resources, a request by REP. SMALL-EASTMAN that Larry Jent be one of the additional members, and the process of adding additional members.

04:31:44 **REP. SMALL-Eastman moved to add additional members, one from the House and one from the Senate, thereby expanding the SAVA Committee by two. Motion failed on a tie vote.**

04:35:46 **REP. HEINERT moved to reschedule the March 10 meeting for March 6, 2006. Motion carried unanimously.**

TAPE 3B

UPDATE ON HELP AMERICA VOTE ACT, Secretary of State Office

04:38:00 Mark Simonich, Chief Deputy Secretary of State, and Elaine Gravely, Election Deputy, gave a status report on the Help America Vote Act and talked about the handicapped-accessible voting machines.

QUESTIONS FROM COMMITTEE

04:46:25 SEN. TROPILA and MS. GRAVELY discussed what the counties are doing with their old equipment.

MONTANA DEPARTMENT OF MILITARY AFFAIRS UPDATE

04:54:12 JOE FOSTER, Administrator, MVAD, passed out documents on Veterans' Disability Claims Services in Montana (**EXHIBIT 15**), "A Montana Snapshot within the National Context."

05:07:07 SEN. TROPILA asked Mr. Foster to comment on the Columbia Falls facilities, if they were full and at capacity. MR. FOSTER said the Columbia Falls facility is full; Glendive is not full but they are adding a wing to accommodate individuals afflicted with Alzheimer's disease.

05:07:53 REP. SMALL-EASTMAN handed to the Committee and to Joe Foster an article "VA's Lack of Service, Discrimination and Ambivalence to Native Americans in Montana and South Dakota" (**EXHIBIT 16**). She would like a facility like Fort Harrison in Eastern Montana.

TAPE 4A

05:20:29 BRIGADIER GENERAL PUTNAM gave an update on the Montana Department of Military Affairs. The Army National Guard, during the past year, has been highly engaged with 60% of their soldiers deployed to various locations, including Iraq. Talked about the education box in the schools; the drug demand reduction program in the schools; talked about Homeland Security and 83rd Civil Support Team.

QUESTIONS

05:33:48 SEN. TASH asked if the Montana National Guard assisted in fighting out-of-state forest fires last summer. MR. FOSTER said that the National Guard did not assist in fighting out-of-state forest fires, but the Guard did some training.

05:37:12 REP. SMALL-EASTMAN wanted to know who to contact to speak at her school on the drug demand reduction program. MR. FOSTER said that she could

contact him by phone or email and he would get her the appropriate person to contact.

PUBLIC COMMENT

- 05:38:09 DAN ANTOINETTI, Legislative Chairman for Veterans of Foreign Wars, and LARRY LONGFELLOW, Adjutant Quartermaster, came before the Committee to commend the SAVA members for the work they do on behalf of veterans.
- 05:39:29 COL. JIM JACOBSON, U.S. Army, Retired, Legislative Chairman of the American Legion, said that the Legion did not have any issues for the Committee and the Legislature at this point in time. The Legion congratulates the Montana Veterans' Affairs Division for doing a fantastic job, encourages the people returning from Iraq to join the American Legion, and congratulates them on the job they are doing for our country.

OFFICE OF BUDGET AND PROGRAM PLANNING - David Ewer, Executive Director

- 05:40:44 DAVID EWER, Executive Director of Office of Budget and Program Planning, talked about: a system to allow legislators more time in the interim to review legislation; issues regarding Teachers Retirement System; and the hiring process of the Executive Director for PERS.
- 05:55:02 CAROLE CAREY, President of the Public Employees Retirement Board (PERB), read from her written testimony (**EXHIBIT 17**) on the events surrounding the hiring process of an Executive Director for Montana Public Employees' Retirement Administration (MPERA). Ms. Carey submitted testimony as the PER Board President regarding the autonomy of the Board (**EXHIBIT 18**) and read the opinion of Gregory Petesch on the Boards' hiring authority. Kelly Jenkins' "Observations Regarding the Niss Letter" (**EXHIBIT 19**) was distributed but not discussed.

DISCUSSION FROM THE COMMITTEE

- 06:19:00 Discussion between Sen. Squires, David Niss, and Carole Carey regarding opening meetings of state agencies and the hiring process of the Executive Director for MPERA.
- 06:31:27 DAVID EWER responded to Ms. Carey's perceptions and commented that the PERB ended up hiring the former PERB Chairman.
- 06:32:56 MS. CAREY defended the Board's position on the hiring of Terry Teichrow as Executive Director of MPERA.

REVISIT THE MOTION BY REP. SMALL-EASTMAN TO ADD ADDITIONAL MEMBERS TO THE SAVA COMMITTEE

- 06:35:52 DAVE BOHYER read the statute on appointing additional interim committee members and said the SAVA Committee should reconsider their vote on Rep. Small-Eastman's motion to add two additional members. He said he believed the statute would require the addition of four, rather than two, members. Thus, the

proper motion would be to request the Legislative Council to add four members to SAVA. **REP. SMALL-EASTMAN made a motion to have four additional members appointed, Legislative Services and leadership appoint four additional members, two Republicans and two Democrats, one each from each house. Motion failed on a tie vote.**

LETTER FROM DAVID NISS TO SEN. SQUIRES REGARDING PERB ISSUES

06:57:29 SEN. SQUIRES request to postpone a discussion of her letter (**EXHIBIT 20**) from David Niss to the March 6th meeting because of lack of a quorum.

PUBLIC COMMENT

06:59:05 TERRY TEICROW clarified a comment that Sen. Squires made about someone saying something to her about having the job. If she was referring to him, it was on the 5th of November the job was offered to him and he signed the contract on the 1st of November. He had already been offered the position when he said that.

ADJOURN

06:59:55 SEN. TASH adjourned the meeting at 3:35 p.m.