

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

March 9, 1981

The Senate State Administration Committee was called to order by Senator Pete Story, Chairman, on the above date in room 442 of the State Capitol Building at 10 a.m.

ROLL CALL: All members of the committee were present, except Senator Kolstad.

CONSIDERATION OF HOUSE BILL 302:

AN ACT TO AUTHORIZE THE DEPARTMENT OF ADMINISTRATION TO DEVELOP AND ADMINISTER A SICK-PAY PLAN FOR STATE EMPLOYEES AND PERMITTING LOCAL GOVERNING BODIES TO ADMINISTER SIMILAR PLANS.

Rep. Francis Bardanouve said this idea is now being adopted in other states and it authorizes sick-pay plan. The effect is reduced payments of Montana government to Social Security. It will give the employee more cash take-home pay. One offset, he admitted, may be a reduction of retirement benefits but it will be insignificant. This will have to be approved by Social Security.

PROPONENTS: Patricia Moore, Dept. of Administration; Larry Nachtsheim, Social Security administrator, submitted testimony; Chad Smith, Montana school board and hospital board representative.

OPPONENTS: None.

Questions: Sen Johnson asked and was answered by Rep. Moore that the total amount of savings in the fiscal year of 1983 could be \$200,000 for both employers and employees.

Sen. Ryan asked for clarification from Mr. Nachtsheim of what this will do to the social security fund, what kind of rates, and how much less individuals will receive. He was answered that there should not be an effect on the social security fund, and less than one per cent is involved. Sen Ryan asked if that meant social security will be reduced less than one per cent; answer no.

Sen. Ryan asked if this would exclude another right of a person to pay into a fund for later years. Rep Bardanouve answered that the impact will be minor; they will get more take-home pay.

Sen. Ryan asked Mr. Smith if they would be precluding many from taking part in an insurance program that the government required involvement of all citizens. Mr. Smith said the political

subdivisions are not all mandated and have elections to see if they want to participate in it. There is no absolute that losing this small amount will affect the benefits because they are computed on the last few quarters.

Sen Hafferman stated he feels that we are gradually nibbling away at the social security system. Mr. Smith answered that they are looking at uniformity that is offered as exclusions given to private industry.

Sen. Story put this bill in a subcommittee, and in closing Rep. Bardanouve said it will have very little effect; it is legal and not objected by social security; it will save money.

If this bill passes, Sen. Story may carry on the floor.

CONSIDERATION OF HOUSE BILL 330:

AN ACT TO REVISE THE MEMBERSHIP OF THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES.

Rep. Joe Kancuch said this bill revises the Board of Health and Environmental Sciences and makes one member a veterinarian, and the other four have to be actively interested in the field of public health.

PROPONENTS: Peter Jackson, Dept of Env. Sciences; Allen Shumate, retired; George Johnson, ASARCO; Gary Langley, representing the National Federation of Independent Business.

OPPONENTS: Cheryl Mott said it is not a bill that is concerned with health and urged an amendment that would strike the words "at least".

Willa Hall, League of Women Voters, asked about the word "intelligence" on line 23 and maintained that public health is the purpose of the Board of Health.

CONSIDERATION OF HOUSE BILL 481:

AN ACT TO REVISE THE GUIDELINES FOR THE STATE BOARD OF INVESTMENTS.

Rep. Ken Nordtvedt, sponsor, said this bill concerns handling of the retirement funds. The essence of the bill is on page 7, line 15, where it changes the limits on common stocks. The only way pension plans can remain is investing the bigger fraction of their investments in common stocks.

March 9, 1981

PROPOSERS: Larry Nachtsheim submitted enclosures; Bob Johnson, Teachers Retirement System; Jim Howeth.

OPPOSERS: None.

Questions: Sen. Hafferman was concerned about a potential crash like in 1929 and asked what the result would be for the common stock. Rep. Nordvedt said there would be no way to compare.

Sen Story asked about page 6, line 12, 13: staff man, John Hollow said this changed existing law.

Sen Ryan received confirmation from Mr. Nachtsheim that his board has gone over this.

The hearing was closed.

CONSIDERATION OF HOUSE BILL 296:

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION REMOVING THE RESTRICTION ON INVESTMENT OF PUBLIC FUNDS IN CORPORATE CAPITAL STOCK AND THE REQUIREMENT THAT SCHOOL FUND INVESTMENTS BEAR A FIXED INTEREST RATE.

Rep. Ken Nordtvedt, sponsor, said this proposes an amendment to the constitution. He says the state is losing these long-term funds because the constitution prevents that. This constitutional amendment would allow the investment board to invest other long term funds in common stocks. This is the best way the state can maintain purchase power.

PROPOSERS: Jim Howeth, State Board of Investments.

OPPOSERS: None.

Question: Sen. Towe asked if they anticipate any opposition to the constitutional amendment because they put no restrictions on any of the funds. Rep. Nordtvedt said that limitations are done by statutes with regard to the retirement fund. He posed the questions whether the legislature should act as an investment board or do they hire a non-political board. He thought they should give the investment board leeway and put in guidelines.

Senator Story asked if the date should be changed, and Senator Towe said no.

The hearing was closed.

CONSIDERATION OF HOUSE BILL 545:

AN ACT TO ALLOW A MEMBER OF A POLICE FORCE AND HIS FAMILY TO PARTICIPATE IN POLITICAL ACTIVITY AND THE RIGHT TO HOLD PUBLIC OFFICE.

Rep. Bob Sivertson stated this bill allows members of a policeman's family to participate in political activities and was amended to allow the policemen also but not while in uniform, only as a civilian.

PROPONENTS: None.

OPPONENTS: None.

Questions: Senator Ryan asked if police force is defined. Rep. Sivertson did not know the answer, and Senator Towe sought the answer in the code.

Senator Towe asked what the subcommittee had done in the house. Rep. Sivertson said they changed the intent of his bill and agrees with Senator Towe the bill probably does not do what the title says it does. Senator Towe was told the committee could look at the original. Senator Towe questioned whether there has ever been a problem concerning family members in political situations and was told yes.

Senator Towe suggested leaving in the stricken material on page 1, reinstate stricken material on page 2, make it number 2, and make 3 state, "The officer or member of the police department may participate in political activity or hold public or political office provided he does not do so while on duty or in uniform or that it does not otherwise interfere with the performance of his duties."

There was some further discussion before the hearing was closed.

CONSIDERATION OF HOUSE BILL 683:

AN ACT TO REVISE AND CLARIFY THE LAWS RELATING TO BALLOT ISSUES; TO SIMPLIFY THE LANGUAGE IN BALLOT ISSUE PETITIONS; TO REQUIRE THAT EACH PETITION CONTAIN THE ADDRESS OF THE PERSON CIRCULATING IT; AND REQUIRING THE ATTORNEY GENERAL TO APPOINT A COMMITTEE TO WRITE THE PURPOSE OF THE BALLOT ISSUE AND THE STATEMENTS OF IMPLICATION.

Rep. Jay Fabrega said this bill revises and clarifies the law relating to ballot issues and read the title. He went over particular sections: page 2, line 6, and page 3, line 5: the stricken material on page 4; page 13, line 17, etc. and explained the new language.

PROPOSERS: Mark Mackin said this will make the initiative better drafted; Mike Males suggested an amendment to delete page 13, line 6.

OPPOSERS: Mike McGrath, from the Attorney General's Office, opposed section 7 because it is a cumbersome process, and it is difficult to locate opponents. There also is no money for this.

Senator Story asked about the status of Senate Bill 235 and was answered that it is still pending.

Senator Ryan asked if there should be a penalty if one signs a petition twice and Rep. Fabrega answered yes. He was asked if anyone has ever been accosted, and the answer was no but it is illegal and the clerk and recorders have a color code to check to see if it has been signed more than once. Senator Towe mentioned that it should be an intentional signature because time may elapse between signatures, and one may not realize he is signing the same petition more than once.

Senator Towe asked Rep. Fabrega about a mandate that he seek out assistance, concerning lines 12-15 on page 14.

Senator Towe then asked Rep. Fabrega if he is familiar with Senate Bill 235, stating that both cannot be passed.

Senator's Towe, Ryan, and Mr. McGrath discussed the wording of the amendment suggested on page 16, line 17. Senator Towe moved an amendment following: "shall", insert: "seek out parties on both sides of the issue and obtain their advice. The attorney general may, if he deems it necessary,".

Senator Ryan discussed his difficulty with the wording because it implies the attorney general may try, but with little effort.

Chairman Story stated we may wait to see what happens to the other bill before we act on this.

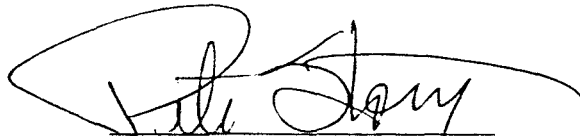
Senator Towe withdrew his motion.

Rep. Fabrega closed pointing out that the printing shop had left off the boxes for voting on the bill.

Chairman Story announced executive meeting Tuesday, March 10, but House Bills 330 and 683 will be voted on at a later date.

There was discussion of House Bill 302 within the committee.

ADJOURNMENT: 11:50.



PETE STORY, CHAIRMAN

ROLL CALL

STATE ADMINISTRATION COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 3-9-81

NAME	PRESENT	ABSENT	EXCUSED
Senator Pete Story, Chairman	✓		
Senator Allen Kolstad, V. C.			
Senator William Hafferman	✓		
Senator H. W. Hammond	✓		
Senator Jan Johnson	✓		
Senator Patrick Ryan	✓		
Senator Thomas Towe			

Each day attach to minutes.

INFORMATION SHEET - HOUSE BILL 302

DESCRIPTION: "An act to authorize the Department of Administration to develop and administer a sick pay plan for state employees." The intent of this legislation is to reduce the Social Security (FICA) tax paid by the State of Montana, political subdivisions and their employees.

DISCUSSION POINTS:

1. The state is now taxing employees unnecessarily. This bill would allow the tax to be reduced by giving public employers the authority to pay sick pay "on account to illness."
2. Five states are currently using this plan for accounting of sick leave. They are Washington, Indiana, Tennessee, Vermont and Alabama.
3. Many private employers in Montana, including St. Peter's Hospital, now exclude sick pay from FICA tax.
4. Audit reports have recommended in the past that the state seek authorization to exclude sick pay from FICA tax.
5. The capability to separate sick leave for illness from sick leave for family illness or funerals is to be provided in the new payroll system, expected to be implemented between January 1, 1982, and July 1, 1982. Hopefully, we would begin taking the exclusion by July 1, 1982.

PROJECTED SAVINGS:

The projected savings (for the state) for just those employees paid through Central Payroll (approximately 11,000) is \$222,000 for FY83, and a similar amount would be realized in increased take-home pay for the affected employees. The calculation used assumes that the average days used for sick leave "for illness" is 5 days. This may be conservative when compared to what other states have used for their estimates.

POSSIBLE OPPOSITION TO THE BILL:

The only potential opposition to this bill would be due to concern that excluding sick pay from the FICA tax will have an effect on Social Security benefits of the employee. Excluding sick pay from the calculation of the tax results in the base figures accumulated by the Social Security Administration for calculation of benefits at retirement to be reduced also. A State of Wisconsin study determined that "for employees who retire at 65, the exclusion of sick pay would result in only about a 1% decrease in benefits." However, in some cases the employees' increased take-home pay does not totally offset the decrease in benefits. Employees may also increase their contribution to PERS to offset a decrease in Social Security benefits.

3-9
302

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Social Security Administration
Bureau of Retirement and Survivors Insurance

HANDBOOK FOR STATE SOCIAL SECURITY ADMINISTRATORS



Informational Release

NO. 18

DATE: 1/19/79

Status as Wages of Payments Made to Employees Who are Absent Due to Illness or Accident Disability.

This informational release is issued for the purpose of clarifying the present policies regarding the wage status of payments made by State and local governments to employees who are absent from work due to illness or accident disability.

The revised Chapter on wages and statute of limitations is being prepared for publication. Pending its issuance, this release provides interim instructions. It is suggested that section 413 of the handbook be cross-referenced to this release.

1. General.--Sections 209(b) and (d) of the Social Security Act exclude from wages payments made on account of sickness or accident disability. Section 209(b) excludes all payments on account of sickness or accident disability made under a plan or system established by the employer. Section 209(d) excludes sick payments not made under a plan or system, provided the payments are made more than 6 months after the last calendar month in which the employee worked. Payments made by a State or local governmental employer can be excluded under these subsections only if it has legal authority to pay "on account of sickness" and provides evidence that shows the payments were made under that authority.
2. What Constitutes Legal Authority.--Legal authority to pay on account of sickness means either an express statutory authorization to make such payments or the absence of any statutory restriction on the employer's ability to do so. The first step in determining whether such legal authority exists is to examine the State statutes and constitution. If either restricts an employer's ability to pay on account of sickness, the sick pay exclusion does not apply. If there is no

- b. Procedure When Plan Provides Both for Payments which are and are not excluded from wages:

Frequently sick leave plans permit the use of sick leave for absences not due to the illness or disability of the employee. For example, sick leave may sometimes be used to attend a funeral or when a member of the employee's family is ill. While such occasions may justify the use of sick leave, payments for such absences are not excluded from wages under section 209(b).

NOTE: WHERE AN EMPLOYER'S PLAN OR SYSTEM PROVIDES BOTH FOR PAYMENTS WHICH ARE EXCLUDED FROM WAGES AND PAYMENTS NOT SO EXCLUDED, THE EMPLOYER MUST BE ABLE TO IDENTIFY THE EXCLUDED PAYMENTS. OTHERWISE, ALL THE PAYMENTS MUST BE REPORTED AS WAGES.

5. Disability, Injury, or Extended Illness Pay.--Payments over extended periods of time to employees who are not working because of disability, injury, or long-term illness may be excluded from wages under several provisions of section 209. Such exclusions may be:
- a. Payments not charged against the employee's sick leave or made after the sick leave has been used up are often authorized by statute, ordinance or regulation as payments "on account of sickness." If so authorized, these payments are excluded under section 209(b) or (d). This situation is common in cases of injury on the job.
 - b. Payments made after the year the employee died or became entitled to social security disability insurance benefits are excluded under section 209(n) or (o).
 - c. Payments made after the employer has determined that the employee will not return to work may be excluded as pensions or retirement pay.

H.B. 481

The Public Employees' Retirement System support this proposal. Based on past policy and practice of the Board of Investments, I would continue to expect a diversified, well rounded investment posture for the retirement funds. Since July 1 of 1980, the P.E.R.S. assets have increased over \$20 Million from approximately \$244 Million to \$266 Million. During that period, the stock portfolio has increased \$4 Million from \$17 Million to \$21 Million.

This bill provides the Board of Investment greater latitudes in common stocks investments which can only serve to improve the returns to the retirement funds.

We urge your support of this measure.

Lawrence P. Nachtsheim, Administrator
Public Employees' Retirement Division

NAME: Mick Mackin DATE: 3-9

ADDRESS: 1316 Spring St Helena

PHONE: 448-1177

REPRESENTING WHOM? Cit Legislative Coalition

APPEARING ON WHICH PROPOSAL: HB 683

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: HB 683 will make sure that initiatives
are better drafted.

~~the ballot language on~~
the form of the initiative is
improved.

the title writing committee is a nice feature.
Cit will give potential opponents an
opportunity to ensure the ballot language
is accurate.

NAME MIKE MALES BILL No. 683
ADDRESS P.O. Box 1184 Helena DATE 9 MAR 1981
WHOM DO YOU REPRESENT EN. TWO CTR
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

PROPOSED AMENDMENT:

PAGE 13, LINE 6: DELETE LINE 6

THE AMENDMENT IS MINOR & TO REMOVE
REDUNDANCY — DATE OF NOTARIZATION
MUST BE DATE OF SIGNING ACTIVITY.

DATE 3-9-81

COMMITTEE ON

VISITORS' REGISTER

[illegible]

DATE 3-9-81

COMMITTEE ON St. adm. BILL NO. HB 330

VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

DATE _____

COMMITTEE ON _____ BILL NO. _____

BILL NO.

296

VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

DATE 3-9

COMMITTEE ON State Administration BILL NO. 683

BILL NO. 683

VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)