

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE

Call to Order: By Chairman William E. Farrell, on April 3, 1989, at 9:00 a.m., Room 331, Capitol.

ROLL CALL

Senators Present: Senator William E. Farrell, Senator Swede Hammond, Senator Pat Regan

Representatives Present: Representative Vicki Cocchiarella, Representative Richard Nelson

Excused: Representative Ray Peck

Staff Present: Lois Menzies

HB 159

Discussion:

Chairman Farrell announced that the House has rejected the Senate amendments to HB159. He then asked if Representative Cocchiarella would present her proposed amendments.

Representative Cocchiarella asked Mr. Dave Evenson to talk about the first amendment, noting she thinks that is the amendment which is most important. She related that a person, whom she knows, is a controller at the University of Montana, and had been in PERS for 22 years. She indicated that, in a reorganization of that office, he was moved to another administrative position, which put him under TRS. She noted that he does not lose those years, he will vest five years, without this bill, in TRS, which will give him 27 years, if he combines them, and can retire at 25 years in TRS. She stated that the cost, under that example, she thinks is about \$8,000, to him and, under this bill, as it is, to transfer his 22 years, he will personally have to pay a lump sum amount of about \$8,000 to combine those years. She added that he has the option of leaving them separate, that he can remain under PERS, leave those 22 years under PERS, and work under TRS for however many more years that might be. She stated that it

seems an unfair disadvantage to this person, who has been in one system this long, to have to pay the employers contribution to the TRS, the difference, when he moves to TRS. She explained that, in other words, under this bill, he has to pick up the difference in cost between the PERS retirement system and the TRS retirement system. She noted that it is not unfair that TRS be funded, it needs to be funded, and there is no argument there. She indicated the amendment asks that this person, these kinds of people, have a one-time opportunity to elect to remain under the PERS system.

Representative Nelson stated that, under an extreme case like this, of 22 years, he can see no problem with it, but that maybe a time limit should be put in so that anybody who serves for 10 years will have that option, but those with less than 10 years do not have enough to transfer.

Senator Regan asked what is forcing them to go from PERS to TRS, that they have the option to stay where they are.

Representative Cocchiarella responded they are not being forced. She indicated that, when they change positions, they have to go under the TRS retirement system. She added that they can leave their 22 years where it is, that it stops, and they can start in the new system, and have two retirements. She noted that they can not combine them, and would never get the full retirement from either one, even if they put in the total years.

Senator Regan she has been led to believe that it is slightly to an advantage to have both systems, rather than one, and asked if she is right or wrong.

Mr. Evenson responded that the problem is that there are two retirement systems, and their benefit is calculated on their final average salary. He noted that, in an inflationary economy, that base looks less attractive. He gave the example that Mr. Larry Natchsheim's salary, over the last 10 years, went up 300% and, if that salary is capped 10 years ago, it is not very attractive, which is the problem, and it is an advantage to combine the final average salary.

Senator Regan then asked, in transferring from PERS to TRS, if the TRS package is really better than PERS.

Representative Cocchiarella responded that it is more expensive.

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Senator Regan then asked if the individual is being asked to contribute their contribution, plus the employer's contribution, minus what the employee and employer have already put into that system.

Mr. Senn responded that is basically how they get there, noting they do not quite go through that formula. He indicated there is a 2% difference in total contribution, a little better than 2%, and that the actuary recommended they require an additional 2% contribution from the members.

Senator Regan asked if there would be any objection to requiring that they transfer their retirement, plus the difference that they paid and the employer paid, to secure the better benefits.

Chairman Farrell and Representative Cocchiarella both responded that is what this bill does, and Chairman Farrell added that is the objection, that they do not want to pay the 2%.

Senator Hammond asked if there is another feature in there, if their retirement at an earlier time. Chairman Farrell responded when they go to TRS. Senator Hammond noted that is what they gain by going from PERS to TRS.

Representative Cocchiarella indicated that is right, adding that she thinks that should be funded, that the purpose of this bill is to lessen the unfunded liability, and there is no argument with that. She added that those people, if they move from one to another, should have to pay the difference. She then indicated that one of the amendments is to change it from 2% to 1%, but noted that she does not have any problem with leaving it the way it is. She pointed out that those people, noting there are several, who get several years into PERS, would rather remain there, work the 30 years, and continue under that same system, paying the same amount. She added that the jeopardy to the systems, they say, is adverse selection.

Representative Nelson asked Mr. Senn if there is something which says if they are in a teaching position, they must belong to TRS.

Mr. Senn responded that is one of the positions, that they must belong to the teachers' retirement system, noting there are several, within the statutes, that have to be members of this system, and one area is just called administrative. He explained that, many years ago, a problem in the university system, and other agencies, was that general elected offi-

cials, like the office of public instruction, were electing retirement systems every two years, after the session; which system they perceived had the better benefits, based on their age, a wholesale look at retirement, that they would select a retirement system, and change. He reported that, in 1983, they went through a process to tie the administrative positions a little closer. He further reported that, at that time, there was such a thing as a board of regents contract, noting that he does not know if they understand what a board of regents contract is, but indicated that it seems board of regents contracts are now covering more people than those typically defined and thought of as in a teachers position, or an administrative position which requires an education background, something to do with the field of educating students, in higher education, as well. He stated that he thinks they have another problem, which they can work on, to define the positions better, and lessen the impact of this proposal on who it will affect, and who is going to have to pay the costs.

Mr. Senn stated that, to say that all teachers have to belong is correct, that all instructional staff have to belong, and it is really the administrative people they are talking about. He added that they can do that administratively, without legislation, noting that he has talked to Carrol Krause, that they are committed to work on that over the biennium, and that is an area they will be working on. He pointed out that it really boils down to the cost, which they defined as 2%, and indicated he thinks there is relative agreement, that this is reasonable cost, and who should pay it.

Chairman Farrell asked Mr. Senn, under the present system, if a person has been in PERS, can they now transfer that time to TRS.

Mr. Senn responded at no cost, initially. He indicated it is nothing more than transfers between the systems, and that the actuary seemed to have a problem in funding the liability, if they were to assume it, and made the recommendation which is in this bill.

Chairman Farrell further asked, but when they transfer to TRS, if they have to put 5 years into the present system. Mr. Senn responded right, that it does not transfer creditable service, and they have to put in 5 years under the teachers retirement system.

Mr. Evenson distributed copies of a breakout of their staff, a copy of which is attached as Exhibit 2. He reported that

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they have 1,574 faculty, 415 administrators and professionals, and 2,248 classified positions, a total of 4,233. He pointed out that the source of their confusion is that the classified staff has been interpreted, under existing statutes, to be members of PERS. He indicated that faculty and professional administrators are those who have a board of regents contract, which is the same as the school board contract, in essence, in that these people have tenure, that they have legal rights, in that sense. He noted that the 415 are often the ones who are at issue, and that these might be people like director of administration at Montana State University, who has a doctorate degree, occasionally teaches a class, or something like that, and has some faculty status, that he is in the middle ground. He explained that, for simplicity, they just said, if they have a board of regents contract, there is no real dispute about that, they are a teachers' retirement employee, but, if they are a classified staff member, they are PERS.

Senator Regan stated the problem may be with their policy, in not allowing them to make the selection on their own, but by arbitrarily saying this is it. She noted that maybe that is necessary, and asked if their position is that it is necessary to do that.

Mr. Senn responded no, that it is not necessary they draw the line at the board of regents contract. He noted that, as Mr. Evenson said, it was for simplicity sake, he is sure, that it was done in 1983. He added that there are many people, who are under consideration for a board of regents contract, who do not fit the typical TRS position, when thinking of people who are going to be covered under the teachers' retirement system.

Mr. Evenson indicated the only comment he can make to that is that there was confusion, in 1983, and there was an agreement at the insistence, he understands, of the retirement board at that time. He noted they worked out an arrangement which is easily understood on the campus level, and was an agreement between the regents and the TRS board. He indicated they could go back, on a case-by-case basis, and make those determinations, but the problem was that there was not a lot of consistency or logic in the eventual decisions. He added that he has no problem with that.

Mr. Natchsheim reported that they went through the same thing, in 1983, noting that he wrote a letter to Jack Noble, and the teachers board took action which asked, by December 31, 1983, that they be told which place they were going to put the positions on. He added that there was an election, because

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they were trying to define it. He referred to Representative Cocchiarella's example of the individual with 22 years of service, who is now caught between moving from one system to the other, noting that he does not know his age or anything else. He indicated that the letter he wrote was a result of the 25 year retirement furor, and people who to look to retire early are going to migrate to the teachers system, noting that was the way it would be. He pointed out that, now, they have the bill they have just considered, and they hope to make it one to change the formula. He pointed out that the gentleman with 22 years, who plans to work until he has 30, will want to stay in PERS, but, if he plans to retire at 25 years, he will move to the teachers'. He indicated they have to have some kind of measurement in there, in the structure, to indicate which direction they go, and they do not think that individual should have the right to make that election. He indicated they have 27,000 people and, if every one of the 415 moved, they are talking about less than 1/10th of 1%, noting he would have to believe they are probably talking about 15 or 20 people. He noted that he does not think all 415 contracts are going to be changed.

Mr. Natchsheim stated that retirement administration is not static, with some of the bills which are being passed, and the contribution rates between teachers and PERS being changed. He added that, if they do, they will be here to say that now the rates have changed, they are getting to be more comparable, and he would think they would come in and say, okay, the spread is not 2%, that maybe it is only 1.4%, noting that is what they are talking about for future years. He also noted that, when they bring a proposal to the legislature, they can only bring it on the basis of what the statute is, at the point in time they put it together, which is the way this bill was put together. He indicated that contribution rates have changed from a spread of 32/100ths of 1%, to 2.055%, in the six year period between 1983 and 1989, which is a significant difference between the two systems. He noted that it was not to give a cost of living, or anything to retirees, that a big piece of that was for the 25 year provision, etc., adding that those will change, again, in the future.

Representative Cocchiarella stated that she has an amendment which removes the effective date, so that it would go into effect in October. She asked Mr. Natchsheim, when and if HB234 goes through, how far apart will they be, what will the difference be, after five years.

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Mr. Natchsheim responded that for the first two years, it will still be 1.7%. Representative Cocchiarella asked what it will be at the end of five years. Mr. Natchsheim responded that they are not going to get any more funding until 1993. Representative Cocchiarella asked what will be the difference be, at that point in time. Mr. Natchsheim responded 1%.

Representative Cocchiarella indicated that, each session, they will have to come back, and look to see if there is a change in those systems, in the funding and contribution amounts, to determine whether or not they are going to get to a point where they are even.

Mr. Senn indicated it could be amended it at this point, noting that the difference is 2.055%, now. Mr. Natchsheim stated that it would become 1.7% in this biennium. Mr. Senn noted that, by the end of this biennium, it will be 1.6%.

Representative Cocchiarella asked if they could make that kind of an amendment. Mr. Senn responded that he does not see where they could not, that he has no problem with that. Representative Cocchiarella indicated they are talking about the actual difference between the funding, the contribution for each system, and that amendment would be to make it so that it is the actual difference, not just 2% . Mr. Senn noted the difference in rate, at termination.

Senator Regan stated that she thinks that is a reasonable thing to do, that it is what they are trying to accomplish here. Mr. Senn indicated it should be the difference in rates on that date, not wait until rates go by, and then transfer.

Chairman Farrell asked if they would want to move the effective date.

Representative Cocchiarella asked if they have to lock it in at the date of transfer. Mr. Senn responded it would be the date of termination, the date they terminate the PERS position and go to a TRS position. Representative Cocchiarella noted that is really when they transfer. Mr. Senn pointed out that they may wait 10 years to transfer, or the individual with 22 years, in PERS, may wait 5 years to make the transfer.

Senator Regan offered a motion that the two administrators find compromise language which accomplishes that, so that, at the time of transfer, the contribution will be whatever is the actual cost, noting that she thinks that is the key, and is fair. Representative Cocchiarella noted that makes it worse.

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Chairman Farrell asked, if they move the effective date of this bill up to July or October, will that give HB234 a chance to kick in. Mr. Senn responded that HB234 is effective upon passage and approval. Chairman Farrell noted that, then, would not affect this that much.

Mr. Natchsheim indicated that he thinks the change in the effective date might overcome some of the problems the university had, in the sense of people who would rather transfer, under the current bill. He noted they would not have any problems with a July 1st date, or an October 1st date, and will advise the people in the interim.

Representative Nelson asked if that would have to be on an individual basis. Senator Regan responded at the time they make the transfer. Representative Nelson then asked if it is not, now, a blanket, like the 2% is now. Senator Regan responded that, as time goes on, the discrepancy between the two is going to narrow, so it is unfair to say 2%, if they make the choice. She added that, if they make it loose, they do not have to come back and fight the bill, again.

Representative Nelson then asked if there is any problem with doing that, noting that would be on an individual, case-by-case, basis. Mr. Natchsheim responded that is true. Representative Nelson asked if they would have a problem with that.

Mr. Senn responded that they do not handle that many transfers, and they have to look and see when did they leave PERS and move to teachers', and what the difference in rates was, in that period, adding that he does not have a problem with that.

Mr. Evenson indicated that it raises only one question, in his mind, which is sort of a philosophical one. He distributed materials to the committee, a copy of which is attached as Exhibit 3. He explained that it is a breakdown of the actuarial report, comparing PERS, TRS and the others. He went over the breakdown, and pointed out that it sums up to be approximately a 2% difference between the two systems. He noted that the concern he has is on the employee and employer split. He pointed out that, currently, it is 6% for TRS, for employees 7.044%, and his question, the reality would be that, perhaps, they should talk about the employee contribution. He indicated there is an argument he thinks could be made that they are paying less, under one system, as an employee, and perhaps that should be the guiding line, rather than the total difference, because the employer obligation is

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the source of the other 1%, under the current formula, and that it would be his recommendation that they use the employee split.

Mr. Natchsheim indicated that the employer/employee split is strictly arbitrary and, in some cases, political, in deciding how to pass a bill, and not necessarily the real cost, whether it was allocated to the employer or employee.

Senator Regan called for a question on the motion she made that they go with the actual cost at the time of transfer. She stated that she thinks it is fair, and that it is the best they are going to be able to work out here. She noted that she thinks they can talk a long time about the philosophy, but that the bottom line is, if they want to make a transfer and elect to, they will be shown what it is going to cost them, they will know what their benefits are, and can make their decision with that.

Representative Nelson asked if that will affect this amendment at all. Chairman Farrell said the only amendment put on was creditable service, that this was the standing committee report amendment, and does not have anything to do with this. Senator Hammond asked if that is considering that the other bill, HB234, is effective upon passage.

Senator Regan responded that they can take care of the effective date, noting there was some discussion about the effective date, and indicated she thought they could take care of these amendments one at a time.

Chairman Farrell announced that a question has been called for on the motion to amend HB159 to the actual cost at the time of transfer, the difference in the contribution rates.

Mr. Senn asked that the time of transfer be defined for him, if it is the time of individual transfer from a PERS position to a TRS position, not the time of termination. He indicated he thinks the time of transfer may be six years later, when he does the paperwork. Chairman Farrell asked if he wants "termination". Mr. Senn responded that termination would be clearer to him.

Amendments and Vote:

Motion passed by the committee that HB159 be amended to the actual cost at the time of termination.

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Discussion:

Senator Regan indicated the only other thing is the effective date, that she thinks there is an argument to be made to allow a little opportunity for those, noting she does not think there will be many who will choose to sort of beat the rap.

Representative Cocchiarella indicated she thinks it should be October 1st, because there are some positions that do not work in the summer, and they will need notification time in the fall, when they come back to a position. She noted that she is not sure what those would be, but that there would be some that would not get a notification if it was effective July 1st.

Chairman Farrell asked if they are working now. Representative Cocchiarella responded they could be, but she does not know that it gives them enough time to make that move. Senator Regan noted that there could be some on sabbatical, who are gone now. She asked Mr. Senn if he has any objections. Mr. Senn responded no.

Senator Regan offered a motion that HB159 be amended to provide an effective date of October 1, 1989.

Mr. Natchsheim indicated he thinks the university wants the amendment on the creditable service. Chairman Farrell indicated the free conference committee would accept the creditable service amendment that the Senate put on.

Amendment and Vote:

Motion passed by the committee that HB159 be amended to provide for an effective date of October 1, 1989.

Discussion:

Senator Regan asked Representative Cocchiarella how much damage has been done. Representative Cocchiarella responded that it is better than it was, and she thinks it will work.

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ADJOURNMENT

Adjournment At: 9:35 a.m.


WILLIAM E. FARRELL, Chairman

WEF/mhu
FRCONCOM.043

Mr. Speaker:

We, your Free Conference Committee on House Bill 159 (reference copy -- salmon) met and considered: House Bill 159 in its entirety.

We recommend that House Bill 159 (reference copy -- salmon) be amended as follows:

1. Title, line 11.
Following: "SYSTEM."
Insert: "AND"

2. Title, lines 12 and 13.
Strike: ";" on line 12 through "DATE" on line 13

3. Page 2, line 6.
Strike: "[2]"

4. Page 2, line 7.
Strike: "subsection" and "[1]"
Insert: "this section"

5. Page 2, line 8.
Strike: "(a)" and "(2)(b):"
Insert: "[3]"

6. Page 2, line 9.
Strike: "(a)" through "the"
Insert: "(2) The"
Strike: ", the"
Insert: "shall transfer to the public employees' retirement system"

7. Page 2, line 22.
Strike: "(b) from the"
Insert: "(3)(a) The"
Strike: ", the"
Insert: "shall pay an"
Strike: "of"
Insert: "equal to"

8. Page 3.
Following: line 2
Insert: "(b) If the sum of the rates provided in 19-3-701 and 19-3-801 exceeded the sum of the rates provided in 19-4-602 and

ADOPT

REJECT

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19-4-605 at the time the employee terminated active membership, as defined in 19-4-302, the employee shall pay an amount in addition to that required in subsection (3)(a) to receive full credit for the service transferred. This additional amount is equal to:

(i) the final compensation as determined in subsection (2) multiplied by the total years of creditable service being transferred multiplied by the difference between the sum of the rates provided for in 19-3-701 and 19-3-801 and the sum of the rates provided in 19-4-602 and 19-4-605; plus

(ii) accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the retirement system.

(c) If the member chooses not to make the contribution provided for in this section, he shall receive credit for the service transferred based on the ratio between the retirement systems' employee and employer contribution rates provided for in 19-3-701, 19-3-801, 19-4-602, and 19-4-605."
Renumber: subsequent subsections

9. Page 3, line 10.
Strike: "subsections" and "[1]" and

10. Page 3, line 11.
Strike: "[3]"
Insert: "this section"

11. Page 3, line 12.
Strike: "subsection"
Insert: "subsections"
Following: "[2]"
Insert: "and [3]"

12. Page 3, line 24.
Strike: "subsection"
Insert: "subsections"
Following: "[2]"
Insert: "and [3]"

13. Page 6, line 6.
Strike: "[2]"

14. Page 6, line 7.
Strike: "subsection" and "[1]"
Insert: "this section"

15. Page 6, line 8.
Strike: "(a)" and "[2)(b):"
Insert: "[3]"

- Following: "plus"
Insert: "(ii)"
- 25. Page 7, line 11.
Strike: "(3)"
Insert: "(c)"
- 26. Page 7, line 12.
Strike: "subsection (2) (b) (ii)"
Insert: "this section"
- 27. Page 8, line 10.
Strike: "subsection"
Insert: "subsections"
Following: "(2)"
Insert: "and (3)"
- 28. Page 8, lines 23 and 24.
Strike: section 5 in its entirety

And that this Free Conference Committee Report be adopted.

For the House:


Rep. Vicki Cocchiarella,
Chairman


Rep. Ray Beck


Rep. Richard Nelson

For the Senate:


Sen. Bill Farrell, Chairman


Sen. Swede Hammond


Sen. Pat Negan

- 16. Page 6, line 9.
Strike: "(a)" through "the"
Insert: "(2) The"
Strike: " "
Insert: "shall transfer to the teachers' retirement system"
- 17. Page 6, line 22.
Strike: "i"
Insert: " "
- 18. Page 6, line 23.
Strike: "(b)" through "the"
Insert: "(3) (a) The"
Strike: "i"
- 19. Page 6, line 24.
Strike: "(i) the"
Insert: "shall pay an"
Strike: "of"
Insert: "equal to"
- 20. Page 7, line 3.
Strike: "i"
Insert: " "
- 21. Page 7, lines 4 and 5.
Strike: "plus" on line 4 through "an" on line 5
Insert: "(b) If the sum of the rates provided in 19-4-602 and 19-4-605 exceeded the sum of the rates provided in 19-3-701 and 19-3-801 at the time the employee terminated active membership under 19-3-406, the employee shall pay an amount in addition to that required in subsection (3) (a) to receive full credit for the service transferred. This additional"
- 22. Page 7, line 5.
Following: "amount"
Insert: "is"
Strike: "28 of"
Insert: " (i)"
- 23. Page 7, line 6.
Strike: "(a)"
- 24. Page 7, line 7.
Following: "transferred"
Insert: "multiplied by the difference between the sum of the rates provided for in 19-4-602 and 19-4-605 and the sum of the rates provided in 19-3-701 and 19-3-801;"

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 4/3/89

BILL NO. HB159

PROPOSED AMENDMENT TO HB-159

This amendment is on page 8, line 18. Insert the following:

(8) A person who is a member of the Public Employees Retirement System and transfers to a position eligible to be covered by the Teachers Retirement System may either elect to become a member of the Teachers Retirement System or to remain a member of the Public Employees Retirement System. A person choosing to remain with the Public Employees Retirement System must file a written election of intent with the board no later than 30 days after transfer to the new position or no later than 30 days after (the effective date of this act).

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 4/3/89

BILL NO. HB159

Montana University System
Employee Statistics

1989

	<u>FACULTY</u>	<u>ADMINISTRATORS/ PROFESSIONALS</u>	<u>CLASSIFIED</u>	<u>TOTAL</u>
CHE		16	17	33
EMC	141	42	227	410
MSU	792	178	981	1,951
NMC	82	40	95	217
TECH	93	45	110	248
UM	422	65	761	1,248
WMC	<u>44</u>	<u>29</u>	<u>57</u>	<u>126</u>
	1,574	415	2,248	4,233

Dave Evenson
Montana University System

SENATE STATE ADMIN.

EXHIBIT NO. 3 P. 1

DATE 4/3/89

BILL NO. HB159

HB-159

A BILL FOR AN ACT ENTITLED: AN ACT TO
ESTABLISH A FORMULA FOR DETERMINING THE AMOUNT THAT MUST BE
PAID TO TRANSFER CREDITABLE SERVICE BETWEEN THE PUBLIC
EMPLOYEES' AND THE TEACHERS' RETIREMENT SYSTEMS.

We have looked carefully at HB-159 and are of the opinion that its provisions are discriminatory to employees working in the University System.

The bill should be amended in order to mitigate some of the problems. The following are a summary of the amendments proposed.

- A) Employees forced to transfer from PERS to TRS should be allowed a choice to stay with their current retirement system.
- B) The TRS vesting requirements should be changed. Employees who are vested with PERS should not have to serve a second 5 year vesting period in order to qualify for TRS benefits.

DISCUSSION

House Bill 159 requires individuals transferring from the Public Employees Retirement System (PERS) to the Teachers Retirement System (TRS) to pay an additional amount out-of-pocket.

Determining membership eligibility is a responsibility of the TRS Board. As the result of a recent ruling the following policy was adopted. Employees, who are classified under the provisions of the State Classification and Pay laws, must be enrolled in PERS. Employees with individual contracts under the authority of the Board of Regents fall under the provisions of the Teachers Retirement laws. The practical result of this ruling is that faculty and professional staff are governed by TRS laws and administrative support staff are members of PERS. It is a common practice in the University System to promote an employee from an administrative position into one on the professional staff. One consequence of the promotion is that employees must change retirement systems.

This policy has worked smoothly - up to now. Current law allows employees to move freely between PERS and TRS without penalty. Time worked under PERS is credited as time worked

Ex #3 p. 2
4/3/89
HB 159

under TRS. All employer and employee contributions plus interest are also transferred with the employee. The same procedures are followed for transfers going in the opposite direction, i.e. from TRS to PERS. In short, service in the two systems is essentially equivalent under current law.

The two retirement systems are very much alike. Both retirement systems allow full retirement at age 60 with 5 years of service. However, TRS allows full retirement at any age after 25 years of service, while a person must work 30 years in the PERS system for the same benefit. Both systems use the same formula to calculate retirement benefits: $1/60 (x)$ final compensation (x) years of service.

The major difference between the two retirement programs is the funding requirements. The "normal cost" is slightly different between the two plans. (The normal cost is the funding required to provide future retirement benefits to current employees). The normal cost for PERS employees is 9.376% of salary. Under TRS the normal cost is 8.663% of salary. It currently costs less to provide future retirement benefits to TRS participants. However, when one looks at the "unfunded past service liability" the picture is quite different. (The unfunded past service liability largely results from benefits promised to current retirees). The past service liability for PERS requires a payment of 3.041% of salary over 24.96 years. In TRS the past service liability requires a payment of 5.809% of salary over 36.47 years.

The total contribution rate is the sum of the normal cost and unfunded liability contribution:

	<u>PERS</u>	<u>TRS</u>
Normal Cost	9.376%	8.663%
Unfunded Liability	3.041%	5.809%
Total	<u>12.471%</u>	<u>14.471%</u>

The required contributions is split between the employee and employer as follows:

	<u>PERS</u>	<u>TRS</u>
Employee	6.000%	7.044%
Employer	6.417%	7.428%
Total	<u>12.417%</u>	<u>14.472%</u>

HB-159 makes the following changes in law.

- 1) Instead of transferring the combined employee and employer contributions to TRS for employee and employer contributions to TRS for employees, PERS will now be required to transfer 5% of

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the average final compensation multiplied by years of service plus interest. In most cases this will result in more money being transferred from PERS to TRS than now occurs under current practice. How much more depends on the salary history of an individual and future wage inflation.

The bill creates an irony. The system, that on a normal cost basis is more expensive, will now be required to subsidize the less costly system.

2) The employee will also be required to transfer an amount equal to 2% this final compensation multiplied by years of service. This can result in a sizable amount of money for an individual.

Example: Assume an employee with a salary of \$30,000 and 10 years of service.

Final salary (x) 2% (x) years of service = penalty:

$$\$30,000 \times .02 \times 10 = \$6,000.$$

The employee in this example would be required to pay a \$6,000 penalty to transfer to TRS.

It should be remembered that, in most cases, employees will not have a choice. The TRS Board determines eligibility. Employees must be members of the retirement system provided by law.

3) The penalty paid to TRS will not go to pay for future retirement benefits. Rather the penalty is a payment to the unfunded liability created by pension promises to current retirees.

Active employees had little to do with creating the unfunded liability. It is a result from state laws and practices of the TRS Board. Most people view the past service liability as an employer obligation.

We believe that the unfunded liability is an obligation of the state of Montana and that it is unfair to tax a small number of individuals in the manner proposed by the TRS Board in HB-159.

4) If the bill is not killed outright it should be amended in the following manner.

- a) Employees transferring from PERS to TRS should be allowed a choice to stay with PERS.
- b) The bill should be amended to allow vesting in PERS to qualify as a vesting period in TRS. Current practice is that employees must serve a separate vesting period with TRS. Employees should not be required to serve two vesting periods with a single employer.

A COMPARISON OF THE PUBLIC EMPLOYEES' RETIREMENT
 SYSTEM AND THE TEACHERS RETIREMENT SYSTEM
 NORMAL COST ALLOCATION AND UNFUNDED LIABILITY CONTRIBUTIONS

(1) Normal Cost Contribution Rate:	<u>PERS</u>	<u>TRS</u>
(a) Retirement	6.364%	6.199%
(b) Death	0.204	0.226
(c) Disability	0.336	0.339
(d) Vested	1.381	0.341
(e) Withdrawals	<u>1.091</u>	<u>1.558</u>
(f) Total Normal Cost Rate	9.376%	8.663%
(2) Present Value of Future Salaries of Current Members	\$3,446,149,867	\$2,837,295,037
(3) Present Value amount of Future Normal Costs For Current Members (1(f) x 2)	\$ 323,111,012	\$ 245,794,869
(4) Unfunded Liability Amount	\$ 298,511,691	\$ 586,200,249
(5) Unfunded Liability Contribution Rate	3.041%	5.809%
(6) Statutory Funding Rate (1(f) + 5)	12.417%	14.472%
(7) Contribution Formula:		
(a) Employee	6.000%	7.044%
(b) Employer	<u>6.417%</u>	<u>7.428%</u>
(c) Total Statutory Funding Rate	12.417%	14.472%
(8) Past Service Amortization Period in Years	24.96	36.47

Source: Public Employees' Retirement System actuarial valuation as of July 1, 1988 and Teachers Retirement System actuarial valuation as of July 1, 1987. Hendrickson, Miller & Associates Inc. Actuarial Consultants.

SENATE STATE ADMIN.

EXHIBIT NO. 4

DATE 4/3/89

BILL NO. HB159

Amendment #1

This amendment moves the effective date from passage and approval to October 1, 1989.

Line 12, page 1, title of bill, strike "; and providing an immediate effective date"

Line 23, page 8, strike Section 5 in its entirety.

SENATE STATE ADMIN.

EXHIBIT NO. 5

DATE 4/3/89

BILL NO. HB159

Amendment #2

This amendment changes the 2% of final compensation to 1%.

Page 7, line 5, strike: "2%"
insert: "1%"

SENATE STATE ADMIN.

EXHIBIT NO. 6

DATE 4/3/89

BILL NO. HB159

Amendment #3

This amendment would require that all Montana University System employees become members of the Teachers Retirement System.

New Section.

1) All employees of the Montana University System shall become members of the Teachers Retirement System on or before October 1, 1989.

2) Employees who are current members of the Public Employees Retirement System shall have an amount equal to the combined employer and employee contributions as defined in 19-4-602 and 19-4-605 transferred to the Teachers Retirement System.

3) Upon transfer under this section all service from the PERS system shall be considered creditable service under 19-4-401.

EXHIBIT NO. 7DATE 4/3/89BILL NO. HB159

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PUBLIC EMPLOYEES' RETIREMENT SYSTEM

19-3-511

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — statewide plan — qualification of service from other Montana public retirement systems, 19-9-405.

Police retirement — local funds, Title 19, ch. 10.

Firefighters' unified retirement, Title 19, ch. 13.

Firefighters' unified retirement — qualification of service from other Montana public retirement systems, 19-13-404.

19-3-510. Service in the United States government. (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may qualify such federal service as creditable service in the public employees' retirement system under subsection (2) of this section, provided that:

(a) the member has accrued 5 years or more of service in the public employees' retirement system; and

(b) the member returns to full-time employment with the prior state or local government employer for at least 1 year after completing service in the United States government.

(2) A member of the public employees' retirement system who is assigned to an agency of the United States government has the option to:

(a) continue his payments into the account; or

(b) qualify this service under 19-3-505 within 2 years after his return to active status as a state or local government employee.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the public employees' retirement system and may be included in the determination of final compensation as defined in 19-3-104, provided that the final compensation cannot exceed 100% of the member's highest annual compensation earned as a state or local government employee.

History: En. Sec. 1, Ch. 261, L. 1981.

19-3-511. Transfer of service credits from teachers' retirement system. (1) For the purpose of this section, "assumed salary" means the sum of the following:

(a) earned compensation for all full-time service and part-time service as defined in 19-4-101; and

(b) the amount of the first full year's teaching salary earned in Montana after any period of creditable service not included in subsection (1)(a) multiplied by the number of years or partial years granted by the teachers' retirement system.

(2) A member may at any time before his retirement make a written election with the board to qualify in the public employees' retirement system all of his creditable service in the teachers' retirement system.

(3) The amount that must be paid to the retirement system to qualify this service under subsection (2) is the sum of the following:

(a) from the teachers' retirement system, an amount equal to the combined employer and employee contributions as defined in 19-3-701 and 19-3-801, based on the assumed salary, less the amount paid by the employee in subsection (3)(b); and

(b) from the employee, the amount of his accumulated contributions at the time he terminated active membership, as defined in 19-4-302, plus

19-5-202

PUBLIC RETIREMENT SYSTEMS

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mortality and service experience of the contributors to and the beneficiaries of the fund and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 289, L. 1967; amd. Sec. 5, Ch. 63, L. 1977; amd. Sec. 20, Ch. 332, L. 1977; R.C.M. 1947, 93-1112(1), (2).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

PERS — powers and duties of Board, 19-3-304.

Teachers' retirement — administration by Teachers' Retirement Board, 19-4-201.

Sheriffs' retirement — functions of Board, 19-7-201.

Police retirement — local funds — local Boards of Trustees of funds, 19-10-201.

Firefighters' retirement — Board of Trustees of association, 19-11-104.

Firefighters' unified retirement — power and duties of Board, 19-13-202.

Montana Trustees' Powers Act, Title 72, ch. 21.

19-5-202. Administrative expenses. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the fund.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system pension trust fund.

History: En. Sec. 4, Ch. 289, L. 1967; amd. Sec. 1, Ch. 23, L. 1969; amd. Sec. 3, Ch. 63, L. 1977; R.C.M. 1947, 93-1110; amd. Sec. 1, Ch. 235, L. 1981; amd. Sec. 5, Ch. 282, L. 1983.

Cross-References

Teachers' retirement — per diem and expenses of Board members, 19-4-202.

Highway patrol retirement — administrative expenses, 19-6-203.

Sheriffs' retirement — expenses of administration, 19-7-202.

Game wardens' retirement — expenses of administration, 19-8-203.

Police retirement — statewide plan — administrative expenses, 19-9-203.

Firefighters' unified retirement — administrative expenses, 19-13-204.

Part 3**Membership and Service Allowance****Part Cross-References**

PERS — membership, Title 19, ch. 3, part 4.

PERS — service credits, Title 19, ch. 3, part 5.

Teachers' retirement — membership, Title 19, ch. 4, part 3.

Teachers' retirement — creditable service, Title 19, ch. 4, part 4.

Highway patrol retirement — membership and credit for service, Title 19, ch. 6, part 3.

Sheriffs' retirement — membership and credit for service, Title 19, ch. 7, part 3.

Game wardens' retirement — membership and credit for service, Title 19, ch. 8, part 3.

Police retirement — statewide plan — membership, Title 19, ch. 9, part 3.

Police retirement — statewide plan — credited service, Title 19, ch. 9, part 4.

Firefighters' unified retirement — membership, Title 19, ch. 13, part 3.

Firefighters' unified retirement — credited service, Title 19, ch. 13, part 4.

19-5-301. Membership. (1) A judge or justice who was a member of the PERS prior to December 31, 1984, may elect to remain under that system by notifying the public employees' retirement board in writing of the election on or before October 1, 1985.

(2) Every other judge of a district court or justice of the supreme court must be a member of the Montana judges' retirement system.

History: En. Sec. 7, Ch. 289, L. 1967; amd. Sec. 6, Ch. 63, L. 1977; R.C.M. 1947, 93-1113(1), (2); amd. Sec. 1, Ch. 298, L. 1985.

state game wardens shall be members of the retirement system so long as actively employed in that capacity.

History: En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 8, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977; R.C.M. 1947, 68-1407(part); amd. Sec. 2, Ch. 218, L. 1979.

Cross-References

Legislators — continued participation, 5-2-304.

SENATE STATE ADMIN

EXHIBIT NO. 9

DATE 4/3/89

BILL NO. HB/59

19-8-302. Ineligibility for public employees' retirement system — transfer of membership. (1) After July 1, 1963, no new state employee appointed as a state game warden will be eligible for membership in the public employees' retirement system, and the provisions of The Public Employees' Retirement System Act will not apply to state game wardens.

(2) A person who is a member of the retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement in the fish and game department may retain membership in the retirement system by filing a written election of intent with the board no later than August 1, 1977, or no later than 30 days after transfer to the new position, whichever is later.

(3) A person who is a member of the public employees' retirement system who transfers to a position as a state game warden may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election of intent with the board no later than August 1, 1977, or no later than 30 days after transfer to the new position, whichever is later.

History: En. Sec. 29, Ch. 130, L. 1963; amd. Sec. 16, Ch. 8, L. 1977; amd. Sec. 7, Ch. 330, L. 1977; R.C.M. 1947, 68-1429.

Cross-References

PERS, Title 19, ch. 3.

19-8-303. Credit for prior service. (1) If a person becomes a state game warden after July 1, 1963, who was at any time before July 1, 1963, a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this chapter.

(2) A state game warden shall be allowed service credit hereunder for any service prior to July 1, 1963, including other Montana state, county, or city service.

History: (1)En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 6, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977; Sec. 68-1407, R.C.M. 1947; (2)En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974; Sec. 68-1408, R.C.M. 1947; R.C.M. 1947, 68-1407(part), 68-1408(part).

Cross-References

PERS — qualification of prior service not previously credited, 19-3-506.

19-8-304. Military service. (1) A state game warden inducted into the armed forces of the United States has the option to:

(a) continue his payments into the account; or

(b) allow the board to make his payments for him during his military service, in which event he must repay the account the full amount of the payments within 2 years after his return to active state game warden status.

SENATE STATE ADMIN.

EXHIBIT NO. 10 Q.1

DATE 4/3/89

BILL NO. HB159

TO: Senator William E. Farrell, Chairman

FROM: Administrators; David Senn, Teachers' Retirement System
and Larry Nachtsheim, Public Employees' Retirement System

DATE: March 30, 1989

SUBJECT: HB 159

With the current status of this bill, we do not believe it appropriate to try and create a statement of legislative intention.

In light of the university system's opposition to this bill, we wish to provide the committee an analysis of the bill from strictly a retirement administration perspective.

History: The current provisions for transfer of service credits between TRS and PERS found in 19-4-409, MCA and 19-3-511, MCA, respectively, were enacted in Ch 290 L 1983. The cost of the transfer was the combined employee/employer rate of the system receiving the liability. At the time the bill was introduced, the following contribution rates as a percentage of salary were:

	<u>TRS</u>	<u>PERS</u>
Employee	6.187%	6 %
Employer	<u>6.463</u>	<u>6.32%</u>
Total	12.640%	12.32%

The minor difference in the total contribution rates required the PERS to transfer .32% of salary more for transfers to TRS, while TRS was able to retain the .32% on transfers to PERS. Since there were very few transfers being made at that time and the cash flow advantage in the PERS, with 12 months contributions rather than the 10 month contributions in TRS, the additional cost to PERS was funded from the investment earnings.

However, the passage of the 25 year retirement provision in TRS, Ch 527 L 1983, along with the amendments to 19-4-804, permitting teachers to return to part-time employment and earn up to one-third final compensation adjusted for inflation increased the contributions to TRS to 7.044% employee and 7.32% employer; total 14.364% of salary. At the same time, a cost of living proposal for PERS retirees increased the employer contributions to 6.417%; the employee contributions remained at 6.0%; total 12.417%. The difference became 1.947% of salary.

In 1985 a cost of living increase was granted TRS retirees with a corresponding increase in TRS employer contributions of .108 to the current 7.428%. The contribution rates as of January 1, 1989 were:

	<u>TRS</u>	<u>PERS</u>	<u>DIFFERENCE</u>
Employee	7.044%	6.0 %	1.044%
Employer	<u>7.428</u>	<u>6.417</u>	<u>1.011</u>
Total	14.472%	12.417%	2.055%

Result: As a result of increasing the rates and creating a difference in the total contribution rates between the two systems of 2.055%, the 1983 transfer statute has become inequitable. An individual transferring from PERS to TRS, or from TRS to PERS, is required to transmit their accumulated contributions to the other system.

Since the employee rate in TRS is 7.044% and PERS is 6.00%, a difference of 1.044%, if the current law is continued, there will eventually be a major inequity created. The employee moving from TRS to PERS will be required to pay more for similar service transfers. When the law was proposed in 1983 with similar contribution rates, other differences in the systems such as interest rates, salary limitations and differences in the average salary tended to mitigate the differences. In the six years since 1983, the difference in rates has totally overwhelmed the mitigating elements and will create further inequities in the future as the period from 1983 lengthens.

On the employer side, there is a difference of 1.011% of TRS over PERS. Because the transferring system is required under current law to send only the difference between the combined rate less accumulated employee contributions (deductions plus interest), normally the PERS is required to send a greater amount of employer contributions to TRS than TRS would send to PERS in similar situations.

Discussion:

Transfer between PERS and TRS is a two-way street. The majority of transfers in the university system are certainly from PERS to TRS, particularly for those employees who stay with the university system; however, there have also been university employees who have left the university for positions in state and local government who have transferred from TRS to PERS.

HB 159 attempts to provide equity in transfers going both ways for the majority of employees and employers.

The two retirement boards are charged with the responsibility of determining who is eligible for membership in the respective systems they administer. This covers every classification system in place for state and political subdivisions. Any inequities are reviewed on an individual case basis.

It is not fair or reasonable to enact a provision that would permit any of the participating employers or employees to have an election of membership based on their "unique" classification systems. To date, there has been testimony from only one employer who has voiced a concern for maybe 10% of their employees who make up less than 1% of the combined active membership of the systems.

Recommendation: It is the joint recommendation of the two state retirement administrators that HB 159 be amended to provide an effective date of July 1, 1989 rather than the passage and approval date.

This will permit any individual currently eligible to transfer service to use the current statute. We will advise our memberships at the end of the session, of all legislation and will specifically advise the members of the effect of the changes in HB 159, if enacted.

The TRS recommends concurrence in the amendment permitting service transferred to the TRS to be accepted as creditable service.

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The retirement administrators agree to meet with the Commissioner of Higher Education to discuss and review the positions and the retirement membership in the areas of his concern. if the major problems can be resolved by administrative rule, we will recommend enactment of such rules as soon as possible. If the matter cannot be resolved through the rule-making process, we will work with the university people to draft a proposal for the next legislative session.

If the committee feels HB 159 is not workable, we would recommend the bill be killed. In this event we would anticipate a review of the situation and a revised proposal for the next legislative session.

We both appreciate the time and consideration we have received from every member of the committee.

NOTICE OF
CONFERENCE COMMITTEE MEETING

March 31, 1989

Rep. Peck:

THE Free CONFERENCE COMMITTEE ON House BILL NO. 159
WILL MEET IN ROOM 331, ON Monday, Apr. 3, 1989,
(Day) (Date)
AT 9:00 AM
(Time) PM

Senator Farrell
Chairman
by Sue Ames

Ms Chairman:

I hereby authorize Rep Cocchiarella
to cast my vote in this conference
committee.

Rep Ray Peck